



# Illegal Wildlife Trade Review, Malawi

A technical assessment undertaken on behalf of the Department of National Parks and Wildlife of Malawi

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## List of Abbreviations

**ACB** – Anti-Corruption Bureau

**AEAP** – African Elephant Action Plan

**AEF** – African Elephant Fund

**AMCEN** – African Ministerial Conference on the Environment

**ASYCUD++** – Automated System for Customs Data

**BMZ** – German Federal Ministry for Economic Cooperation and Development

**CA** – Community Association

**CBO** – Community Based Organisation

**CCA** – Community Conservation Area

**CEN** – WCO Customs Enforcement Network

**CIA** – Chileka International Airport

**CITES** – Convention on International Trade in Endangered Species of Wild Fauna and Flora

**CoP** – Conference of the Parties to CITES

**CRA** – Conservation Research Africa

**CURE** – Coordination Unit for the Rehabilitation of the Environment in Malawi

**DAS** – Development Assistance Strategy

**DFID** – Department for International Development

**DNPW** – Department of National Parks and Wildlife

**DoF** – Department of Forestry

**DoI** – Department of Immigration

**DP** – Development Partner

**DPP** – Department of Public Prosecutions

**EC** – European Commission

**EPI** – Elephant Protection Initiative

**ESAAMLG** – Eastern and Southern Africa Anti-Money Laundering Group

**ETIS** – CITES Elephant Trade Information System

**FIU** – Financial Intelligence Unit

**GTZ** – Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) GmbH, now GIZ

**GIZ** – Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH

**GVNRC** – Group Village Natural Resource Committee

**HWC** – Human Wildlife Conflict

**IACCWC** – Inter-Agency Committee on Combating Wildlife Crime

**ICAR** – International Centre for Asset Recovery

**ICCWC** – International Consortium on Combating Wildlife Crime

**ICEIDA** – Icelandic International Development Agency

**ILEA** – International Law Enforcement Academy

**IUCN** – International Union for the Conservation of Nature

**IWT** – Illegal Wildlife Trade

**IWTFCF** – Illegal Wildlife Trade Challenge Fund

**JICA** – Japan International Cooperation Agency

**KIA** – Kamuzu International Airport

**LATF** – Lusaka Agreement Task Force

**MA** – CITES Management Authority

**MACRA** – Malawi Communications Regulatory Authority

**MDF** – Malawi Defence Force

**MGDS** – Malawi Growth and Development Strategy

**MIKE** – CITES Monitoring the Illegal Killing of Elephants

**MLA** – Mutual Legal Assistance

**MoU** – Memorandum of Understanding

**MPC** – Malawi Posts Corporation

**MPS** – Malawi Police Service

**MPSC** – Malawi Public Service Commission

**MRA** – Malawi Revenue Authority

**NCB** – INTERPOL National Central Bureau

**NDF** – Non-Detriment Finding

**NEAP** – National Elephant Action Plan

**NGO** – Non-Governmental Organisation

**NIB** – National Intelligence Bureau

**NPWA** – National Parks and Wildlife Act

**PA** – Protected Area

**PAC** – Problem Animal Control

**PWAs** – Parks and Wildlife Assistants

**REDD+** – Reducing Emissions from Deforestation and Forest Degradation

**RILO** – Regional Intelligence Liaison Offices

**RBM** – Ranger Based Monitoring Systems

**RoP** – Rules of Procedure

**RRU** – Rapid Response Unit

**SA** – CITES Scientific Authority

**SADC** – Southern African Development Community

**SMART** – Spatial Monitoring and Recording Tool

**SOCAM** – The Society of Accountants in Malawi

**TFCA** – Trans-frontier conservation area

**ToR** – Terms of Reference

**UNCAC** – United Nations Convention Against Corruption

**UNCTAD** – United Nations Conference on Trade and Development

**UNDP** – United Nations Development Programme

**UNODC** – United Nations Office on Drugs and Crime

**UNTOC** – United Nations Convention Against Transnational Organised Crime

**UoB** – University of Bristol

**USAID** – United States International Agency for Development

**USFWS** – United States Fisheries and Wildlife Service

**VNRC** – Village Natural Resource Committee

**WAG** – Wildlife Action Group

**WCIU** – Wildlife Crime Investigations Unit

**WCN** – World Conservation Union

**WCO** – World Customs Organisation

**WFP** – United Nations World Food Programme

**WENSA** – Wildlife Enforcement Network of Southern Africa

**WERU** – Wildlife Emergency Response Unit

**WESM** – Wildlife and Environmental Society of Malawi

**WHO** – World Health Organization

**WMAs** – Wildlife Management Authorities

**WP** – Wildlife Policy of Malawi (2000)

**WWF** – Worldwide Fund for Nature

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## **Executive Summary**

### *Overview*

An exponential increase in the scale and nature of the Illegal Wildlife Trade (IWT) globally has left governments, policy makers and conservationists lagging behind the perpetrators of the crime. In many countries, criminals are shipping enormous quantities of high value products such as ivory, rhino horn and pangolin scales largely untouched by ineffective enforcement efforts. Given significant black market prices for wildlife products, and low detection and prosecution rates for wildlife offences, it is not surprising that organised crime networks have turned their attention to IWT. The rewards for wildlife crime, in most cases, far exceed the risks.

This situation is true in Malawi, as with several other countries in the region. However, Malawi for a long time has remained largely under the radar of those trying to combat IWT, due to its small size and relatively small numbers of wildlife. This Review of Illegal Wildlife Trade in Malawi used the ICCWC Wildlife and Forest Crime Analytic Toolkit to analyse wildlife crime data, wildlife legislation, enforcement capacity and agencies, judiciary and prosecution services and the drivers of wildlife crime. The findings are comprehensive and show that although Malawi is setting some excellent examples and making some crucial progressive steps – e.g. being signatory to several wildlife conservation agreements and declarations and establishing an Inter-Agency Committee on Combating Wildlife Crime (IACCWC) – there is still a long way to go and a lot of work to be done if Malawi is to effectively combat IWT along the entire illegal trade chain..

### *Wildlife Crime Data*

Wildlife crime data must be the bedrock upon which strategies for combating crime should be based. However, in Malawi, Reviewers found there to be a lack of reliable available data, making it almost impossible to identify detailed crime patterns or trends. Several agencies seemed to have not historically recorded or retained wildlife crime data, and those that did often stored it in hard copy only, making it very difficult to access and analyse. In total, 50 wildlife crime cases were analysed by Reviewers, the majority of which were ivory offences at airports.

Overall, data clearly revealed that Malawi is being used as a major transit hub for illegal wildlife products, which are being easily imported, processed, packaged, sold and exported through its porous borders. An example of this was the 2013 seizure of 781 pieces of raw elephant tusks, weighing 2.6 tonnes, which were discovered in a truck that had crossed into Malawi from Tanzania. A further troubling example is that of a Chinese national who was arrested and prosecuted for an ivory trafficking offence under one name, deported under a second name, and reported by the INTERPOL NCB to INTERPOL Headquarters under a third name. This case shows the ease with which criminals are circumventing the weak systems currently in place.

In addition to being a transit hub, Malawi's own wildlife is also under considerable threat. Although data and population surveys may be lacking, the stark reality is clear – unless immediate action is taken to combat the trade, Malawi will have very little wildlife left in just a few years' time. For example, in the 1980's Kasungu National Park was thriving, with an elephant population of more than 2000. Today the Park supports around 40 elephants and fears are that the decline is continuing. Poachers are taking advantage of corrupt practices, weak legislation and an acute lack of resources. Malawi's wildlife populations are not large enough to withstand the pressure – each and every rhino or elephant lost must be considered a significant loss to the country.

The Reviewers have proposed a number of changes to assist authorities in data collection, management and analysis, including: the establishment of a centralised wildlife crime database; a series of measures to ensure proper identification of criminals; the development of performance

indicators for recording wildlife crime statistics; the use of ranger-based monitoring systems and implementation of protocols for adequate distribution of data both within and between relevant agencies. Additionally, Reviewers are of the opinion that unless the general public and law enforcement officers are made fully aware of the seriousness of wildlife crime, and of how it is affecting Malawi's environment (and potentially tourism revenue) there can be little or no nation-wide effort to engage the public and motivate officers in prevention of wildlife crime. Reviewers have therefore recommended that a sensitisation campaign is implemented.

### *Legislation*

As part of a comprehensive effort to respond to the current poaching and international trade crises, Malawi has redoubled its efforts to improve its wildlife legislation. This IWT Review includes an examination of Malawi's National Parks and Wildlife Act (NPWA) in light of the CITES National Legislation Project, and reviews CITES requirements for implementing legislation.

The review of the NPWA suggests that for the dual purposes of effectively combating wildlife crime and adequately implementing CITES a number of important changes to the legislation are necessary, including:

- (1) The legislation must clearly designate Scientific and Management Authorities to undertake the tasks required for CITES implementation. Based on the framework of the NPWA and existing practice, the legislation could designate the Office of the Director of National Parks and Wildlife as the Management Authority and as the Scientific Authority. However, best practices suggest that the Management Authority and Scientific Authority operate with the least corruption when they are separate offices.
- (2) Definitional issues related to the scope of the Act must be clarified to ensure that the Act is protective of species. For example, ensuring that "listed species" and "protected species" under legal definitions, are afforded the same protection.
- (3) The provisions for penalties under the Act must be amended to ensure that wildlife crime may be treated as a "serious crime" and to clarify contradictions that make the current provisions unenforceable. Although CITES does not prescribe a particular standard for the imposition of penalties, the increasing scale and extent of wildlife trafficking, and the involvement of organized criminal networks, have led to calls being made for wildlife crimes to be treated as "serious crimes." The Organized Crime Convention defines "serious crime" as "conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty." Prior to 2004, Malawi's wildlife legislation included penalties such that wildlife crimes often constituted "serious crimes," triggering application of the Organized Crime Convention. However, in 2004, the penalty provisions were substantially revised. Unfortunately, these revisions rendered many of the provisions unenforceable because they are contradictory and incomprehensible. It is therefore highly recommended that the penalties are amended as a matter of urgency in order to truly provide a deterrent effect.

In addition to the NPWA, it was found that whilst there are a number of other Acts and Codes that could be used to prosecute wildlife crime. At the time of data analysis (February 2014) Reviewers were not made aware of any concluded wildlife crime prosecution which had so far utilised multiple pieces of legislation. Legislation which could be used in addition to NPWA include: the Malawi Immigration Act, the Malawi Customs and Excise Act, The Malawi Penal Code, Malawi Firearms Act, Corrupt Practices Act, Malawi Forestry Act, Animal Protection Act and the Malawi Money Laundering Act. It is highly recommended that all investigators, prosecutors and members of the judiciary are sensitized and made aware of the wider legal tools that are available in Malawi for apprehending and prosecuting wildlife criminals.

### *Wildlife Law Enforcement*

Effective, proactive law enforcement is an essential component in combating wildlife crime. The Department of National Parks and Wildlife (DNPW) carries the primary responsibility for conserving Malawi's wildlife, however, it currently suffers from an acute shortage of staff, resources and equipment. DNPW's current budgetary ceiling allocated by Government is too low to enable it to effectively carry out its whole mandate. A number of stakeholders interviewed additionally expressed concern about recruitment and disciplinary procedures, particularly relating to some government employees who are believed to be involved in corrupt practices – challenges which need to be addressed with some urgency across agencies.

Other Malawian agencies that are significantly involved in wildlife law enforcement include the Malawi Police Service, Anti-Corruption Bureau, INTERPOL, Financial Intelligence Unit, Malawi Revenue Authority, Department of Immigration and Malawi Defence Force. Reviewers developed an extensive series of recommendations to support the work of all the above enforcement agencies, including but not exhaustive of: establishment of a whistle-blowing mechanism to report suspected or actual cases of wildlife crime corruption; extending the capacity of the MPS sniffer dog unit to include detection of wildlife products; implementation of specialised training and capacity building programmes across the whole law enforcement chain; introduction of more effective risk management systems with regards to wildlife contraband; incorporation of wildlife crime modules into customs training manuals; provision of false document identification training to all senior IACCWC staff members and development of mandatory protocols for all airport staff members concerning methods for wildlife security.

Non-governmental organisations also play an important role in helping Government combat wildlife crime in Malawi. Given the widespread and extensive national and international responsibilities of DNPW (and the other wildlife law enforcement agencies) there is no doubt that NGOs can help DNPW in the detection and prevention of wildlife crime at a local level. It is therefore important for DNPW and NGOs to ensure a good and transparent working relationship is maintained, and where appropriate, that clear boundaries on roles and responsibilities are set.

Reviewers found that there is no specialist wildlife crime investigation unit currently in Malawi, although DNPW have some reactive capability and the MPS have a proactive intelligence unit that undertakes criminal investigations, including investigations of wildlife crime. Investigating wildlife crime requires proactive, disruptive and reactive investigation methods. All these activities are most effective when they are driven by information collected, analysed and developed by a central unit on behalf of all stakeholders. Given the current chronic lack of equipment and resources available to front-line wildlife enforcement officers, and further given the serious and urgent nature of wildlife crime taking place in Malawi, the establishment of a specialist wildlife crime investigation unit, and training of DNPW Rapid Response Units in protected areas, are highly recommended.

### *Judiciary and Prosecution*

The vast majority of wildlife prosecutions in Malawi have taken place in lower grade courts and prosecuted by lower ranked officers. As a result, the fines received to date have been extraordinarily small and not in any way reflective of the seriousness of the crimes committed. For example, a case of ivory trafficking heard in Rumphi Magistrates Court resulted in a fine of just 20,000 Kwacha (USD 40). Worryingly, Reviewers additionally found that 20,000 Kwacha is the average fine given nationally for ivory trafficking – an extremely low amount that must provide no deterrent at all to wildlife criminals.

In addition, it appears that many more criminals are arrested, often in possession of suspected illegal firearms, than are sentenced at the magistrate courts. The Wildlife Action Group arrest around 100 poachers a year in Thuma Forest Reserve, Salima, and hand them onto the authorities. However, between 2010 and 2014 the MPS office in Salima provided just 10 records

of people who were convicted and sentenced by the local magistrate court. This is a serious matter that needs addressing as the current situation provides negligible deterrent to poachers and known notorious poachers will continue to reoffend.

It is recommended that the Director of Public Prosecutions be engaged in matters relating to serious wildlife crime, in order to resolve some of the challenges identified in this report. The Reviewers' recommendation is that it be made mandatory for all cases relating to ivory and rhino horn, regardless of the perceived value of the product, and regardless of whether the suspect has pleaded guilty:

- i) Always be held in a First Grade, Registrar's Magistrate's Court or High Court;
- ii) Always be given a minimum of 7 working days before the court hearing, in order to conduct the required investigations;
- iii) Always be formally and immediately reported to the Director of Public Prosecutions.

### *Drivers and Prevention*

The economic and social drivers behind the IWT can be wide and varied – from political unrest to poverty and food insecurity. From interviews conducted with stakeholders and community members, it was apparent that rural poverty is a factor in their participation in community poaching. However, for the middle men and kingpins of IWT, many of whom are not Malawian nationals, the primary driver is clearly the very high value of most trafficked wildlife products, combined with extremely low detection and prosecution rates for criminals.

All protected areas in Malawi are surrounded by people, usually with no buffer zone between the protected areas and community areas. There is, therefore, an important and inherent link between efforts to reduce the drivers of IWT and engagement with local communities. According to DNPW, the primary challenge to conservation inside Malawi's protected areas are land use conflicts. Communities feel a sense of ownership of these areas, and the vast majority claim to not see any benefit from the protected area status of the land.

The number of snares being recovered each year in protected areas indicate considerable levels of poaching by community members (for example 1,322 snares were recovered from Vwaza Marsh alone between January and September 2014). Over 85% of community members interviewed felt that the low penalties given to poachers were one of the main reasons poaching was common. There is, therefore, a need to sensitize local communities around protected areas that wildlife crime is a serious crime and wildlife criminals will soon be punished more severely. There is also a need for communities to start seeing a benefit to wildlife conservation. Any community based wildlife conservation schemes should be administered so that there are real and tangible benefits provided at the household level. Projects and funding should be administered to help ensure that a significant proportion of the funds and benefits flow from the bottom up and not just trickle from the top down.

### *The Future*

Reversing the trend in Malawi is not yet an impossible task. The Department of National Parks and Wildlife (DNPW) have fully recognised and acknowledged the problem, and an "Inter-agency Committee on Combating Wildlife Crime", comprising representatives from all the relevant enforcement, judicial and prosecution agencies, has been established in response to the rapidly escalating need for inter-agency collaboration and communication. And in law, wildlife trafficking has already been recognised as a serious offence, following a 2003 High Court Case (R v. Maria Akimu):

*"Processing, trafficking, hunting of trophies should in recent times be considered as a serious offence sui generis. Much of the trafficking, hunting and possession of trophies affects*

*animals that are endangered species under many international and regional instruments or arrangements to which Malawi is a party. Under these, Malawi must not only resort to steps reducing threats to the species but eliminate completely all conduct that threatens these species."*

The political and legal precedents have therefore already been set, forming a firm basis upon which to implement a comprehensive strategy for addressing Illegal Wildlife Trade. For such a strategy to be effective, it requires incorporation of complex, multi-faceted actions across all relevant sectors – from Government to judiciary and prosecution services, enforcement agencies, civil society and the communities that surround wildlife areas. This IWT Review clearly demonstrates a way forward, providing a series of recommended tasks and actions which, if implemented, will tackle IWT at all parts of the chain. It will tighten legislation, enhance enforcement efforts and increase prosecution rates and sentences faced by criminals. Malawi has the potential to become a regional role model for combating IWT and should be fully supported in its vital efforts to do so. The first step towards this will be the establishment of an IWT Strategy and Action Plan for Malawi. This should build upon the recommendations made in this assessment and provide direction as to which projects and programmes are priorities and where resources for such interventions can be sourced.

## **1.0 Background to the Illegal Wildlife Trade**

### **1.1 Illegal Wildlife Trade: A Global Wildlife Crisis**

50% of the world's species have been lost in the past 40 years<sup>5</sup>. In 2013 the World Customs Organisation (WCO) reported that in the area of illegal wildlife trade (IWT), rhino and elephant populations continue to be the most common target in Africa<sup>6</sup>. Rhino poaching has reached record levels in Africa. In South Africa, which has by far the largest population of rhinos in the world, rates of rhino poaching have been increasing exponentially over the last decade, from just 10 (officially recorded) poaching incidents in 2004 up to 1215 in 2014 – this equates to a dead rhino almost every 7 hours<sup>7</sup>. African elephants, another of the world's iconic species are facing a similar threat and are being poached at record numbers in recent years. Elephant population in Tanzania has decreased from ca.109,000 in 2009 to 45,000 in 2014, whereas in Mozambique it has decreased from around 20,000 to 9,000 during the same period<sup>8</sup>.

Conservative estimates show that more than 20,000 elephants are being lost to poaching every year, with the real number probably significantly higher. Between Global illegal ivory activity is operating at its highest level in over 25 years (since the 1989 CITES trade ban), and the volume of illegal ivory traded is estimated to have tripled between 1998 and 2011, and more than doubled between 2007 and 2011. The scale is hard to understate, and between 2009 and 2014 there were over 90 seizures of ivory that weighed more than 500 kg, with a total weight of more than 170 tonnes<sup>9</sup>. The International Union for the Conservation of Nature (IUCN) calculated that the “threshold of sustainability” was crossed in 2010, the year when elephant poaching figures reached a critical level and outstripped elephant birth rates. In every year since, the elephant population has stayed in net decline, meaning that the majestic elephant is gradually disappearing from our earth. And there are hundreds of other wildlife species that are also at significant risk from IWT, such as lions or pangolins which are facing rapid declines and the looming threat of extinction due to the IWT crisis. And there are many more examples of species from across the globe

### **1.2 Illegal Wildlife Trade: A Transnational Organized Crime**

Global environmental crime is estimated by the United Nations (UN) to be worth as much as \$213 billion annually. Over \$23 billion is attributed to the IWT alone, of which ivory and rhino horn are important and publicly particularly visible components. Across Africa, as much as 3-5% of the elephant population is being annually killed by a wide range of often highly militarized actors, closely tied to organized crime, conflict and political corruption. Rhino horn is now estimated to trade on the black market in Asia at up to \$60,000 per-kilogram (more lucrative than gold, diamonds and cocaine), while the price of ivory has now reached a wholesale price in China of up to USD \$2,100/kg in 2014<sup>10</sup>. To achieve this value, a trafficking organization must source, consolidate, transport, and sell ivory along a long and complex supply chain that crosses borders and oceans and travels from the remotest corners of Africa thousands of miles to retail markets in Asia. Illegal wildlife trade has consolidated and professionalized, with profits accruing also to transnational organized crime. Asian organized criminal networks in particular tend to profit from the illegal trade, and dominate the supply chain, and are establishing links within the broader black market and trafficking flows. In purely logistical terms, there is also evidence that ivory trade is linked to other forms of illicit activity, such as the illegal drug and weapons trade.

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<sup>5</sup> <http://news.nationalgeographic.com/news/2014/09/1409030-animals-wildlife-wwf-decline-science-world/> - March 2015

<sup>6</sup> World Customs Organisation (WCO) (2013) Illicit Trade Report 2013. Technical Report by WCO <http://www.cites.org/sites/default/files/eng/news/sundry/2014/illicit-trade-wco-2013.pdf> - March 2015

<sup>7</sup> South African Department of Environmental Affairs (2015) via website [www.savetherhino.org/rhino\\_info/poaching\\_statistics](http://www.savetherhino.org/rhino_info/poaching_statistics) - May 2015

<sup>8</sup> Convention on International Trade in Endangered Species of Wild Fauna and Flora CITES.

<sup>9</sup> Elephant Trade Information System ETIS.

<sup>10</sup> Vigne, L and Martin, E (2014). China Faces a Conservation Challenge: The Expanding Elephant and Mammoth Ivory Trade in Beijing and Shanghai. Save the Elephants & the Aspinall Foundation.

Wildlife poaching is no longer solely a conservation issue. It also increasingly threatens the livelihoods and security of the affected population. In some instances, IWT has also been linked to fund destabilizing actors like rebel groups and militias across Africa, with significant implications for human conflict<sup>11</sup>. IWT not only contributes to the degradation of natural environments, but also of communities and the rule of law in some of Africa's most fragile states. Meanwhile, it also amounts to illicit financial flows out of some of the poorest communities in Africa towards international organized crime syndicates, corrupt officials and politicians, and in some cases possibly also to extremists and terrorists.<sup>12</sup> The global IWT now ranks among trafficking in drugs, arms and humans in terms of crime profits. Although it remains an urgent conservation issue, it has clearly become also a security issue that needs to be addressed on a cross-sectoral and cross-border level by coordination of different stakeholders along the entire illegal trade chain.

### 1.3 Illegal Wildlife Trade: A Multi-National and Multi-Agency Response

Wildlife crime is a serious challenge for sustainable development and the political awareness of wildlife crime has reached unprecedented levels. There is widespread high level political will to combat IWT across countries and in the international community. The establishment of international law enforcement agencies and the development of several collaborative international IWT strategies, action plans and enforcement measures reflect this growing will. The governments of several western countries have recently allocated significant funding towards combating IWT, especially in developing countries. Since 2013, the German Government, through particularly the Federal Ministry for Economic Cooperation and Development (BMZ), makes available Euro 500 million annually to conserve forests and other ecosystems worldwide. This biodiversity commitment included the commissioning of the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) to manage a dedicated funding window for cross-cutting, transboundary political cooperation ("Polifund") which was tasked to implement concrete measures to combat poaching and IWT (ivory and rhino horn) in Africa and Asia on a cross-sectoral, cross-border and transcontinental level<sup>13</sup>. This review was supported from that particular fund.

In February 2014, the London Conference on Illegal Wildlife Trade recognised that "*The illegal wildlife trade robs States and communities of their natural capital and cultural heritage... It undermines the livelihoods of natural resource dependent communities. It damages the health of the ecosystems they depend on, undermining sustainable economic development.*" In response, the US Government announced a *National Strategy to Combat Wildlife Trafficking*<sup>14</sup> and the UK Government published a *UK Commitment to Action on Illegal Wildlife Trade (IWT)*<sup>15</sup>. There have also been many other examples of additional countries recently declaring their support for helping to combat IWT. In February 2015 the European Union (EU) announced that they will soon be

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<sup>11</sup> United Nations Office on Drugs and Crime (UNODC). (2011). *Organised Crime and Instability in Central Africa – A Threat Assessment*. Technical Report by UNODC

[http://www.unodc.org/documents/data-and-analysis/Studies/Central\\_Africa\\_Report\\_2011\\_web.pdf](http://www.unodc.org/documents/data-and-analysis/Studies/Central_Africa_Report_2011_web.pdf)

<sup>12</sup> Varun, V & Ewing, T. (2014). *Ivory's Curse – The Militarization and Professionalization of Poaching in Africa*. Report by Born Free USA and C4ADS <http://www.bornfreeusa.org/downloads/pdf/Ivorys-Curse-2014.pdf>

<sup>13</sup> Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) (2014). *Combating Poaching and Illegal Wildlife Trade (Ivory and Rhino) in Africa and Asia - Measure within the Fund for Cross-Cutting Political Co-operation (Polifund)*. GIZ on behalf of Federal Ministry for Economic Cooperation and Development <http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DCD/DAC/GOVNET%282014%2910&docLanguage=En>

<sup>14</sup> United States Government (2014). *National Strategy for Combating Wildlife Trafficking*. Washington, US. <http://www.whitehouse.gov/sites/default/files/docs/nationalstrategywildlifetrafficking.pdf>

<sup>15</sup> UK Government (2014). *UK Commitment to Action on Illegal Wildlife Trade (IWT)*. Crown Copyright, UK [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/277772/pb14129-commitment-action-illegal-wildlife-trade.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/277772/pb14129-commitment-action-illegal-wildlife-trade.pdf)



publishing an *EU Strategic Approach to Wildlife Conservation in Africa* and an *EU Action Plan for Wildlife Trafficking*. All of these strategies and action plans aim to strengthen the implementation of international agreements and arrangements that protect wildlife, including, but not exhaustive of CITES, the UN Commission on Crime Prevention and Criminal Justice, the UN Convention against Transnational Organized Crime and the UN Convention against Corruption.

Many African states have also declared their commitment to combating IWT and the in-situ poaching of wildlife, particularly the illegal killing and trade in elephants. The *African Elephant Action Plan* was adopted in March 2010 and outlines the actions that must be taken in order to effectively conserve elephants in Africa across their range. It is fully owned and managed by the African elephant range states, including Malawi. At the *African Elephant Summit* in December 2013, Botswana, Germany, Niger, Somalia, Uganda, UK, USA, Zambia and Zimbabwe all signed and formally agreed to implement the urgent measures as defined by the Summit as being needed to halt and reverse the trend in illegal killing of elephants and the illegal trade in ivory<sup>16</sup>. At the *London Conference on Illegal Wildlife Trade* in February 2014, 40 countries, including Malawi and 15 other African states, signed the political *London IWT Declaration* to: 1) eradicate the market for illegal wildlife products; 2) ensure effective legal frameworks and deterrents are in place; 3) strengthen law enforcement; and, 4) reduce the threat of IWT to local communities and economic development<sup>17</sup>.

Immediately following the IWT London Conference, the governments of Botswana, Chad, Ethiopia, Gabon and Tanzania announced a global initiative, the *Elephant Protection Initiative* (EPI), to further protect elephants. The EPI consists of range states, partner states, NGOs, iNGOs, private citizens and the private sector working in partnership to: 1) implement the African Elephant Action Plan; 2) close domestic ivory markets; 3) observe a moratorium on any future international trade for a minimum of 10 years and, 5) agree to put all ivory stockpiles out of economic use<sup>18</sup>. Malawi, and several other African states, has now also joined the EPI. In addition, 12 African states, including Malawi, attended the *Arusha Regional Summit – Stopping Wildlife Crime and Advancing Wildlife Conservation – A Call to Action* in November 2014. The subsequent *Arusha Declaration* was signed by seven African states, including Malawi, and all signatories made a political commitment to work at the regional level to conserve wildlife and combat wildlife crimes<sup>19</sup>. All previous commitments have been reviewed and followed up by the various states, including Malawi, at the follow up conference to the London Declaration on IWT, the *Kasane Conference on IWT*, and the follow up summit to the African Elephant Summit, which were both held in Botswana during March 2015.

There are several other examples where governments across Africa and further afield have made significant commitments to step up their efforts to combat IWT. This has included improving transnational and multi-agency efforts. In Southern and Eastern Africa the Lusaka Agreement Task Force (LATF) directs co-operative enforcement operations against IWT. Since 1999 LATF has provided for a permanent task force to combat interregional IWT in Africa. Another example of regional wildlife law enforcement in Southern Africa is the Southern Africa Wildlife Enforcement Network (WEN-SA) that was established in 2012, and for which Malawi is a member. There are also several other African focused multilateral environmental agreements and international instruments etc. with objectives pertaining to the sustainable environmental management and regulation of trade in wildlife and other natural resources. One example (of many) would be the Malawi-Zambia Transfrontier Conservation Area (TFCA) for effective management of the Nyika-

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<sup>16</sup> [https://cmsdata.iucn.org/downloads/african\\_elephant\\_summit\\_final\\_urgent\\_measures\\_3\\_dec\\_2013\\_2.pdf](https://cmsdata.iucn.org/downloads/african_elephant_summit_final_urgent_measures_3_dec_2013_2.pdf) - March 2015

<sup>17</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/281289/london-wildlife-conference-declaration-140213.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/281289/london-wildlife-conference-declaration-140213.pdf) - March 2015

<sup>18</sup> [https://www.google.com/webhp?sourceid=chromeinstant&rlz=1C1AVNC\\_enGB593GB593&ion=1&esp=2&ie=UTF-8#q=elephant%20protection%20initiative](https://www.google.com/webhp?sourceid=chromeinstant&rlz=1C1AVNC_enGB593GB593&ion=1&esp=2&ie=UTF-8#q=elephant%20protection%20initiative) – March 2015

<sup>19</sup> [http://internationalconservation.org/documents/Arusha\\_Declaration\\_Regional\\_Conservation\\_Combating\\_Wildlife\\_Environmental\\_Crime.pdf](http://internationalconservation.org/documents/Arusha_Declaration_Regional_Conservation_Combating_Wildlife_Environmental_Crime.pdf) - March 2015

North Luangwa and the Kasungu-Lukusuzi TFCA, for which a memorandum of understanding (MoU) towards the TFCA's establishment was signed in 2004. As part of this TFCA a joint law enforcement project, operating as a single unit across international borders, was established by Malawi and Zambia to combat poaching. More recently, significant funds have been secured to establish a TFCA programme that will lead to more effective cross-border biodiversity management between the protected areas.

With respect to multi-agency IWT law enforcement, the International Consortium for Combating Wildlife Crime (ICCWC) recently (July 2014) published their Strategic Mission for 2014-2016. This strategy detailed how the ICCWC will strengthen their cooperation and coordination, build national enforcement capacity and raise awareness and political support (amongst other focus areas) of IWT in all countries in which they have jurisdiction. The ICCWC was formed in 2010 and is the collaborative effort of five inter-governmental organizations working together to bring coordinated support to national wildlife law enforcement agencies and to sub-regional and regional networks that, on a daily basis, act in defense of natural resources. The ICCWC partners are the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) Secretariat, INTERPOL, the United Nations Office on Drugs and Crime (UNODC), the World Bank and the World Customs Organization (WCO). The mission of ICCWC is to usher in a new era where perpetrators of serious wildlife crime face a formidable and coordinated response, rather than the common present situation where the risk of detection and punishment is all too low. One of several tools that the ICCWC has for achieving its mission is the ICCWC Analytic Toolkit on Combating Wildlife and Forest Crime, written by the UNODC in July 2012<sup>20</sup>.

#### **1.4 ICCWC Wildlife and Forest Crime Analytic Toolkit**

ICCWC's Wildlife and Forest Crime Analytic Toolkit is designed to provide a mechanism for analysing the main issues relating to wildlife offences in a given country – ranging from legislation to enforcement, judiciary and prosecution systems and identification of the drivers of illegal trade. The toolkit provides a framework to enable a comprehensive analysis of possible means and measures to protect wildlife and monitor their use to help identify the technical assistance needs of a country. The toolkit has formed the basis of this review and the recommendations made.

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<sup>20</sup> International Consortium on Combating Wildlife Crime (ICCWC). (2012). *Wildlife and Forest Crime – An Analytic Toolkit*. United Nations Office on Drugs and Crime (UNODC). United Nations, New York [http://www.cites.org/sites/default/files/eng/resources/pub/Wildlife\\_Crime\\_Analytic\\_Toolkit.pdf](http://www.cites.org/sites/default/files/eng/resources/pub/Wildlife_Crime_Analytic_Toolkit.pdf)

## **2.0 Illegal Wildlife Trade in Malawi**

### **2.1 Malawi and the Poaching Crisis**

Malawi is geographically positioned in the middle of a regional wildlife poaching hotspot. Malawi borders Tanzania, Mozambique and Zambia and the national parks closest to Malawi within these three respective bordering countries are the Selous, Niassa and Luangwa (complex) protected areas. These sites are all listed as current focal points for poaching, especially of elephant. The Selous-Niassa reserves have been the confirmed origin for a number of recent major illicit ivory seizures: 4 tonnes in Taiwan in 2006, 2.6 tonnes in Hong Kong in 2006, 5 tonnes in the Philippines in 2009, 1.5 tonnes in Sri Lanka in 2012, 2.6 tonnes in Malawi in 2013, 1.9 tonnes in Uganda in 2013 and 1 tonne in Singapore in 2014<sup>21</sup>. In 2011, there were 1,000 elephants poached within just one year in Niassa Reserve Mozambique<sup>22</sup>. The Selous ecosystem had 109,419 elephants in 1976 but in 2013 that population was down to 13,084. Almost 25,000 elephants, ca. 66% of the park's population, have been lost between 2009 and 2013. Zambia, like Malawi, has very low levels of human development and income in rural areas and these populations are susceptible to ivory's rapidly increasing price. Zambian poaching gangs are now seen with increasing frequency and poaching levels are again reaching a crisis point. In 2002, 6.5 tonnes of ivory was seized in Singapore and traced back to Zambia and Malawi, the Luangwa Valley complex being identified as the likely specific source of the ivory<sup>23</sup>. In recent years elephant poaching in reserves within the Luangwa Valley has increased and is greater than the CITES Southern African average, e.g. there were ca. 270 officially recorded cases of illegally killed elephants between 2012 and 2013 alone<sup>24</sup>. In addition, reports of movement of ivory between Zambia and Malawi have started to increase again. This poaching, like that in Malawi, is being driven by lucrative illegal markets, in South East Asia and China, which are being utilised by international criminal syndicate which recruit local nationals and local community members to undertake the killing of wildlife and to facilitate the trafficking of the subsequent wildlife products out of the source countries – <http://eia-international.org/reports>.

Malawi's own elephant populations have also been heavily poached - the national population has halved in under 20 years and in some protected areas, such as Majete (prior to the private-public partnership) and those parks close to Lilongwe, numbers have dropped even more alarmingly. For example, Kasungu National Park now supports just ca. 40 elephants down from over 2000 in the late 1980s. At the recent launch of the National Elephant Action Plan (NEAP) for Malawi, Mr Kumchedwa, the Director of National Parks and Wildlife (DNPW) of Malawi, stated that, "*the ivory trafficking is driving the killing of our elephants. Armed criminal gangs pose a real and immediate threat to our rangers and the communities that live near protected areas.*" The Malawian authorities have recorded over 70 cases of ivory trafficking between 2011 and 2014. In addition to elephant, other species are also under considerable threat from IWT in Malawi and have been suffering from catastrophic declines. Lions are now extremely rare and populations of less glamorous animals, such as turtle species in Lake Malawi and orchid species on the Nyika

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<sup>21</sup> Environmental Investigations Agency (EIA) (2014). *Vanishing Point – Criminality, Corruption and Devastation of Tanzanian Elephants*. Research Report - EIA, London, UK  
<http://eia-international.org/wp-content/uploads/EIA-Vanishing-Point-lo-res1.pdf>

<sup>22</sup> Booth, V.R. & Dunham, K.M (2014) Elephant poaching in Niassa Reserve, Mozambique: population impact revealed by combined survey trends for live elephants and carcasses. *Oryx*. Flora and Fauna International – IP197.211.98.83.  
<http://journals.cambridge.org/action/displayFulltext?type=6&fid=9384249&jid=ORX&volumeId=1&issuId=1&aid=9384248&bodyId=&membershipNumber=&societyETOCSession=&fulltextType=&fileId>

<sup>23</sup> Wasser, S. K., Mailand, C., Booth, R., Mutayoba, M., Kisamo, K., Clark, B., & Stephens, M. (2006). Using DNA to track the largest ivory seizure since the 1989 trade ban. *Proceedings of the National Academy of Sciences of the United States of America*. Vol: 104, No. 10, pp 4228-4233.

<sup>24</sup> Nyirenda., V.R., Lindsey., P. A., Phiri., E., Stevenson., I., Chomba., C., Namukondel., N., Myburgh., W.J. & Reilly., B.K. (2015). Trends in the Illegal Killing of African Elephants (*Loxodonta Africana*) in the Luangwa and Zambezi Ecosystems of Zambia. *Environment and Natural Resources Research*. Vol. 5, No 2, pp 24-36

Plateau, are being decimated by highly organised transnational syndicates. Malawi's wildlife is in plight and urgent interventions are now required<sup>25</sup>.

## **2.2 Malawi: An IWT Collection / Distribution and Transit Hub**

The geographical position of Malawi makes it a frequent transport route for freight that is in regional overland transit. Malawi's low export status means that there is also a high need for significant import volumes from international overland supply routes, all of which have to pass through surrounding countries. It is therefore not surprising that wildlife criminals use these existing transit routes to help conduit their contraband across the wider region and onto the Asian markets. For example, there are several high profile cases in which Malawi has been identified as being the chosen place for the collection, storage, packing / sorting and further distribution (to the high risk sea ports of Dar-es-Salaam, Pemba, Beira and Durban) of large quantities of illicit elephant ivory poached from both Malawi and its neighbouring countries. Malawi is, geographically speaking, very conveniently i.e. centrally placed for this purpose.

In June 2002, ca. 6.5 tons of ivory—purported to be stone sculptures—were seized in Singapore after being shipped from Malawi via Mozambique and South Africa. This was the largest seizure since the 1989 ivory ban and the second largest in the history of the illegal ivory trade. The shipment included 532 large tusks, averaging 11 kg, which originated from Zambia. The shipment also contained 42,000 cylindrical signature seals, called *hankos* or chops, each 6 cm in length and 14–18 mm in diameter. The IWT syndicate used a private warehouse in Kanengo, Lilongwe, to store, process and ship the ivory. The syndicate then smuggled large quantities of ivory in multiple shipments, via an intermediate country, to the Far East. A raid on the Kanengo warehouse uncovered detailed documentation linking the seizure to an ivory trafficking operation that included 19 similar shipments over the preceding 8 years; 9 of these occurred in the preceding 3 years. If each of these 19 shipments also contained 6 tons of ivory, the shipments would represent over 110 tons of ivory, corresponding to 17,000 killed adult elephants<sup>26</sup>. Regrettably, despite the high-profile nature of the case, and despite the availability of detailed information concerning the criminal elements involved, investigations have so far failed to lead to any prosecutions of any of the key players.

In early 2012 a shipment of 262 tusks (931.7kg) was seized in Tianjin, China after being exported illegally from Dar-es-Salaam. The shipment contained ivory originating from Malawi and also from the Selous-Niassa game reserve complex. In this case, evidence of at least 3 different poaching syndicates was found<sup>27</sup>. In addition, on 24<sup>th</sup> May 2013, a mobile team from the Malawi Revenue Authority (MRA) carried out an inspection of a truck in the area between Bwengu and Phwezi. The driver declared that the truck contained cement which was being imported from Tanzania. Upon inspection, 781 pieces of raw elephant tusks, weighing 2.6 tonnes, were discovered concealed beneath the cement bags. The tusks were to be concealed in a shipping container in Lilongwe and then exported on to Asia via the port of Beira. DNA analysis of the tusks, some of which reached 1.6 metres in length, has shown that the main place of the ivory's origin was also the Selous-Niassa reserves, with a smaller number of tusks originating from the Ruaha-Mikumi ecosystem. The status of the legal process remains uncertain, although the driver is still awaiting trial in the Malawian High Court and is finally due for hearing on 18<sup>th</sup> March 2015.

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<sup>25</sup> Munthali, S.M. & Mkanda, F. X (2002). The plight of Malawi's wildlife: is translocation of animals the solution? *Biodiversity and Conservation*. Vol: 11, pp 751-768.

<sup>26</sup> Environmental Investigations Agency (EIA). (2002). Back in Business – Elephant Poaching and Ivory Black Markets of Asia. EIA, London, UK. <http://www.eia-international.org/wp-content/uploads/Back-in-Business-2002.pdf>

<sup>27</sup> Ziegler, S., Denkl, C., Hornig, K., & Schupfner, R. (2013). Isotope Databases for Determining Age and Provenance of Elephant Ivory. Research Report for the Implementation of the African Elephant Action Plan. CITES, CoP 16, Bangkok, Thailand. <http://www.cites.org/eng/cop/16/inf/E-CoP16i-19.pdf>

### **2.3 Malawi: A Soft Target for Wildlife Criminals**

The risk-reward ratio for wildlife criminals is extremely high in Malawi. Wildlife crime is very profitable in a country where there is generally very little wealth and very few formal employment opportunities exist. Furthermore, when caught, the penalties faced by wildlife criminals are meagre. To date no-one has ever been sent to prison for trading in wildlife products and the average penalty for trafficking elephant ivory is just \$40. Malawi is also publically perceived as being corrupt i.e. it is listed as the 110<sup>th</sup> most corrupt nation out of 175 in the Corruptions Perceptions Index, and the recent "Cash Gate" scandal has not helped this negative perception. This means it is easier for criminals to evade justice. The World Bank recently ranked Malawi as one of the world's 10 poorest countries. Overcoming poverty related issues such as health and education has taken political precedence, and it is, to some degree, understandable why wildlife crime has been a lesser concern. Government authorities and decision makers have development priorities that outrank wildlife matters and wildlife criminals have taken advantage of limited restrictions. The international wildlife community has neither paid as much attention to wildlife crime in Malawi as perhaps they should, probably because Malawi's wildlife own populations are small in comparison to surrounding countries e.g. an estimated 2,344 elephants in Malawi versus 21,589 in Zambia (according to the IUCN's 2013 Elephant Database report). Times are changing and the laws will be strengthened. However, at present, Malawi is unfortunately an ideal place in terms of geography, logistics, corruption, minimal international awareness (in terms of the country's wildlife resources and the prevalence of wildlife crime), and weak legal deterrence for wildlife criminals to concentrate. This makes it a likely hub for organized wildlife crime syndicates to source, collect, store and then transit shipments of ivory and other wildlife products into and out of ports in Mozambique, Tanzania and South Africa, in addition to Malawi's own International Airports.

### **2.4 Current IWT in Malawi**

IWT in Malawi is being driven by the lucrative illegal markets in South East Asia and China which are being utilized by international criminal syndicates who recruit local nationals and impoverished local community members to undertake the killing of wildlife and to facilitate the trafficking of wildlife out of the country. For example, current intelligence indicates that a predominantly Chinese organised crime group, resident in Malawi, is coordinating a trade in illegal wildlife products, consisting primarily of elephant ivory. This trade involves the active participation of local Malawians, both wittingly and unwittingly, as well as itinerant Chinese working in and around Malawi. Lilongwe operates as a strategic focal point in this trade, drawing ivory poached from within Malawi's borders but also coordinating the transit of illegal goods sourced from neighboring countries. A satellite cell operating near to the Zambian border has been identified as key conduit for ivory originating from North and South Luangwa and beyond.

It is assessed that once in the country raw ivory is processed in workshops in order to aid concealment and then being transported in high volume shipments of between 5 and 50 kg, via air freight or in passenger baggage. Occasionally larger consignments are sent via the airports e.g. in December 2010 two Singapore nationals were arrested in possession of 92 kg of ivory at Jomo Kenyatta International Airport having entered Kenya two days earlier from a flight out of Malawi, and in April 2015, 110 kg of ivory was confiscated in Perth on route to Malaysia, having been sent via air cargo from Malawi. With the facilitation of employees within global freight companies located in Lilongwe even larger consignments are also directed towards the major East African shipping ports – often as raw ivory concealed in amongst legitimate exports such as cotton, pigeon peas and timber products etc. There are no indications that this group restricts itself to trading solely in ivory and they exploit their established trade routes for conveying illegally sourced timber (mkula trees). Additionally, a direct link has been established between the core group and the illegal harvesting of turtles in Lake Malawi.

Other examples of highly organised and lucrative wildlife crime in Malawi include: the illegal killing and trade of hippo and hippo teeth and meat on Lake Malawi (especially around the Senga Bay area); the illegal poaching and trade in fish from Liwonde National Park; the illegal harvesting of orchid (and other) plant species from Nyika National Park; and the illegal harvesting of endemic Mulanje cedar from Mount Mulanje. There are also several instances of small scale, but

widespread, local trading in wild primates, felid and bird species and a sustained commercial trade in bush meat, principally buck species, surrounding most protected areas. Some protected areas e.g. Lengwe National Park and Kuti Wildlife Reserve are also targeted by organized middle class illegal game hunters who privately trade in trophies and game meat with their business associates from larger towns and cities such as Blantyre and Lilongwe. In all cases, ongoing investigations have uncovered various instances of corruption indicating direct collusion between some government officials and the core organised criminal groups and/or community members. These include, but are not limited to, the Malawi Police Service (MPS), DNPW, the Department of Forestry (DoF) and a number of politicians.

*Photographs of IWT in Malawi*



Elephant poached for ivory at Liwonde National Park, February 2014 – © CAWS



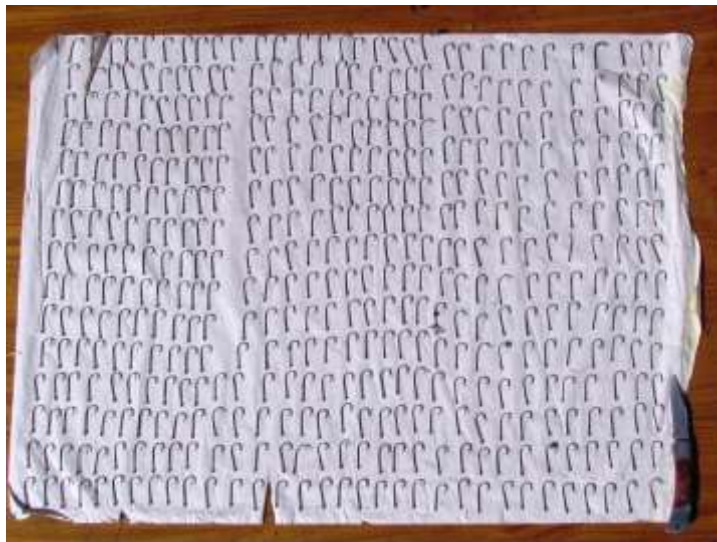
Turtle butchery, Mangochi – hundreds of turtle shells being illegally processed



Unlicensed hippo teeth confiscated by DNPW as part of efforts to combat the illegal trade in hippo parts



Worked elephant ivory confiscated at KIA in September 2014



467 fishing hooks found on a single 1km illegal fishing line from Liwonde National Park, confiscated in April 2015 © CAWS

## **3.0 The Illegal Wildlife Trade Review**

### **3.1 Statement of Need**

In early 2014 Malawi's Department of National Parks and Wildlife (DNPW), through the Ministry of Information, Tourism and Culture, identified IWT as a significant cause for concern for the Malawi Government. DNPW initiated a series of meetings together with the German Embassy in Malawi, GIZ as the German Development Cooperation implementation agency, the United Kingdom Embassy in Malawi and the Lilongwe Wildlife Trust (LWT). During those meetings it was agreed that developing strategies for addressing IWT in Malawi could only be effectively undertaken once a comprehensive Review of IWT had been conducted. The German Government committed to funding such a Review through GIZ.

### **3.2 Scope and Objectives**

GIZ on behalf of BMZ, and in consultation with DNPW, commissioned the Born Free Foundation (BFF) and the LWT to conduct this IWT Review between September 2014 and May 2015.

The Objectives of this IWT Review are as follows:

**OBJECTIVE 1:** To better understand the scale and nature of IWT in Malawi;

**OBJECTIVE 2:** To help improve wildlife legislation in Malawi;

**OBJECTIVE 3:** To develop comprehensive recommendations, in addition to suggesting legislative changes, for addressing IWT in Malawi;

**OBJECTIVE 4:** To secure resources for implementing the IWT Review recommendations.

The full Log Frame for the IWT Review can be found in Annex B.

### **3.3 Methodology and Approach**

The ICCWC Toolkit provided the platform from which this IWT Review has been conducted. Every stage in this IWT Review process, from development of questionnaires to community workshops, has been constructed using the relevant guidance contained within the ICCWC Toolkit. All law enforcement agencies in Malawi were provided with copies of the ICCWC Toolkit prior to the undertaking of this assessment. The Reviewers held a series of workshops, meetings and interviews with a comprehensive range of key stakeholders, including representatives of government departments and law enforcement agencies, judiciary, local and international NGOs, local communities, the private sector (freight, shipping and airline, postal and logistic) and the general public. IWT data was also requested and reviewed from all those interviewed and taken from international sources e.g. Elephant Trade Information System (ETIS) database.

It is expected that the recommendations presented and summarised in Section 12 below, will be used to develop a Governmental Action Plan for Combating IWT in Malawi and will be included in existing relevant action plans, e.g. the National Elephant Action Plan (NEAP) that was launched in January 2015. Some of the recommended actions presented in this review require little resource and can be implemented immediately. Others will have to form the basis and rationale for a series of small to large proposals submitted by Government or NGOs in partnership with Government, to potential donors that can provide technical and financial assistance, such as those listed in Section 11, below.



## **4.0 Inter-Agency Committee on Combating Wildlife Crime (IACCWC)**

### **4.1 Overview of IACCWC**

In advance of this IWT Review, Malawi had already initiated some efforts to combat wildlife crime. Most notably, the establishment in June 2014 of an *Inter-Agency Committee on Combating Wildlife Crime* (IACCWC), established in response to the rapidly escalating need for improved inter-agency collaboration and communication in Malawi, and in recognition of the increasing scale and complexity of wildlife crime taking place across the country. IACCWC comprises senior representatives from each of the following government agencies:

- Ministry of Justice;
- Judiciary (Elected Chair until June 2015)
- Department of National Parks and Wildlife (DNPW) (Secretariat);
- Malawi Police Service (MPS) (Elected Vice Chair until June 2015);
- Malawi Defence Force (MDF);
- INTERPOL;
- Department of Immigration (DoI);
- Financial Intelligence Unit (FIU);
- Anti-Corruption Bureau (ACB);
- Malawi Revenue Authority (MRA);
- Department of Public Prosecutions (DPP);
- Department of Forestry (DoF)
- National Intelligence Bureau (NIB)

Civil Society is also represented on IACCWC through the Wildlife and Environmental Society of Malawi (WESM).

### **4.2 Inter-Agency Steering Committee on Combating Wildlife Crime**

A high-level Inter-Agency Steering Committee has also been established, comprising the Heads of Institutions and senior officials responsible for policy directions. To date the Steering Committee has only met once. IACCWC reports to the Inter-Agency Steering Committee.

### **4.3 Functions of IACCWC**

Although IACCWC is still in its infancy, its establishment represents a critical first step in the process of combating wildlife crime in Malawi. All members of the Task Force recognise the significant benefits that IACCWC presents in terms of developing and enacting a proactive wildlife crime strategy. All of the members expressed a desire for regular IACCWC meetings and collaboration.

The Terms of Reference for IACCWC (which have yet to be finalised and approved), focus on:

- *Facilitating the investigation of wildlife crime cases;*
- *Advocating for use of multiple laws in prosecution of wildlife crime cases;*
- *Advocating for review of wildlife legislation and other related pieces of legislation;*
- *Strengthening the collaboration and co-ordination among participating agencies;*
- *Facilitating the gathering, collating and analysis of intelligence relating to wildlife crime;*
- *Facilitating awareness campaigns to the general public and other stakeholders;*
- *Developing and delivering training for enforcement agencies.*

A copy of these draft ToRs is provided in Annex A.

The development of more formal Agreements/Memorandums of Understanding (MoU) between the agencies represented on the Committee is underway. In some cases, such as the FIU, the presence of a MoU is required by law before sensitive information can be exchanged.

The following MoUs are currently in place between IACCWC members:

- i) *Anti-Corruption Bureau & Malawi Revenue Authority*
- ii) *Anti-Corruption Bureau & Financial Intelligence Unit*
- iii) *Malawi Defence Force & Department of Forestry*
- iv) *Financial Intelligence Unit & Malawi Revenue Authority*

The following MoUs are currently in draft form:

- i) *Department of National Parks and Wildlife and Anti-Corruption Bureau*
- ii) *Department of National Parks and Wildlife & Malawi Defence Services*

In addition, the following MoUs were yet to be drafted but were mentioned during the review as being considered necessary by the relevant IACCWC members:

- i) *Department of National Parks and Wildlife & Malawi Revenue Authority*
- ii) *Department of National Parks and Wildlife & the Financial Intelligence Unit*
- iii) *Department of National Parks and Wildlife & the Department of Forestry*

The following MoUs were felt by the relevant IACCWC members to be unnecessary at this time:

- i) *Department of National Parks and Wildlife & Malawi Police Services*

#### **4.4 Importance of IACCWC**

It is clear from the comprehensive cross-sector representation on the IACCWC that the Task Force must form a central core to Malawi's strategy for addressing and mitigating against wildlife crime. The Task Force members have so far attended five Committee meetings and inter-sessional communication is starting to increase, although further meetings and communications are required. However, there is a need to avoid reliance on the existence of IACCWC in and of itself - regular meetings and the development of Protocols (e.g. regarding communication and data-sharing) must be established in order to define roles and responsibilities, thus ensuring that the important activities of IACCWC can be adequately implemented and sustained. For example, currently there are no agreed protocols regarding a process for alerting fellow Committee members of a wildlife crime case. How such information is shared between Task Force members, and how follow-up action is coordinated, should be clearly set out in order to maximise impact and outcome. Additionally, given that the majority of members of IACCWC are based in Lilongwe, methods needs to be considered for communication to regional and district outposts.

Careful consideration must also be given, and agreements reached and detailed in the IACCWC ToRs and the various inter-departmental MoUs, as to how each IACCWC member, and the committee as a whole, will facilitate operational level wildlife crime investigation. At present the IACCWC members still sit within their respective agencies and wildlife crime constitutes a percentage of their overall work. There will be a need for a smaller specialist wildlife crime investigations unit to be established for efficient operational implementation which is facilitated and guided by the IACCWC (see Section 7.27, below).

#### **4.5 Recommendations: IACCWC**

*4.5.1 Recommendation 1(a): Expanding and finalising the IACCWC Terms of Reference (ToR) and developing an IACCWC Rules of Procedure (RoP).*

Inclusion of the following provisions into the ToR is recommended:

- A clause quantifying the Objectives and Performance of IACCWC over the next 3 years. Some examples are provided below:

- At least 15 wildlife crime cases prosecuted each year as a result of IACCWC facilitated investigations.
  - 5 wildlife crime cases prosecuted each year using multiple legislation such as the National Parks and Wildlife Act, Money Laundering Act and Immigration Act.
  - One wildlife crime case prosecuted per year following the use of controlled deliveries.
- A clause relating to the establishment of a data-sharing protocol between IACCWC members;
  - A clause relating to the establishment of a communication protocol between IACCWC members;
  - A clause providing for regular reviews of IACCWC, its impact, successes and failures;
  - A clause providing for how the IACCWC will facilitate the implementation of a specialist, operational level wildlife investigations unit within DNPW;

Inclusion of the following provisions into an RoP is recommended:

- A clause regarding composition of the Committee and tenure of elected Chair and Secretariat;
- A clause regarding decisions made by the Committee i.e. establishing whether all decisions made by the Committee will be by consensus or whether there will be provisions for voting;
- A clause defining methods of inter-sessional communication between members;
- A clause defining the regularity of IACCWC meetings and their location;
- A clause defining the financial assistance afforded to IACCWC members for attending standard IACCWC meetings;
- A clause defining confidentiality of meetings and the recording of meeting minutes;
- A clause regarding invitation of non-IACCWC members to meetings as appropriate;
- A clause regarding the identification, selection and appointment of IACCWC focal points within non-IACCWC organisations that are important for combating IWT. Some examples are:
  - Malawi Communications Regulatory Authority (MACRA);
  - Civil Aviation Authority in Malawi;
  - Department of Malawi Post Corporation;
  - Department of Environmental Affairs;
  - Road Traffic Directorate;
  - Representatives of the private sector such as air and shipping line companies, logistic and freight forwarding companies and the banking sector ((see Recommendation 1(c) below)).
- A clause regarding dissemination of IACCWC information within member agencies;
- A clause regarding dissemination of IACCWC information to external stakeholders ((e.g. WCO ENVIRONET, private sector (e.g. shipping lines, logistic and freight companies, banks etc.) and NGOs etc.)) and external IACCWC wildlife crime focal points
- A clause regarding the dissemination of IACCWC information internationally and with other regional and international wildlife law enforcement task forces e.g. Lusaka Task Force and Wildlife Enforcement Network for Southern Africa, amongst others.

*4.5.2 Recommendation 1(b): Establishment of a secure and quick method for distributing "Wildlife Crime Alert" messages between IACCWC members.*

At an IACCWC meeting held on 7th November 2014, it was agreed that the most efficient way to alert IACCWC members of information received pertaining to wildlife crime was through an initial text message, followed immediately by an email.

It is recommended that the IACCWC Secretariat (DNPW) be responsible for sending these "Wildlife Crime Alert" text messages / emails. Upon DNPW being informed of a wildlife crime (through direct discovery or reports from another IACCWC member or a non-member tip off), DNPW should acknowledge receipt of the information and then issue an Alert message. The Alert messages should be distributed to the source and all voting IACCWC members within 2 hours of the information being received, in order to enable immediate follow-up. The alert message should be followed by an email containing further details to be sent by close of business the same day. In case the IACCWC Secretariat cannot be reached, or for whatever reason does not acknowledge the receipt of the wildlife crime information within 2 hours, then any Committee member can take responsibility for distribution of such Alert messages to all IACCWC members.

#### *4.5.3 Recommendation 1(c): Agreement regarding engagement with non-IACCWC members*

It is recommended that the IACCWC establishes focal points and develops communication protocols for the distribution of information to agencies and private organisations not represented on the IACCWC, but still considered important stakeholders in the fight against wildlife crime. For example, if it becomes known to IACCWC that an ivory poaching syndicate intends to smuggle ivory out of the country using courier companies, such information should be passed on to the sector focal point company and such companies should be sensitized, so that they can be on high alert for detecting suspicious packages. In addition, the IACCWC may feel that it is important to work with MACRA to ensure that regulations within the post and courier sector are tightened to prevent such companies from being unknowingly targeted by wildlife criminals. A database of these focal points should be produced by the IACCWC and shared between all their members. Contact details of each focal point must be updated regularly. It would be important for the IACCWC to consider the need to enter an information privacy agreement with any non-committee member focal point on a case by case basis.

#### *4.5.4 Recommendation 1(d): Securing resources and regular meetings of IACCWC*

As earlier identified, IACCWC forms a central core to the implementation of an IWT strategy for Malawi. Regular meetings of the Committee will be essential. It is therefore recommended that IACCWC meet at least 4 times per year, with a provision for emergency and project level meetings as required. Resources need to be made available from department budgets to ensure this happens. Initially, funding can be sourced from donor partners, but long-term funding stability from central Government should be the aim of IACCWC within the next two years. As DNPW are the IACCWC secretariat, it is suggested that it is DNPW that is allocated such funds from Government and manages them in accordance to the IACCWC ToRs.

#### *4.5.5 Recommendation 1(e): Finalising Memorandums of Understanding between IACCWC members*

It is recommended that outstanding MoUs (see above) be completed as a matter of priority in order to facilitate the effective operation of IACCWC. In addition, a further discussion concerning the benefit of an MoU between DNPW and the MPS is highly recommended. Although the roles and responsibilities of each agency are well known by their respective management, and although the two agencies already work extremely closely together, the Reviewers believe an MoU would assist those agencies in defining more clearly the terms of their interaction and engagement.

#### *4.5.6 Recommendation 1(f): Development of Parliamentary Outreach Strategy*

Key to the success of IACCWC and the Inter-Agency Steering Committee will be achieving Parliamentary National and Regional support for combating IWT. It is therefore recommended that IACCWC develop a strategy for regular engagement with Decision-Makers, including:

- i) The Parliamentary Committee for Industry and Trade;
- ii) The Parliamentary Committee for Natural Resources;
- iii) The Permanent Secretary to the Ministry of Information, Tourism and Culture;
- iv) Members of Parliament;
- v) The SADC Ministers Meetings, to be approached through Malawi's Ministry of Foreign Affairs

## **5.0. Wildlife Crime Data and Analysis**

### **5.1 Overview**

#### *5.1.2 Data Limitations*

The true extent of IWT, the scale of the problem and the number of people involved is very difficult to determine in Malawi, due to an absolute and chronic lack of reliable data. Given the trans-boundary nature of wildlife trafficking, this situation is further compounded by a wider lack of research into wildlife crime statistics globally. For example, without a good understanding of crime data in the Southern African region, it is much more challenging to develop an accurate picture of the state of wildlife trafficking in Malawi itself. The analysis of available data for Malawi, therefore, provides a somewhat isolated picture. In addition, it is almost impossible to identify crime patterns or trends based on available information in Malawi. Nevertheless, what has become clear, through the collection and analysis of intelligence and data that does exist, is that Malawi is both a source country and transit hub for illegally traded wildlife products. Indeed, Malawi has a serious problem that is not only threatening its own precious environment, but is also providing an open door for criminals to damage environments in other countries and export the products of those crimes through Malawi. There is, therefore, a significant and compelling argument for tackling IWT in the country as matter of extreme importance.

Developing effective strategies for tackling wildlife crime in Malawi depends upon a sound knowledge of the crime and those committing it. Currently the collection and analysis of wildlife crime data is woefully lacking, which is having a significant impact on the functions of those responsible for wildlife law enforcement. For example, the data analysis below indicates that Chinese nationals appear more likely to traffic worked rather than raw ivory – however, it may be just as likely that the trafficking of raw ivory by Chinese nationals is more organised and therefore has so far gone largely undetected. The fact that most agencies do not have a central database, and that much of the data that does exist is in hard copy only (with no references kept for purposes of searching those hard copies), it is currently almost impossible to even find the data, never mind analyse it. Indeed, whilst conducting research for this report, Reviewers found that only one of the relevant authorities (the Anti-Corruption Bureau) had kept any records of the high profile Singapore ivory seizure case – providing a stark example of the urgent need for data record-keeping and storage methods in Malawi to drastically change.

#### *5.1.2 General Wildlife Crime Statistics and Estimates*

The collection of wildlife crime statistics is not currently the sole responsibility of any single agency. Wildlife crime data is recorded by several agencies, including DNPW and several of the other law enforcement agencies that are members of the IACCWC. Within these agencies there is little to no information on how wildlife crimes were investigated, or how many wildlife crime investigations undertaken have led to successful prosecution in relation to the total number of reported wildlife crimes. There are no consolidated records of what type of property and other assets are seized annually in relation to wildlife crime. To the Reviewer's knowledge, although several law enforcement agencies may collect and store wildlife crime records, there is currently no formal system / protocol for doing so within or between any of the IACCWC law enforcement agencies. In addition, specific details of wildlife offences, and detailed and true information on the perpetrator are lacking. It is also extremely likely that many wildlife offenses remain unreported and/or unprosecuted.

Currently there are no estimates being made as to the general level of wildlife crime and all crime data relates to reported crime only. There are many outstanding cases of wildlife crime where the accused is still awaiting prosecution; e.g. there are over 15 outstanding wildlife crime cases to be heard at the Rumphu Magistrate Court. It is not clear how many persons have been prosecuted for a wildlife crime, how many have been convicted and how many have been acquitted. The

actual number of wildlife crime offenses being committed is likely to be significantly higher than the number of wildlife crimes reported (and the number of crimes for which the Reviewers received data). In addition, the details of the crimes actually recorded and the information recorded regarding the person arrested and/or convicted is also limited in terms of reliability (see Section 5.2, below). There is a need for significantly better recording and reporting protocols and systems for wildlife crime statistics across all law enforcement agencies and within the judiciary

## **5.2 The Case of the Man with Three Names**

An example of the serious nature of Malawi's problems relating to wildlife crime data collection is the *Case of the Man with Three Names*. A case of ivory trafficking heard in the Senior Resident's Magistrate's Court in Lilongwe (Case No. 677 of 2014) involved the discovery of 50 kg of ivory at the airport in September 2014. A Chinese national was tried, found guilty, handed a MK 1 million fine and deported from Malawi. The name of the Chinese national?, not possible to know; for on the court records his name was recorded as Axin Shang, on the INTERPOL report Axan Veniine Namtha Lao, whilst on the Immigration Deportation Notice Fucong Zhung.

This extraordinary example of one man who appears to have so easily lied to and confused the enforcement and prosecution system of Malawi indicates several things:

- i) The extent to which criminals are willing to go to undertake these criminal activities;
- ii) That without proper data collection, storage and analysis, and without communication of such data between agencies, criminals who have been convicted and deported can continue to traffic wildlife products and potentially move freely into and out of the country;
- iii) That the current wildlife law enforcement system is of no deterrent whatsoever to the crime networks and organisations that are using Malawi to profit from IWT.

## **5.3 Confidentiality**

Although wildlife crime data is by its very nature sensitive, and often requires confidential handling, there appears to be some significant misunderstanding within some of Malawi's enforcement agencies concerning confidentiality. Which data can be shared, which cannot, and which requires an agreement to be in place before sharing can happen, is not clearly understood by all agencies. The inevitable result of this situation is that little sensitive information is being shared both within and between the relevant law enforcement agencies in Malawi. This must be addressed and efforts made to improve the current levels of information sharing.

## **5.4 Suppression of Data**

The current lack of a comprehensive method for data collection and management provides opportunities to those who have a vested interest in suppressing data. Promoting more organised and transparent data collection practices in Malawi will support efforts to ensure that wildlife law enforcement is not hindered by corrupt practices (see also Section 4.3).

## **5.5 Wildlife Crime Data and Statistics for Malawi**

### *5.5.1 Data Sources*

Data from November 2010 to October 2014 was requested from all law enforcement agencies on the IACCWC and from other stakeholders helping to combat wildlife crime in protected areas. November 2010 was decided as a sensible data cut-off point as most IACCWC members felt that it would be extremely difficult to source any records that were over four years old. Upon request, several agencies confirmed that they had not historically recorded or stored any wildlife crime data, including: Malawi Revenue Authority (MRA); Financial Intelligence Unit (FIU), Department of Forestry (DoF), Department of Immigration (DoI) and the Anti-Corruption Bureau (ACB). The ACB did have documentation relating to a single wildlife crime investigation and both the ACB and FIU are now more active in gathering wildlife crime information (e.g. the Tanzania-Malawi ivory

seizure in May 2013). The DoI did hold a single record of a deportation in September 2014 which was as a result of a wildlife crime. MRA did not have any records of wildlife crime from any port of entry / exit in Malawi and did not have available any information on the import and export of wildlife in and from Malawi. DoF do not store their own crime records but rather rely on the MPS to keep records of arrests and prosecutions that are undertaken on their behalf.

Data used in this report was obtained from the DNPW, MPS, INTERPOL and several wildlife NGOs/private enterprises including: Wildlife Action Group (WAG), Jumbo Africa, African Parks (Majete), Act to Protect and Nyika-Vwaza Trust. MPS provided datasets from the following stations: Machinga; Salima; Kasungu, Rumphu; Nchola; Nkhotakota; Blantyre, Chileka (Southern Region HQ); Nsanje; Chileka International Airport (CIA); and Kamuzu International Airport (KIA). In addition, consolidated records from MPS were obtained from the National Police Head Quarters; Lilongwe, and Area 3 (Central Region HQ). DNPW provided data from MPS Head Quarters, Nyika National Park, Liwonde National Park and Vwaza Wildlife Reserve. Datasets from other protected areas are still being collated by DNPW. Records of crimes related to elephants and rhino were only found within the data provided by WAG, DNPW, INTERPOL and Machinga, Salima, Kasungu, Rumphu and KIA MPS stations (plus the consolidated MPS records from Area 3, Lilongwe). There was no central database used within or between any of the law enforcement agencies and most data was provided in hard copy only. DNPW do not use electronic ranger based monitoring systems to collect and store their field observations.

The following analysis has been undertaken using wildlife crime records related to elephant and rhino only. It is probable that some of the 100's of records provided to the Reviewers that described cases related to non-specific "game species" did include offences committed to elephant or rhino. However, unless a specific reference to these species was made in the case record it did not form part of this analysis. In addition to data held nationally, all official CITES Elephant Trade Information System (ETIS) database records for Malawi were obtained from TRAFFIC. 182 official ETIS records were obtained dating back to 1989. This included 28 records between 2010 and 2014. The full official ETIS dataset can be found in Annex C. The official ETIS database was only used to verify the national datasets and help the reviewers understand how effectively elephant crime data was being managed and reported in Malawi. It is worth noting that DNPW hold an internal ETIS database which was assumed to have formed the basis of their official submissions to the CITES ETIS database (although upon analysis it transpired that the two databases did not match – see section 2.2.5.2 and 2.2.5.3 below).

It should also be mentioned that the analysis below did not take into consideration the May 2013 2.6 tonne ivory seizure as the case was still under investigation.

## *5.5.2 Data Summary*

### 5.5.2.1 Number of Cases

From the data provided, a total of 50 separate cases of elephant, and one case of rhino, crime were provided by the various stakeholders. All of these cases can be found in Annex D. Note that national databases contained 22 additional elephant trade cases, undertaken between 2011 and 2014, from what had been recorded on the official CITES ETIS database. No single agency or stakeholder in Malawi held records of all 51 cases and, in many cases, different offices and datasets within each agency held different sets of records and/or had recorded the same case differently so at first inspection it resemble a different case. MPS held the most cases (a total of 64 cases collected from 5 MPS offices), followed by DNPW HQ (34 cases), DNPW Internal ETIS Database (13 cases); INTERPOL Malawi (4 cases); WAG (4 cases); DNPW Nyika-Vwaza (1 case) -See Figure 1, below.



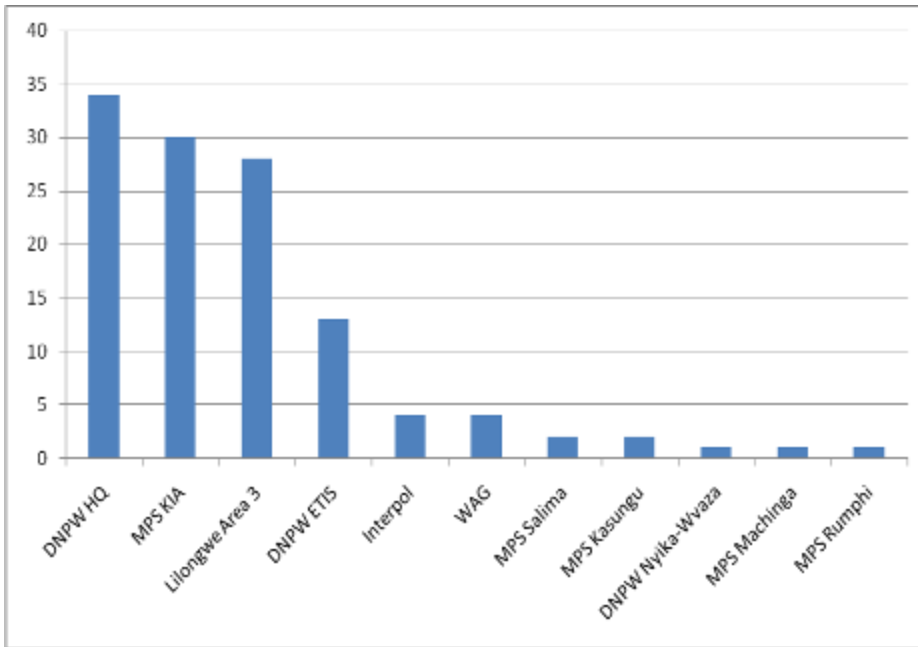


Figure 1: Breakdown of data made available to Reviewers by agencies and organisations

There have been 50 elephant / rhino wildlife crime cases recorded in Malawi since November 2010: 1 case in 2010, 17 cases in 2011, 5 cases in 2012, 13 cases in 2013 and 14 cases between January and October 2014. See Figure 2, below.

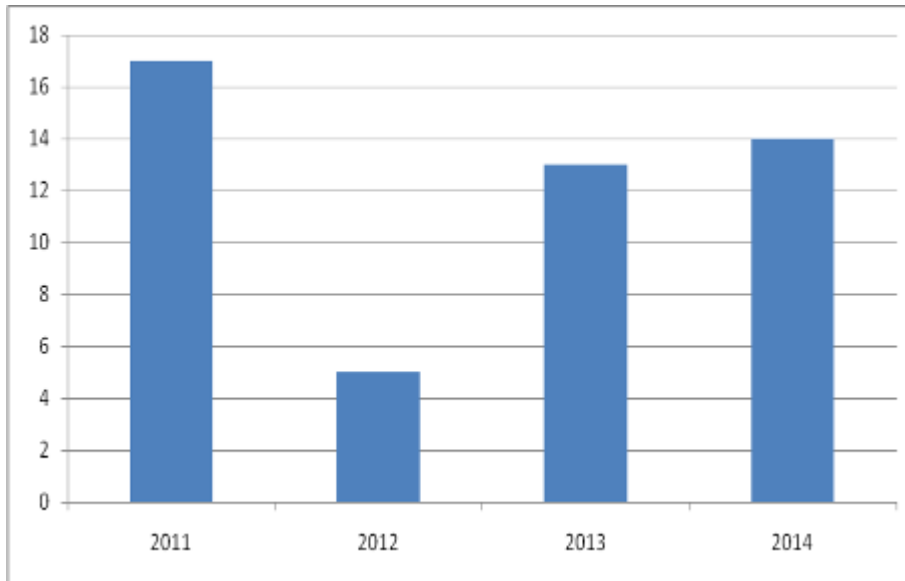


Figure 2: Number of elephant and rhino crime cases between 2010 and 2014

### 5.5.2.2 Nature of Crimes

In all cases the person arrested was prosecuted using just the auspices of National Parks and Wildlife Act 2004 (as amended) (NPWA). There were no instances of any other piece of legislation being used to increase the number of charges or achieve stiffer sentencing (although at the time of writing a repeat elephant poacher – Mr. Dixon Mzinba – was awaiting trial having been charged with offences under both the NPWA and the Fire Arms Act). The only local enforcement agencies involved in the cases reviewed were MPS, DNPW and, very occasionally, INTERPOL.

The majority of the wildlife crimes committed were ivory trafficking offences at airports (36 cases – 72%), followed by possession of ivory (8 cases – 16%) and poaching of elephants (6 cases – 12%). Of the 36 cases of trafficking, 35 were from KIA – which helps explain the predominance of data held by MPS and DNPW in Lilongwe. See Figure 3, below.

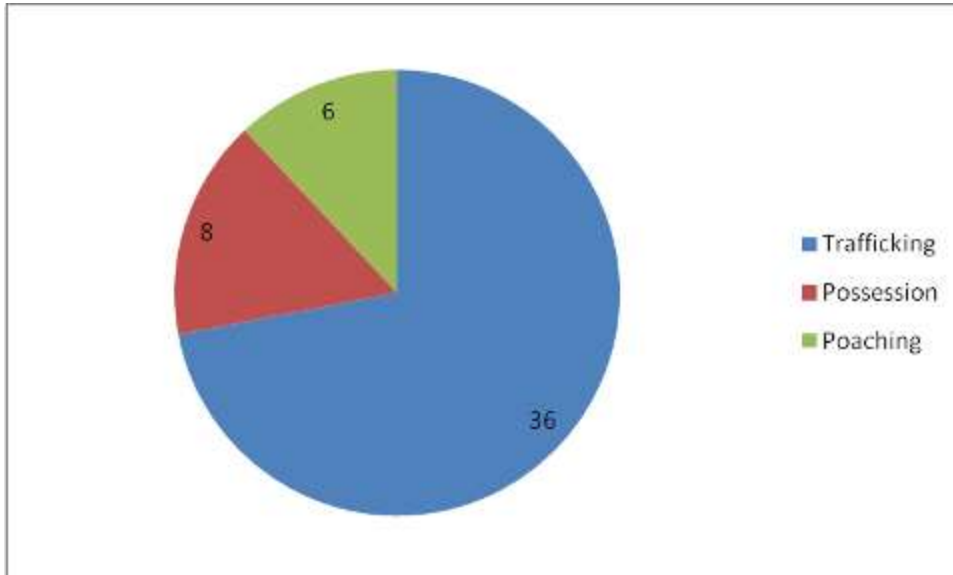


Figure 3: Breakdown of criminal offences committed

In terms of ivory trafficking cases, 33 (66%) involved worked ivory artefacts and 14 (28%) involved raw ivory tusks. See Figure 4, below.

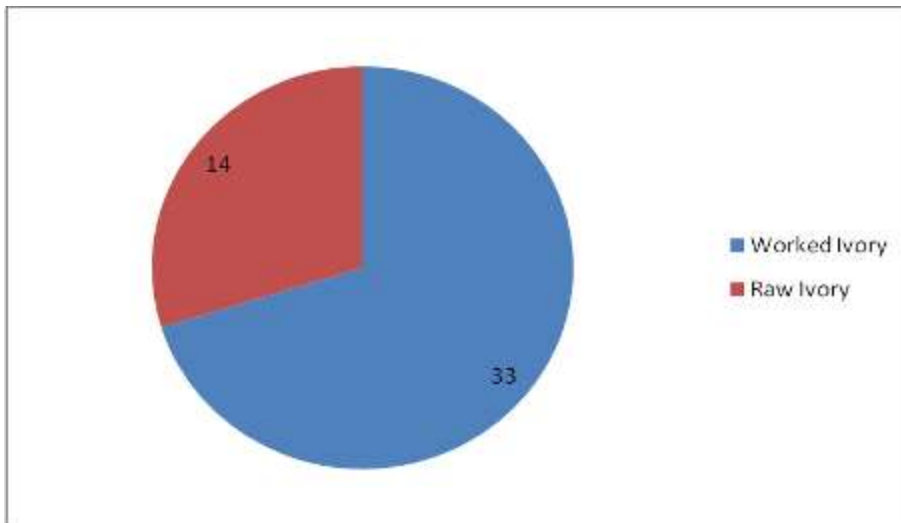


Figure 4: Raw vs worked ivory seizures

The weight range of ivory seizures recorded from attempted trafficking cases was 0.2 kg – 487 kg, with a mean average of 33.8 kg.

A total of 43 persons were arrested and convicted for attempted trafficking. Of this total, 32 (74%) were Chinese nationals, 5 (12%) were Malawian nationals and 3 (7%) were other foreign nationals. See Figure 5, below.

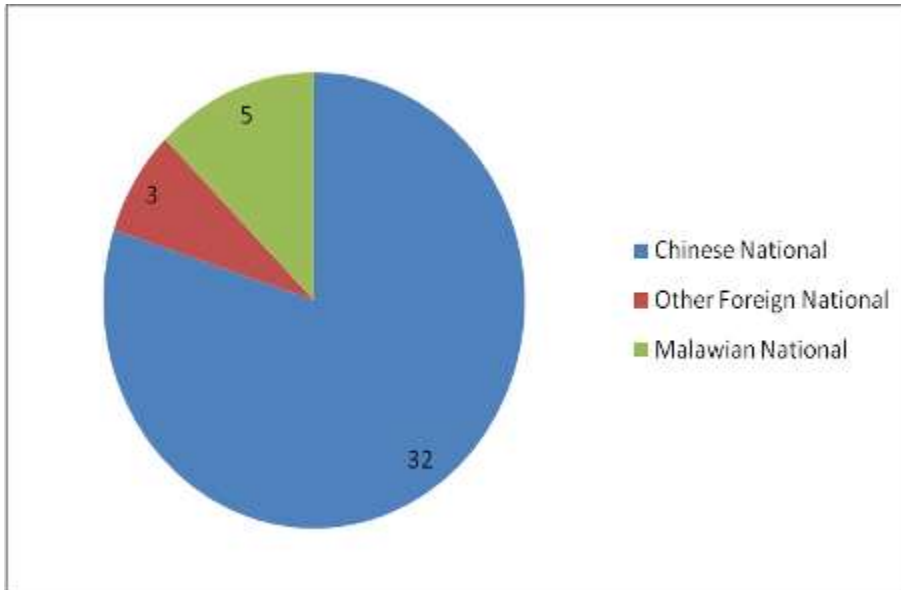


Figure 5: Nationalities involved in wildlife crime

There are no records of a Malawian national attempting to traffic ivory prior to September 2013. However, since that date Malawian nationals have committed 10 of the total 14 recorded cases of raw ivory trafficking (71%) in Malawi. Of the 32 cases where Chinese nationals have been convicted for ivory trafficking, only 2 cases (6%) involved raw ivory with all others involving worked ivory pieces. According to available data, Chinese nationals seem much more likely to attempt to traffic worked ivory than raw ivory and vice versa for Malawian nationals. Of the 13 ivory trafficking seizures that are over 5 kg, 7 (53%) were from raw ivory cases and 6 (46%) from worked ivory cases. The range of raw ivory trafficking seizures over 5 kg was 6.6 kg to 120 kg, with a mean average of 54.3 kg. The range of worked ivory seizures over 5 kg was 6 kg to 487 kg, with a mean average of 108 kg, although all but one (83%) of worked ivory seizures were 50 kg and under. In terms of cases of unlawful possession of ivory and/or killing of elephants, all cases (100%) were committed by Malawian nationals and in 75% of such cases the seized product was raw ivory. There are only two cases of a Malawian national being found in possession of worked ivory.

In terms of overall elephant and rhino crime cases, there are 69 persons that have been arrested and convicted of trafficking, possession and/or unlawful killing. Of those 69 people, 41 (59%) are Chinese nationals, 25 (36%) Malawian nationals; and, 3 (4%) other foreign nationals (Italian x 2 and Nigerian x 1). See Figure 6, below.

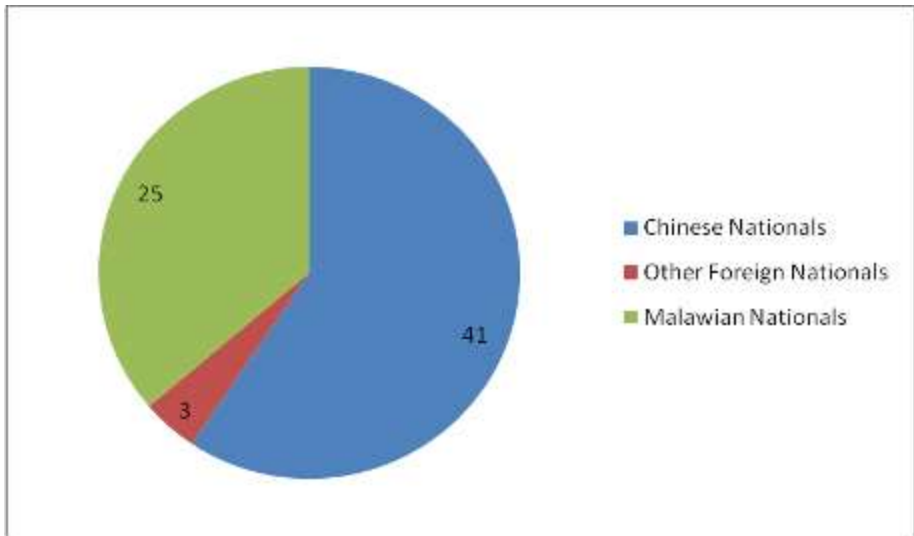


Figure 6: Overall breakdown of nationality of those convicted of wildlife crime

There has been a significant increase in the weight of ivory seizures confiscated by the authorities between November 2010 and October 2014 ( $r_s = 0.478$ ;  $P < 0.01$  – Spearman’s Rank Correlation). See Figure 7, below.

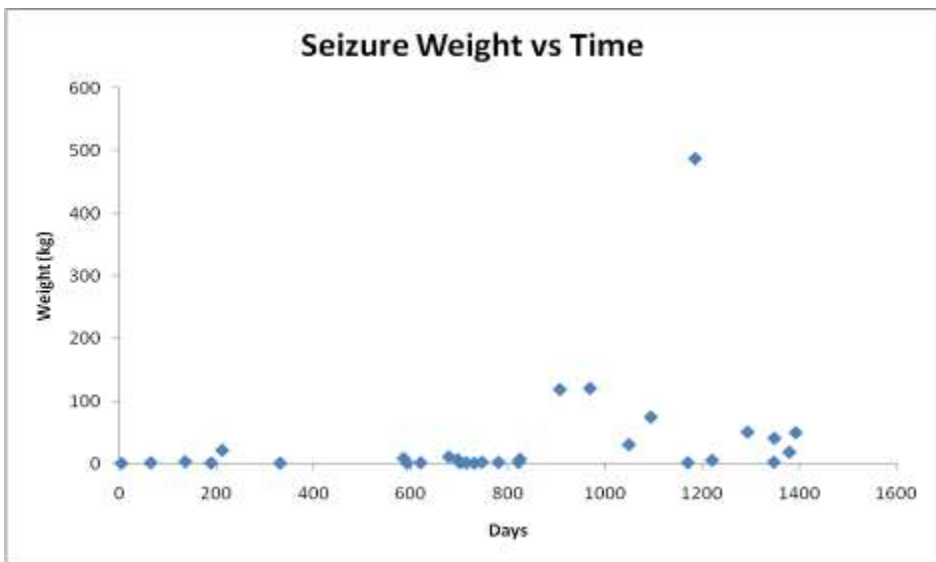


Figure 7: Seizure weight vs time

From the middle of 2013 there has been a general increase in the size of seizures, whereas prior to 2013 all seizures were relatively small – the largest being 21 kg, and the mean average just 3 kg. After 2013 the largest reported seizure was 487 kg and the mean average was 56 kg. There seems to be a recent demand for larger shipments (see Figure 8, below) and this is perhaps a result of a shift from what was predominately tourist curios before 2013, to more commercial trade in raw ivory and Chinese stamps from 2013 onwards.

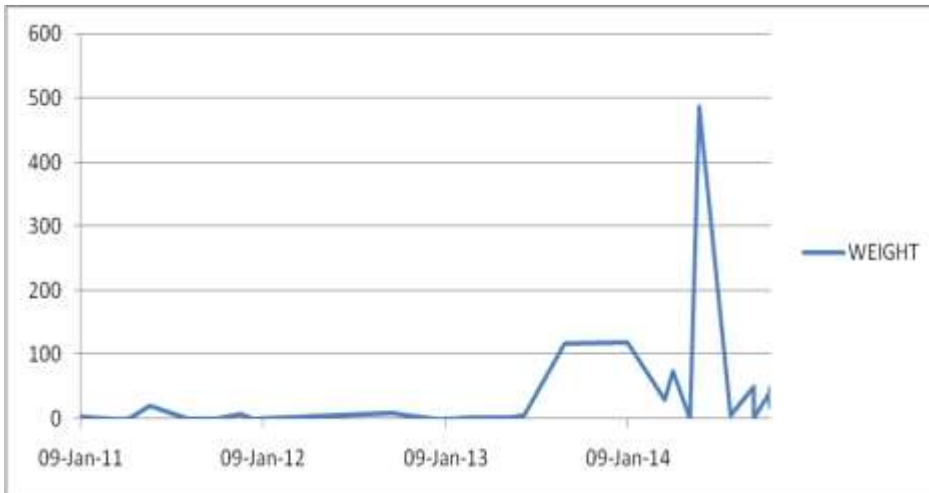


Figure 8: Weight over time

### 5.5.2.3 Nature of Sentences

Of the 50 elephant related cases provided to the Reviewers, only one custodial sentence has been passed by the courts – 36 months in default of a custodial sentence with hard labour (IHL) given to Mr Daniel Chana for killing an elephant in Thuma Forest Reserve on the 9<sup>th</sup> May 2013. This sentence was passed by Salima court – MPS Case File SA/SR/49/03/2013, Court Case ID 131/2013 – and was served after the accused broke bail for a similar offence. DNPW have no record of this case. It is also expected that forthcoming trial of Mr Dixson Mzinba will produce a custodial sentence. In all other 49 (98%) cases the sentence for unlawful killing, possession and/or export has been a fine in default of a short custodial sentence with hard labour. In all 49 cases the accused persons have paid the fine and did not serve the custodial sentence. The maximum fine given was MK 1,000,000 (ca. \$2,000) and the smallest fine MK 5,000 (ca. \$10). The mean average fine across the 49 cases is MK 83,500 (ca. \$ 167), but the most common fine (modal average) is MK 20,000 (ca. \$40). A fine of MK 20,000 has been passed 9 times (18% of all cases) and for ivory seizures ranging from 200 g to 21 kg. It is encouraging that there has been an increase in the size of fines given since February 2014. In February Malawi attended the London Conference on IWT, the DNPW “Stop Wildlife Campaign” was launched and the IACCWC was established. The mean average fine before February 2014 was MK 53,200 and the modal average MK 20,000. However, the mean average fine after February 2014 is MK 410,000 and modal average MKW 1,000,000. The difference between fine size pre and post February 2014 is significant ( $Z = 1.96$ ;  $P < 0.05$  - Mann-Whitney U Test) with the size of fines significantly greater after February 2014 than before.

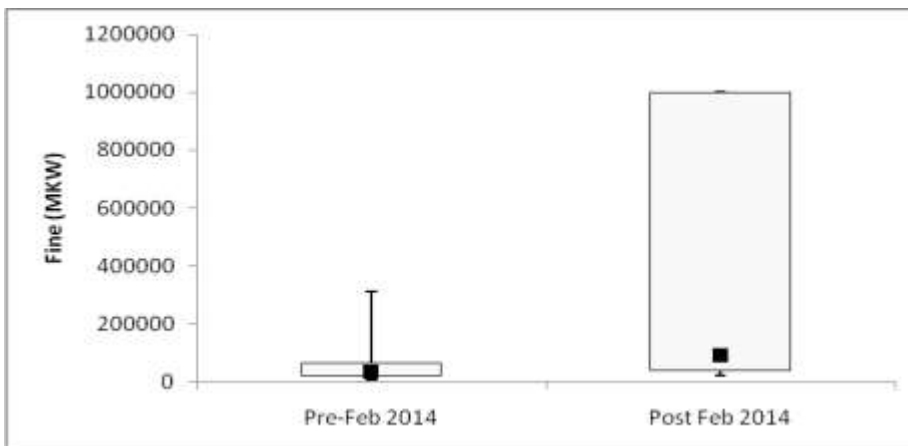


Figure 9: Size of fines pre- and post February 2014

The spike in the size of fines post February 2014 explains some of the overall increase in the size of fines since January 2010, which until 2014 were generally small and always under MK 200,000. See Figure 10, below.

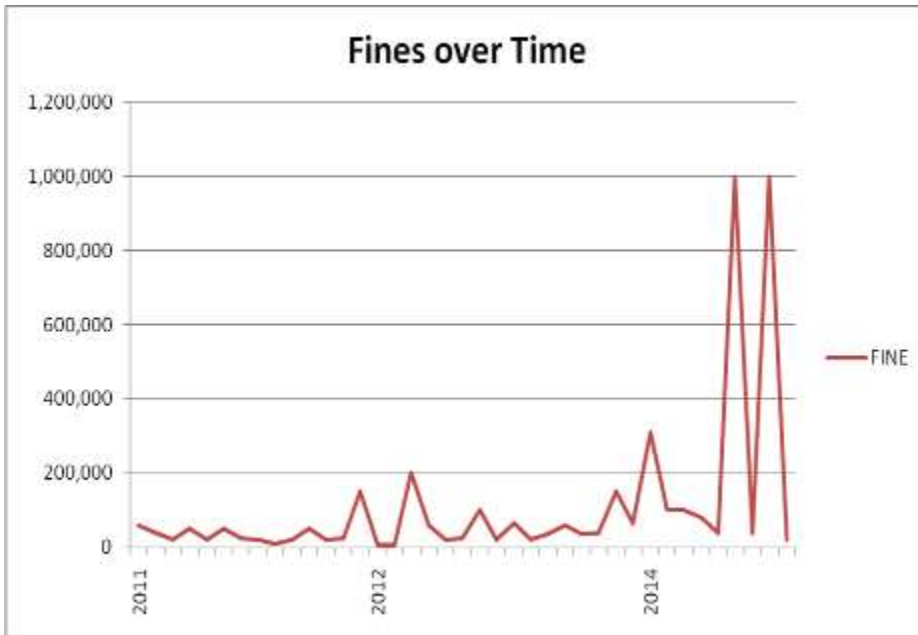


Figure 10: Fines over time

There is a positive association between time (months between January 2010 and October 2014) and the size of fine ( $r_s = 0.364$ ;  $P < 0.05$  – Spearman's Rank Correlation). However, this is likely to be in main part due to the post February 2014 spike in the size of fines passed. See Figure 11, below.

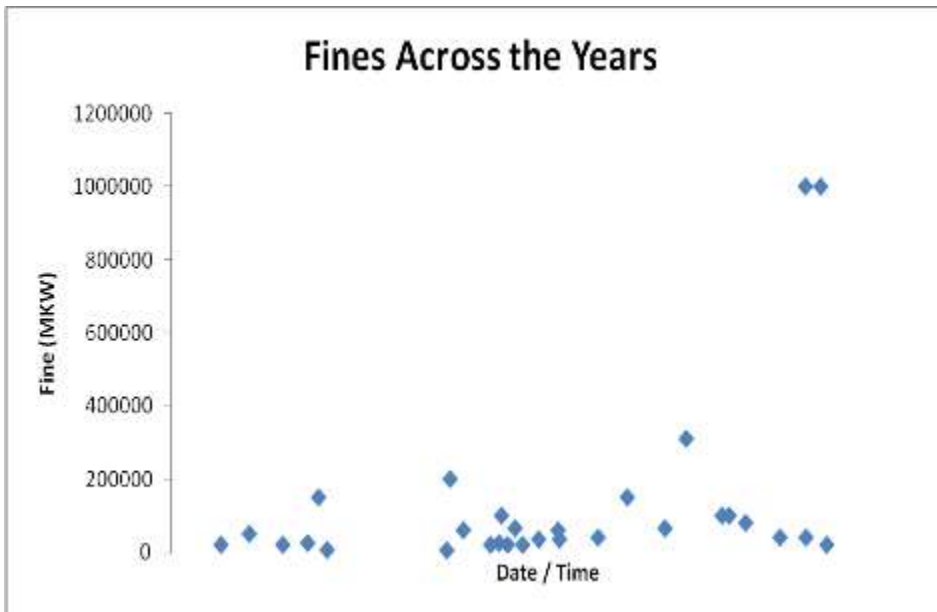


Figure 11: Fines across the years

The increase in the size of fine with time is also associated with the already observed increase in the weight of seizures (as described above). There is a positive association between the weight

of a seizure and the size of the fine awarded ( $r_s = 0.377$ ;  $P < 0.01$  – Spearman’s Rank Correlation). See Figure 12, below.

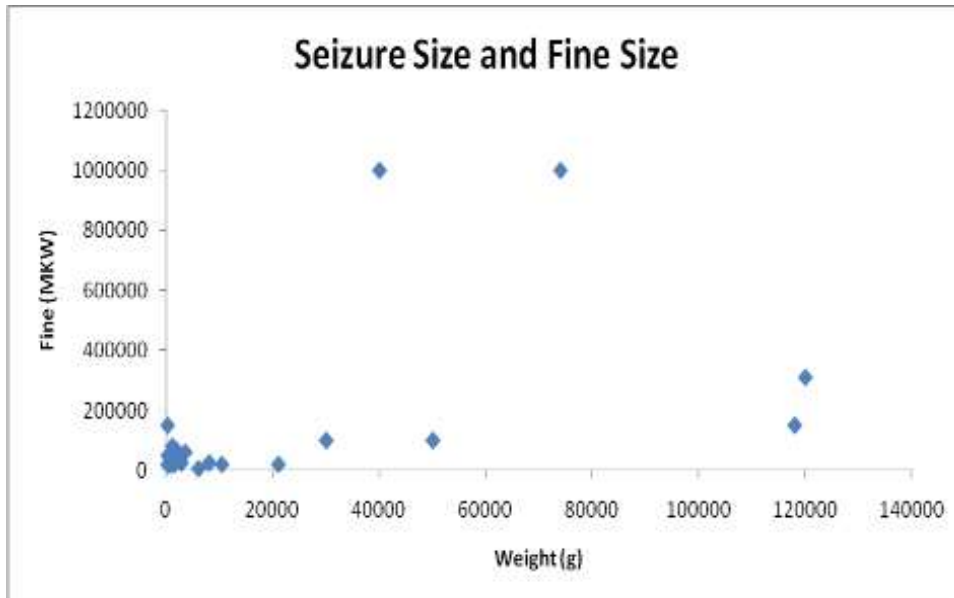


Figure 12: Seizure size and fine size

It is therefore likely that an increase in both the size of ivory exports and an increase in awareness of the issue have led to larger fines being passed to wildlife criminals since the middle of 2013. However, levels of fines are still largely woefully inadequate in comparison to the serious nature of the crime and those passed in other countries.

Although fines seem to increase with weight and over time, the same cannot be said for the default custodial sentence that would have to be served if the offender failed to pay the fine. There seems to be no pattern or correlation between the size of the fine passed by the judiciary and the associated default custodial sentence passed with the fine ( $r_{crit} = 0.381$ ;  $p > 0.05$  – Linear Regression). See Figure 13, below.

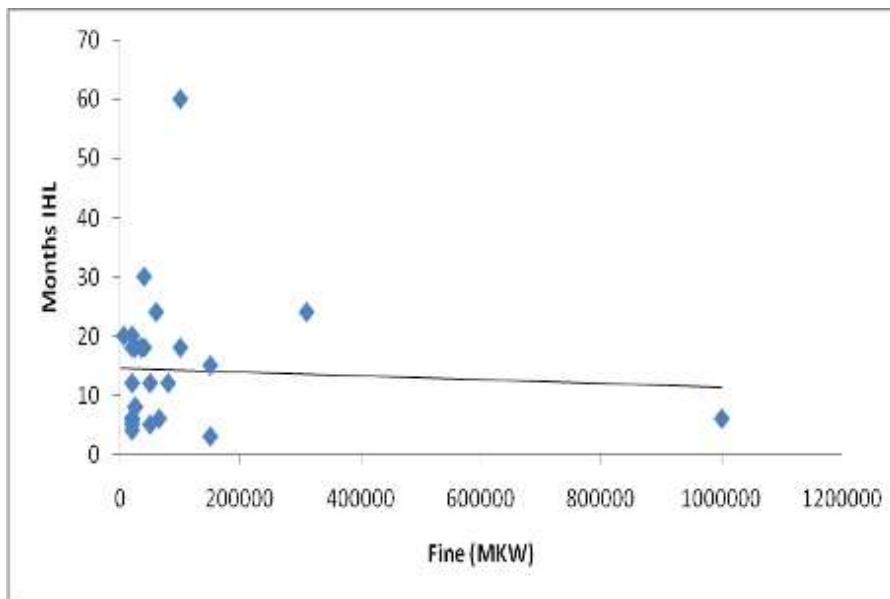


Figure 13: Size of fine vs default custodial sentences passed

There are no significant differences between the sentences that are passed to Chinese nationals, other foreign nationals or Malawian nationals ( $H = 1.468$ ;  $P > 0.05$  – Krustal-Wallis Test), although the range of fines attributed to Chinese nationals is far greater than for other nationals. Nationality does not seem to impact upon the penalties attributed. See Figure 14, below.

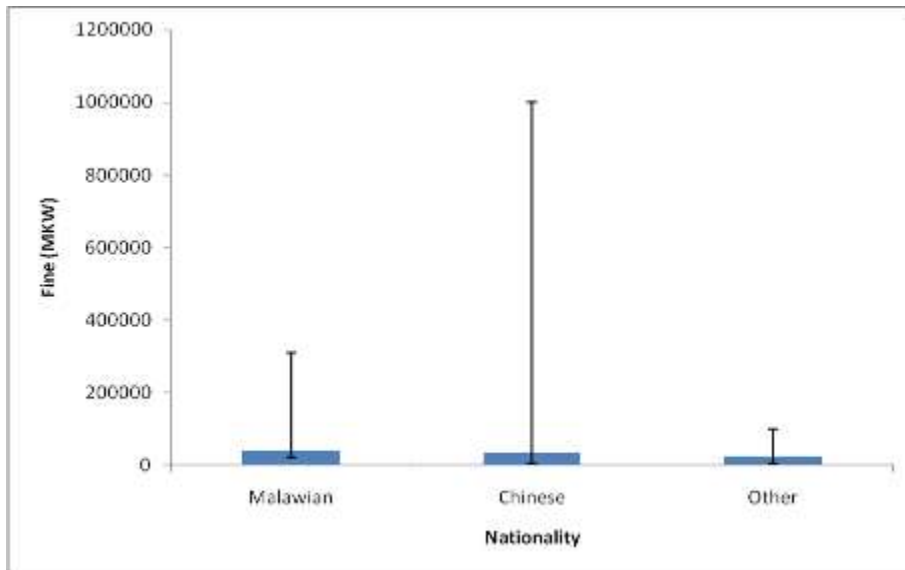


Figure 14: Relationship between nationality and fine handed down

The courts neither distinguish between offences when passing sentence. For instance, persons committing trafficking and possession receive similar sentences – there is no difference between the penalties given for those attempting to traffic ivory and those found in possession of ivory ( $U = 8.35$ ;  $Z = 0.693$ ;  $P > 0.05$  – Mann Whitney U-Test). See Figure 15, below.

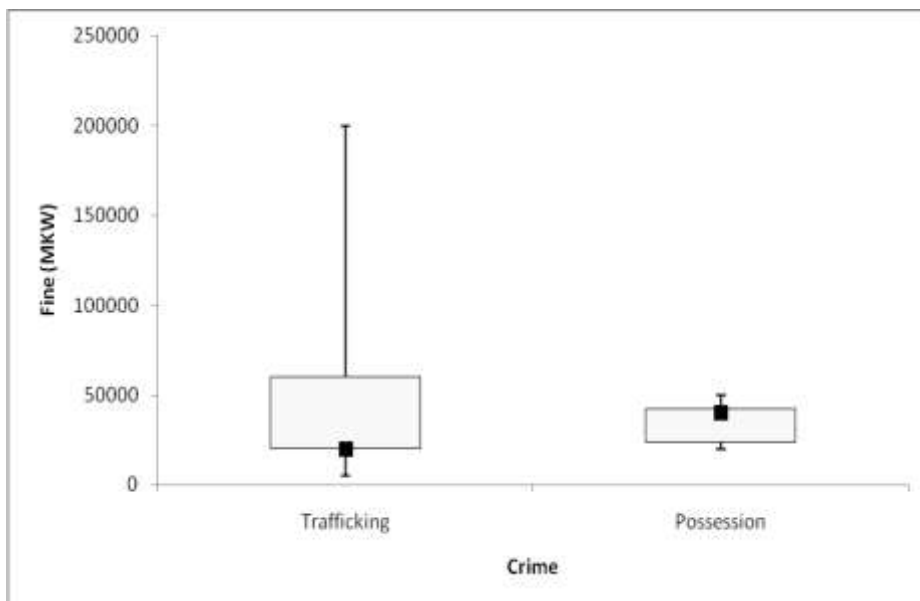


Figure 15: Type of crime vs fine handed down

However, there is a significant difference between the sentences passed at different courts. There is a significant difference between the sentences passed at Lilongwe Court compared to other courts ( $H = 5.041$ ;  $P < 0.01$  – Krustal-Wallis Test). See Figure 16, below.



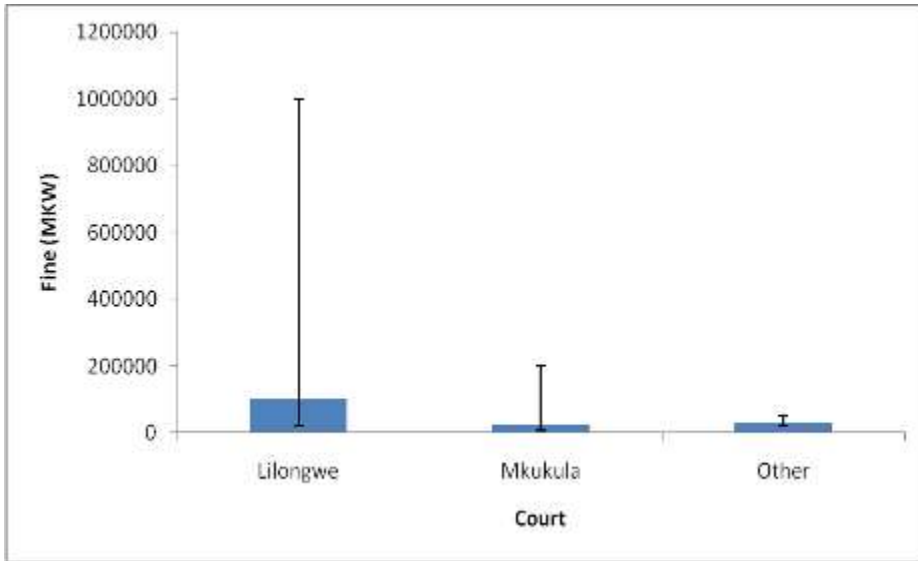


Figure 16: Differences between sentences passed by different courts.

For instance, Lilongwe Court passed significantly larger fines than Mkukula Court ( $U = 40$ ;  $Z = 2.165$ ;  $P < 0.05$  – Mann-Whiney U Test). See Figure 17, below.

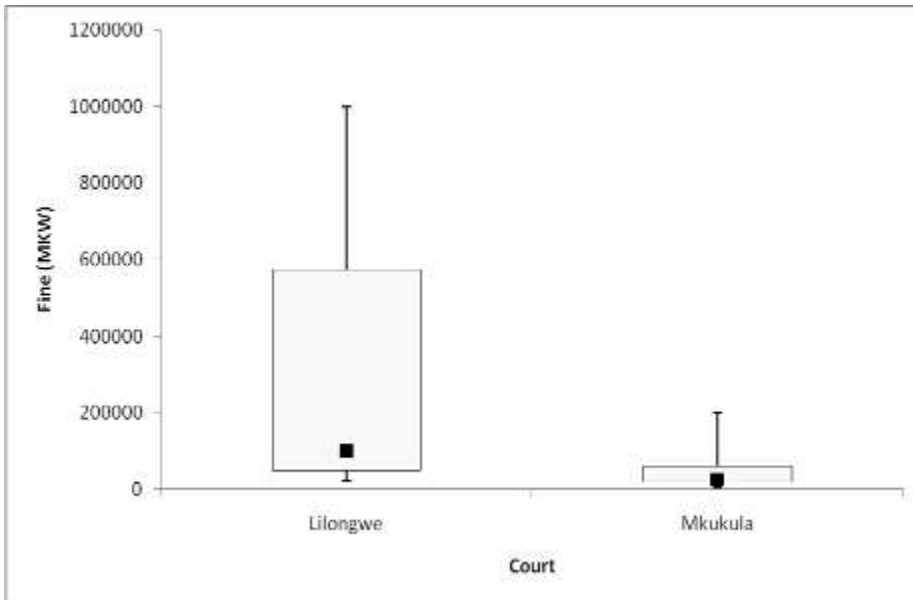


Figure 17: Difference in fines handed by Lilongwe and Mkukula Court

### 5.5.3 Further Data Observations and Limitations

DNPW provided data in the format of several Microsoft excel spreadsheets, but all data provided by MPS was hard copy only. There was no centralized database. As a result, in many cases different agencies had recorded different case file numbers and details for the same case. Even within agencies, it was not uncommon that details of the same case are recorded differently. For instance it was very common that seizure weights, the name of the accused etc. did not match up across the different offices and databases used by a single agency. Furthermore, the CITES ETIS database records do not match with DNPW's internal ETIS records, which, in turn, do not match the general DNPW HQ Excel database either. In many cases the court case file number that DNPW have recorded for a case do not match the actual court case file number provided by

the prosecutors and courts, and they rarely cite the MPS case file number. This means that cross referencing cases between agencies and finding MPS case and court files retrospectively is extremely difficult, not just for the Reviewers but for the law enforcement agencies themselves. For instance, during this review it took DNPW and MPS months for copies of cases to be sourced from various unlabelled archived filing systems. It is very likely that many of the historic wildlife crime records were not found i.e. the hard copies had been misplaced or filed in an unfamiliar, unorganised system whereby they will probably never be seen again. This is a serious issue if historic case files will ever be needed to assist a future prosecution.

For many records, essential details such as MPS Case File, Court Case ID and DNPW Case File No. are incomplete. In addition, for most records it was not possible to identify which species of wildlife the wildlife crime was actually committed against i.e. most records simply stated "Game Offence" with no further details provided. It is important to rectify this, as species distinction is likely to be required during future prosecutions e.g. the killing of an endangered species such as rhino or trading in a species that is CITES listed such as elephant ivory, are likely to be deemed more serious cases of wildlife crime than the trapping a scrub hare along a protected area boundary etc. by a local community member. Another area of concern is that the Dol only have one official record of a deportation certificate being issued for wildlife crime – Mr Axin Jhang a Chinese national (court case 677/2014). This is despite at least 37 foreign nationals having been convicted between 2010 and 2014 of possession or attempting to traffic ivory out of Malawi. It is assumed that these 37 persons are currently free to return and potentially continue their criminal activity in Malawi should they so choose. This situation is made more alarming with the confirmation that Mr Axin Jhang probably used a false name when being deported (see above). Unless information is shared effectively, and *all* law enforcement agencies are engaged, then combating wildlife criminals will be extremely challenging.

Currently, the quality and extent of the wildlife crime data collected by the authorities, and the methods and systems used to manage that data once collected, are not adequate for combating organised wildlife crime. The current systems serve no deterrent whatsoever to wildlife criminals and they offer little service either nationally or internationally. For instance, between November 2010 and October 2014 the official CITES ETIS database has 28 records of elephant trade data for Malawi. Unfortunately, and despite ETIS listing DNPW as the case source, DNPW do not have a record on any of their internal databases for 15 of these 28 ETIS cases (53%). In six of these 15 cases (40%), no other law enforcement agency in Malawi either has a current record of the cases. In such instances it can only be assumed that the case files in country have been misplaced, and therefore that invaluable detailed information regarding the crime has been lost. The problem is further compounded by evidence that Malawi has not managed to report all of its elephant trade cases to ETIS i.e. between 2010 and 2014 there are 22 cases of elephant trade crimes that have been recorded in Malawi but not submitted to ETIS database. This is almost as many cases again as the ETIS database currently contains i.e. elephant trades in Malawi are almost twice more prevalent than what the ETIS data currently conveys to the international community.

As evidence has been found to suggest that both the national and international wildlife crime databases for Malawi are incomplete, then it can be assumed that there is little hope of any future investigators and prosecutors being able to utilise comprehensive and reliable wildlife criminal data and statistics when handling cases of serious and organised wildlife crime in Malawi. Data collection, management and communication should therefore be significantly improved across all relevant and secure national and international law enforcement agencies and databases as a matter of priority, subject to the appropriate agreements and protocols. Consideration should also be given to carefully sharing information on cases with the relevant agencies in the countries of transit and destination, especially those within the Asian demand region.

#### 5.5.4 National Park Data Case Study - Kasungu National Park

Wildlife crime data from 2014 for Kasungu National Park, collected from both DNPW and the MPS (Prosecutions), has been reviewed to help evaluate data management and sharing between these two paramount wildlife crime law enforcement agencies. The key observations are summarized below.

In 2014 DNPW recorded 42 cases of wildlife crime from Kasungu National Park. In comparison MPS Kasungu recorded just 7 cases, 35 (76%) fewer cases than DNPW (See Annex E for the raw data). Only 4 cases (9%) have been recorded by both DNPW and MPS – including:

1. MPS Case File - R/U/SR/N/A Court Case ID - 3/14 regarding Mr. Moses Mumba; Mr. Chisomo Phiri; Mr. Dixon Mzinba found guilty of *Unlawful Killing of Protected Species etc.*
2. MPS Case File - R/U/SR/4/07/14 Court Case ID - 43/14 regarding Mr. Bolax Kwanda found guilty of *Entering into a Protected Area*
3. MPS Case File - R/U/SR/06/07/2014 Court Case ID - N/A regarding Mr. Mlowoka Tembo charged with the *Unlawful Killing of a Protected Species etc.*
4. MPS Case File - R/U/SR/08/08/2014 Court Case ID - 248/14 regarding Mr. Evance Nkhoma found guilty of *Entering and hunting in a Protected Area*

Interestingly, despite DNPW having 76% more wildlife crime records than MPS Kasungu, MPS Kasungu have 3 records of wildlife crime that DNPW did not have on their database:

1. MPS Case File - 06/02/14 Court Case ID - 64/14 regarding Mr. Davie Nkohma found guilty of *Entering into a Protected Area etc.*
2. MPS Case File - R/U/SR/06/02/2014 Court Case ID - 64/2014 regarding Mr. Moses Chimtika, Mr. Simon Banda, Mr. Chidziwitso Banda found guilty of *Entering into a Protected Area, Conveying a Weapon etc.*
3. MPS Case File - R/U/SR/01/08/14 Court Case ID - 223/14 regarding Mr. Moses Phiri found guilty of *Entering into a Protected Area*

It is a concern that MPS have 76% fewer records than DNPW, and have no records post August 2014. DNPW records extend until December 2014. DNPW do not have any record of any case that has been concluded by MPS since October 2014. At present there are 23 DNPW cases, including 7 cases of charges of unlawful killing of a protected species with a firearm, which have not been concluded in court. It seems that DNPW have been arresting more wildlife criminals than MPS prosecutors are processing through the courts / and or the processing and /or sharing of data from cases through the courts is not undertaken in a timely manner. The negative consequences of such data limitations for effective and motivated law enforcement are obvious and can contribute to repeat offenders being treated lightly by the courts. This will reduce deterrence.

For instance, in August 2014 Mr Mlowoka Tembo was arrested and convicted for the offences of: illegal entry into a protected Area, conveying a weapon (muzzle loader and shotgun); and, illegal hunting in a protected area (MPS Case File - R/U/SR/06/07/2014). He was fined MK 15,000 in default of a custodial sentence with hard labour. This case appears on both the DNPW Kasungu and the MPS Kasungu records. However, in October 2014 Mr Mlowoka Tembo re-offended – a firearm was again confiscated by DNPW – and Mr. Tembo was sent back to court. After this point, DNPW have a record of Mr. Tembo being found guilty and convicted of the charges and receiving a fine of MK 15,000 in default of a custodial sentence with hard labour. However, MPS Kasungu has no record of this case, or at least no record was provided to the Reviewers.

Consequently, if Mr Tembo were to continue re-offending, the MPS prosecutor would not have access to the complete criminal record of the accused. Furthermore, poor communication of court case outcome has also been cited as a demotivating factor for DNPW rangers (see Section 4.3).

The case of Mr Tembo illustrates three further issues:

- 1) How light and ineffective the existing penalties for repeat wildlife criminals are – the same weak sentence (MK 15,000 fine) was passed by the same court for the second offence of the same crimes, committed just two months apart;
- 2) The accuracy of data recording is questionable and inconsistent or incomplete between agencies, e.g. the sentence passed to Mr Tembo in August 2014 is listed as a fine in default of 4 months IHL by DNPW, but 18 months by MPS;
- 3) That prosecutors are not pressing for convictions outside of the NPWA e.g. no charges of being found in possession of an unlawful firearm under the Firearms Act of Malawi were presented.

#### 5.5.5 *MIKE Site – Kasungu National Park*

MIKE (Monitoring the Illegal Killing of Elephants) is a programme that sits within the CITES framework and is designed to measure the level of illegal killing of elephants and monitor trends in those levels. There are MIKE sites located in almost all African elephant range states which provide data to a centralised database, which is then analysed and made available to CITES to ensure that decisions undertaken by CITES are made with the best information available. Kasungu National Park is the designated MIKE site for Malawi. However, although DNPW confirm that they have been submitting data to the relevant Sub-Regional Support Officer for the MIKE Programme, unfortunately no records of MIKE submissions could be found in the CITES documentation by the Reviewers. This means that Malawi (and the wider region) has less knowledge on elephant numbers and movements in country and also less of an understanding of the current threats to elephant survival in Malawi. In addition, the apparent unavailability of MIKE data for Malawi in CITES documentation could mean that policy decisions taken in the international arena, regarding elephant conservation, will not be responsive to the actual impacts of poaching (and human elephant conflict) in Malawi. It would be beneficial to Malawi, and the other elephant range states, if data from MIKE data from Kasungu National Park were regularly available for observation and inclusion in CITES documentation and therefore also in such decision making.

## 5.6 **Recommendations: Wildlife Crime Data and Analysis**

### 5.6.1 *Recommendation 2(a): Centralised Wildlife Crime Database*

Strategic and proactive criminal intelligence processes require an organised method for actively collating, organising, analysing and disseminating data. Almost all stakeholders interviewed identified a centralised electronic wildlife crime database as a critical and urgently required tool for wildlife investigations and enforcement in Malawi. Such a database would require (among other things):

- i) Agreement about where the Centralised Database will be domiciled. Reviewers recommend that it be housed at DNPW as the primary agency responsible for wildlife protection, management and enforcement in Malawi;
- ii) Development of a data collection and sharing protocol between all agencies;

- iii) Agreement about the format and content of the data to be inputted into the Centralised Database. For example, agencies must specify which species have been killed or found in possession for export (currently items are sometimes simply listed as "game species");
- iv) Agreement about management, access and confidentiality of the database. For example, which officers will input the data, and how can transparency and accuracy of data input be ensured?
- v) Compatibility between existing criminal records database platforms that already exist in MPS, ACB and FIU.

There is no need to re-invent the wheel. The technology for such a centralised crime database already exists in country (such as the IBM i2 law enforcement solutions, and TechnoBrain software). It is recommended that the IACCWC request a detailed proposal from both of these companies and analyse which would be the most useful. The central intelligence services within the MPS already have good security protocols in place and are trained in the use of the IBM i2 intelligence software. The same software is also currently being used by the FIU and many international enforcement organisations, so this option may be preferable. The relevant MPS staff have a good level of skill in information gathering and analysis using i2, however, additional training and mentoring will be required across the wider IACCWC. Ongoing technical support will also be an essential element.

#### 5.6.2 *Recommendation 2(b): Identification of Criminals*

Only three of the reviewed wildlife crime records included the recording of any form of formal identification document number (a passport number in all of the three cases) from an offender. Therefore it is very hard to identify offenders and see if they have re-offended. This problem is particularly pertinent in light of the use of several false names by the offenders and/or the misspelling of names by the officers making arrests / logging the crime data.

The following measures are therefore recommended to ensure the proper identification of criminals:

- i) Ensure a photograph is taken of all persons arrested for IWT;
- ii) Ensure that a passport is taken, checked for validity and photocopied from all persons arrested for trafficking offences and other serious wildlife crimes;
- iii) Ensure that all personal mobile telephones are confiscated immediately, the telephone number for the phone obtained from suspect (and checked through flashing the phone in front of the suspect) and then passed on to the relevant criminal intelligence teams within MPS for analysis;
- iv) Ensure a thumb print is taken of all persons arrested for trafficking offences and other serious wildlife crimes;
- v) Ensure the full name given by the offender matches the passport details and then share those details with all other IACCWC members;
- vi) Store details on central database and transmit to regional or international enforcement agencies as relevant ((e.g. WCO Customs Enforcement Network (CEN), INTERPOL)).

#### 5.6.3 *Recommendation 2(c): Inter-Agency Sharing of Data*

Each agency (and even each office within each agency) has their own set of records which often do not match up with others' sets. Some agencies had little or no records. This has led to problems, including an inability to track criminals or submit reliable data to international wildlife

crime databases. For example, Dickson Mzinba had been convicted on numerous occasions in Salima and Kasungu, but no records of these convictions were shared between any MPS offices. This resulted in Mr Mzinba being regularly handed down very small sentences as each magistrate was not aware of past offences.

The following measures are therefore recommended:

- i) Centralized database records regularly shared between IACCWC members (and international bodies as appropriate);
- ii) Ensure that ETIS and MIKE data are accurate and submitted in a timely fashion;
- iii) Each office of each agency to develop protocols for sending monthly reports of wildlife trafficking records to their own Head Quarters and in to the Central Database;

#### *5.6.4 Recommendation 2(d): Dissemination of Data to the General Public*

Unless the general public and law enforcement officers are made fully aware of the seriousness of wildlife crime, and of how it is affecting Malawi's environment (and potentially tourism revenue) there can be little or no nation-wide effort to engage the public and motivate officers in prevention of wildlife crime. It is therefore recommended that a comprehensive and coordinated sensitisation campaign is implemented. For example the DNPW/LWT "Stop Wildlife Crime Campaign" ([www.malawiwildlife.org](http://www.malawiwildlife.org)) could be continued and the scope expanded. Such campaigns should be led by DNPW and the IACCWC and supported by the international community. They should continue to raise the profile of this unsustainable and serious crime. A series of press conferences should also be organised in order to ensure that (appropriate) information concerning wildlife crime is shared through print media, radio and television. If ivory stockpiles are to be destroyed, then DNPW should seek expert public relations advice to ensure that they can take full advantage of this internationally significant event and ensure that correct messaging is conveyed by the local and international media.

#### *5.6.5 Recommendation 2(e): Submission of MIKE data from Kasungu*

It is unfortunate that no data that has been submitted to the MIKE programme Sub-Regional Support Officer regarding Kasungu National Park is currently available for view in CITES documentation. Reviewers strongly recommend that any problems associated with data collection and submission are reviewed and rectified in order that the data from Kasungu National Park can be shared with CITES and included in the MIKE analysis.

#### *5.6.5 Recommendation 2(f): Development of Performance Indicators for Recording Wildlife Statistics*

All wildlife law enforcement agencies, prosecution teams and magistrates should start to record data from wildlife crimes in a format from which analysis can be undertaken and performances evaluated. The IACCWC should develop a specific set of wildlife crime performance targets for each member agency. They should also develop a series of indicators from which each agency can evaluate progression made in combating wildlife crime in Malawi. It is recommended that these targets and indicators should be based on performance indicators outlined in the ICCWC Wildlife and Forest Crime Analytic Toolkit on page 181. The IACCWC should also decide, as part of their ToRs, who will be responsible for conducting reviews of agency performance against targets. The IACCWC also needs to and how the results will be shared with other IACCWC members. There will be a need to determine how and when targets and indicators should be reviewed and potentially revised accordingly.

#### 5.6.6 *Recommendation 2(g): Use of Ranger Based Monitoring Systems*

The importance of using data collected by patrol staff as part of their regular patrols has long been recognised. If properly implemented, the information generated can be used to assess both the effort and effectiveness of law enforcement patrols, provide management with an overview of the extent and intensity of illegal activities in an area, and offer valuable information on key aspects of the protected site, such as location of key species, incidences of fire etc., all of which can help improve the planning and implementation of law enforcement operations. DNPW must move away from hardcopy paper based data collection systems and start to adopt one of the standard electronic ranger-based monitoring systems that have been designed for, and used by, wildlife authorities around the globe. Common equipment associated with Ranger Based Monitoring Systems (RBM) include: Handheld GPS units, Trimbles and Smart Phones. At present DNPW has very few of these RBM tools and more are desperately needed.

There is a relatively long history of RBM in Africa, and a number of common features of successful RBM systems have emerged. These include: ensuring the system has clearly defined information requirements to avoid over-burdening patrol staff and 'data swamp' during analysis; using data recording forms that are designed to enable completion by patrol staff with little formal education; and keeping any data collection equipment simple, robust (ideally dust and waterproof) and easy to maintain or replace. It is recommended that DNPW seek assistance to procure adequate numbers of RBM equipment. In addition, DNPW needs to source and be trained on a common system for collating and analyzing RBM data using the RBM tools. As the Spatial Monitoring and Recording Tool (SMART) is free and open source and, as DNPW already have some familiarity with using SMART at Kasungu National Park, it is recommended that the SMART system is implemented across the department for use in all protected areas. Prior to this, it is also suggested that DNPW consults with their peers in neighbouring countries that already utilise SMART systems e.g. the Zambian Wildlife Authority, to help them build upon any lessons that have already been learnt from the implementation of this technology in the region. Equally important is building sufficient capacity in DNPW for staff to manage data collation and analysis at the protected area level.

## **6.0 Legislation**

### **6.1 International Treaties and Agreements**

#### *6.1.1 Treaties Overview*

Malawi has ratified a number of International Treaties which can significantly support its efforts to combat IWT. Additionally, some of the Treaties are legally binding upon the signatory States, making it imperative for Malawi to ensure that the relevant stakeholders are fully cogniscent of their content and are able to implement the directives contained within those Treaties. International Conventions can be employed by Malawi for making requests for assistance to other State Parties which have ratified the same treaties. Such Conventions often complement domestic legislation where legal gaps could otherwise mean that it almost impossible for Malawi to seek and seize serious wildlife crime suspects/assets from within other States.

There is a wealth of overlap and duplication in some of these areas and some confusion and debate within the authorities on the applicability and usefulness of each Convention and/or Protocol when tackling wildlife crime. There is a need for prosecutors of serious, international wildlife crime to fully capture all these optional routes and junctions, from offence to sanction, so as to reach a consensus and make best use of the ratified Conventions, Treaties, Protocols, etc. when prosecuting wildlife criminals.

#### *6.1.2 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)*

Malawi has been a Party to CITES since 1982. CITES is the principal international instrument to control and regulate international trade in protected species and to ensure that international trade in specimens of wild animals and plants does not threaten their survival. It is the single most important international instrument dealing with illegal trade in wild fauna and flora because it is the only treaty that requires Parties to penalize some aspects of illegal trade in protected species. It also enables countries to confiscate illegally sourced wild fauna and flora. CITES is, in fact, the only international treaty that sets out specific violations relating to illegal activities in the wildlife sectors. It is worth noting that the African Elephant Action Plan (AEAP) is one of the listed CITES management tools (see Section 11.1 of this report).

Like many Parties to CITES, although Malawi has ratified the treaty, it has not enacted specific legislation to implement the Convention. Instead, Malawi relies on the National Parks and Wildlife Act as amended in 2004 (NPWA) to control trade in CITES-listed species in Malawi. The extent to which the NPWA conforms to CITES, and therefore how much Malawi is compliant with CITES, is discussed in detail in Section 6.4 below. If national legislation does not comply with CITES systems, it becomes difficult to prevent criminal groups from engaging in IWT and to punish the perpetrators. CITES can be effective only to the extent that Parties enact (and enforce) specific provisions, usually done through an endangered species statute or similarly termed legislation. In Malawi this has been achieved through the NPWA which has been reviewed below. Issues related to Malawi and CITES with regards to international law enforcement are also discussed in detail below, in Section 7.1.

#### *6.1.3 United Nations Convention Against Transnational Organised Crime (UNTOC), United Nations Convention Against Corruption (UNCAC)*

The United Nations Convention against Transnational Organised Crime was ratified by Malawi in 2005. The stated purpose of the Convention is: "...to promote cooperation to prevent and combat transnational organized crime more effectively". It contains a number of Articles of relevance to wildlife crime, including:

- Organised Criminal Groups (Article 5)



- Money Laundering (Article 6)
- Corruption (Articles 8 and 9)
- Obstruction of Justice (Article 23)
- Serious Crime (Article 2 (b))
- Offences established by the Convention's three protocols

This Convention can ensure, for example, that Malawi both gives and receives Mutual Legal Assistance (MLA) (a mechanism which enables one State to assist another) in wildlife crime cases involving a number of international actors. MLA must be provided by a UNTOC ratified State, if a transnational offence has occurred that involves an organised criminal group and if there are reasonable grounds to suspect that the offence is transnational in nature, including if victims, witnesses, proceeds, instrumentalities or evidence of such offences are located in the requested State and offences involve an organised criminal group (Article 18 (1)). In addition, State Parties to the Convention, which make co-operation for purposes of confiscation, conditional on the existence of a treaty, can use UNTOC as a legal basis for such cooperation. The UNTOC may also provide a mechanism for Malawi to recover assets from serious wildlife crimes (see below).

Since both the perpetration and the effects of wildlife offences are often transnational in nature, and given the frequent involvement of organized criminal groups in these undertakings, there is considerable potential for invoking the UNTOC in a legal response to the cross-border aspects of serious wildlife offences. Indeed, the General Assembly of the United Nations confirmed that the Convention:

*constitutes an effective tool and the necessary legal framework for international cooperation in combating such criminal activities as the illegal trafficking of protected species of wild flora and fauna, in furtherance of the principle of CITES.*

The United Nations Convention against Corruption was ratified by Malawi in 2007. The stated purpose of the Convention is:

*(a) To promote and strengthen measures to prevent and combat corruption more efficiently and effectively;*

*(b) To promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery;*

*(c) To promote integrity, accountability and proper management of public affairs and public property.*

Parties to UNCAC and UNTOC, including Malawi, must, in accordance with the Conventions, afford the “widest measure of mutual legal assistance” and “to the fullest extent possible” in investigations, prosecutions and judicial proceedings in relation to Convention offences (UNTOC Article 18 (1) & (2) UNCAC Article 46 (1) & (2)).

The MLA provisions of UNTOC Articles 18 (9) – (29) (and UNCAC Articles 46 (9) – (29)) apply to MLA requests made pursuant to Article 18 (or Article 46) if there is no other relevant treaty relationship between the requesting and requested State Parties.

Assistance types listed under UNTOC Article 18 (3) and UNCAC Article 46 (3) include the following which may be requested:

- Taking of evidence and statements from persons,
- Service of documents,
- Search and seizure,
- Provision of government, bank, corporate, financial and business records,
- Other forms of assistance not contrary to domestic law.

The provisions of the two Conventions concerning *Spontaneous transmission of information* (UNTOC Article 18 (4) – (5), UNCAC Article 46 (4) – (5)) is optional and provides a legal basis for one State Party to forward to another State Party information or evidence that it believes is important for combating offences covered by UNTOC or UNCAC where that State Party was unaware and had not requested assistance.

Under the Convention, there is an obligation to return confiscated property/proceeds to a requesting State Party in case of embezzlement or laundering of public funds established by UNCAC – in other cases, return is a priority consideration (UNCAC Article 57). There is specific provision of spontaneous disclosure in order to facilitate the making of a request in accordance with UNCAC Chapter 5 on Asset Recovery.

During this Review different legal experts in Malawi have provide different interpretations on the applicability of UNTOC and UNCAC for international asset recovery and MLA, especially in the absence of domestic enactments. Clarification and guidance to all prosecutors on this subject is required.

#### 6.1.4 *Southern African Development Community (SADC) Legal Protocols*

Malawi is also a signatory to 26 legally binding SADC Protocols. These Protocols enshrine the aims of the SADC Community by providing codes of procedure and practice on various issues, as agreed by Member States. Each Protocol is a legally binding document committing Member States to the objectives and specific procedures stated within it. The most relevant Malawi ratified SADC Protocols with regards to combating wildlife crime include:

- Protocol on Mutual Legal Assistance in Criminal Matters
- Protocol on Corruption
- Protocol on Extradition
- Protocol on Wildlife Conservation and Law Enforcement

#### 6.1.5 *Other relevant Treaties and Agreements*

Other regional or international Treaties or Agreements ratified by Malawi that are relevant to IWT include:

- i) African Convention on the Conservation of Nature and Natural Resources – ratified on the 6<sup>th</sup> of March, 1973, deposited on the 12<sup>th</sup> of March 1973.
- ii) Convention on Biological Diversity (Malawi's focal point is Environmental Affairs Department of DNPW).
- iii) London Conference on Illegal Wildlife Trade;
- iv) Arusha Declaration on Wildlife Crime;
- v) Clinton Global Initiative;

vi) Convention Concerning the Protection of World Culture and Natural Heritage, commonly referred to as the World Heritage Convention, was ratified by Malawi in 1982.

Malawi is also an observer on the Lusaka Agreement Task Force (the DPP confirmed that Malawi does participate in most of their activities) and is part of the SADC Trans-Frontier Conservation Area initiative. The Malawi – Zambia Trans-frontier Conservation Areas Agreement is at MOU stage but is moving towards signing a Treaty.

## **6.2 Extradition**

Wildlife offences are not expressly included in Schedule 2 of the Extradition Act 1972, as amended in 1992. As a result, direct wildlife offences are not included for the purposes of extradition. However, stealing does appear in Schedule 2, so theft of a dead body of a wild animal or its constituent parts (e.g. ivory) (s.270 Penal Code) could qualify as an extraditable offence. The killing or injuring animals (s.343 Penal Code) appears not to apply to wild animals because the victims have to be '*capable of being stolen*' and live specimens are not. However, since s.270 says that '*everything produced by or forming part of the body of an animal* (e.g. tusks, horn etc.?) *are capable of being stolen*' (i.e. moveable), there could be strained argument that killing or maiming an animal for such things, or parts, equates to '*malicious or willful damage to [State] property*'. This offence is also listed in Schedule 2 as "relevant" for extradition. Clarification is needed and it is recommended that if the Extradition Act is revised, then revisions should be proposed that expressly incorporate serious wildlife offences, such a trafficking an endangered species, within Schedule 2 of the Act.

## **6.3 Recommendation: International Treaties and Extradition**

### *6.3.1 Recommendation 3.1(a): Training for Relevant Stakeholders on Application and Use of International Treaties and Conventions*

Many of the stakeholders interviewed by Reviewers were neither aware of the Treaties to which Malawi is a Party, nor of the vital content of those Treaties. They were neither aware of what extradition options are available for use by the authorities in cases of serious wildlife crimes. It would greatly enhance the ability of Malawi to combat wildlife crime if all relevant stakeholders were identified and a series of workshops conducted to ensure that these stakeholders are knowledgeable about extradition, Treaties and how to implement their provisions when dealing with serious wildlife crime. These workshops could be organised by the DPP with the assistance of expert organisations such as the International Centre for Asset Recovery (ICAR) and various law firms specializing in international environmental law and law enforcement e.g. UNODC. It would be useful to construct an algorithm/flow diagram which captures all the optional routes and junctions from offence to sanction.

### *6.3.2 Recommendation 3.1(b): Revision of Extradition Act 1972 (as amended)*

It is recommended that an application is made to the Malawi Law Commission and Attorney General to undertake revisions to the Extradition Act 1972 so that it includes specific serious wildlife crime offences within Schedule 2 of the Act.

## **6.4 Domestic Wildlife Legislation**

### *6.4.1 Domestic Legislation and CITES*

The CITES (or the Convention) is the principle multilateral environmental agreement for regulating international trade in plants and animals of conservation concern. Since CITES entered into force on July 1, 1975, the Parties have developed numerous interpretations of key terms, mechanisms for species conservation that are not found in the Convention itself, and institutions to guide implementation of the Convention. As such, CITES is a living multilateral regime that is evolving to meet ongoing conservation challenges. The Convention now boasts more than 80

resolutions that guide implementation of the Convention, as well as dozens of decisions directing the Parties, the Secretariat, and various CITES committees to undertake specific actions. CITES, by nature, is a complex Convention that demands cohesive interpretation, implementation, and enforcement. For this reason, the Treaty text, and the Parties by later action, has prioritized the development of adequate national legislation as a cornerstone of CITES membership.

The Treaty itself does not specifically require national legislation, but it does demand that Parties “take appropriate measures to enforce the provisions” of the Convention. First, a Party must designate one or more Management Authorities. The Management Authority is responsible for issuing permits and certificates and making certain findings required for issuance of a permit or certificate. Second, a Party must designate one or more Scientific Authorities to make the non-detriment finding required before issuance of import and export permits and introduction from the sea certificates, as well as findings relevant to living specimens. Third, a Party must adopt appropriate legislation to prohibit trade in violation of CITES. According to Article VIII(1) of the Convention, that legislation must include provisions to penalize trade in, or possession of, specimens that violates CITES. Additionally, the Convention specifies that legislation must include provisions to confiscate specimens traded in violation of CITES or to return the species to the State of export.

Ultimately, the Parties have interpreted Article VIII as requiring that all Parties enact implementing legislation that meets at least the basic requirements of the Convention. In fact, having adequate domestic legislation is so crucial to the effectiveness of CITES that the Parties have developed a National Legislation Project through which the Secretariat reviews and analyses each Party’s domestic legislation, categorizing it as generally meeting the requirements of CITES, generally not meeting all of the requirements for implementation of CITES, or generally not meeting any of the requirements for domestic legislation. Reflecting the provisions of the Convention outlined above, Resolution 8.4 (Rev. CoP15), *National Laws for Implementation of the Convention*, provides that domestic legislation must, at a minimum, designate at least one Management Authority and one Scientific Authority, prohibit trade in specimens in violation of the Convention, penalize such trade, and provide authority to confiscate specimens illegally traded or possessed.

Currently, the Secretariat categorizes Malawi’s legislation as Category 2, which means that the Secretariat considers it “generally not to meet all of the requirements.” As part of a comprehensive effort to respond to the current poaching and international trade crises, Malawi has redoubled its efforts to improve its wildlife legislation. This paper examines Malawi’s National Parks and Wildlife Act (NPWA) in light of the National Legislation Project and CITES requirements for adequate implementing legislation, as well as the Wildlife and Forest Crime Analytic Toolkit produced by the International Consortium on Combating Wildlife Crime. The Toolkit provides a framework for analysing legislation for purposes of controlling wildlife crime. In many ways, the framework offered is nearly identical to what CITES requires, but in other ways important for enforcement, the Toolkit deepens the legislative analysis.

This review is limited to Malawi’s NPWA, but other pieces of legislation may be relevant to CITES implementation and wildlife trade generally. As a result, the recommendations herein may not alone lead to the Secretariat reclassifying Malawi’s legislation as “generally . . . meet[ing] the requirements for implementation of CITES” (Category 1) because other legislation is also relevant for implementation of CITES, such as the Forestry Act, but if implemented, the recommendations made in this paper would result in significantly stronger wildlife legislation that is supportive of CITES goals and which could be used as a framework for revisions to other relevant legislation.

Review of NPWA suggests that for the dual purposes of effectively combating wildlife crime and adequately implementing CITES a number of changes to the legislation are necessary. A handful of these changes are most important:

- (4) The legislation must clearly designate Scientific and Management Authorities to undertake the tasks required for CITES implementation.

- (5) Definitional issues related to the scope of the Act must be clarified to ensure that the Act is protective of species.
- (6) The penalties provisions of the Act must be amended to ensure that wildlife crime may be treated as a “serious crime” and to clarify contradictions that make the provisions unenforceable.

These changes represent the minimum necessary to ensure that the legislation is enforceable, is broad in scope, and defines clear lines of authority. These recommendations are further elaborated in this paper. Additional recommendations are noted throughout. It should be clear that the NPWA provides a solid legislative framework that can be bolstered with further legislative amendment and harmonization with related laws to build a legal regime that is protective of Malawi’s wildlife. It is also essential that any legislative amendments are made in harmony with the Wildlife Policy of Malawi which was last updated in 2000 but is currently under review.

#### *6.4.2 Basic Requirements for CITES Implementing Legislation and the ICCWC Toolkit*

Against the backdrop of CITES’ core provisions, this section outlines the basic requirements for CITES implementing legislation as identified by the National Legislation Project and as further elaborated by the Wildlife and Forest Crime Analytic Toolkit. It also identifies the relevant provisions of Malawi’s legislation and examines whether the provisions are adequate when assessed against CITES requirements and the Wildlife and Forest Crime Analytic Toolkit. As outlined in the introduction, at its most basic level CITES requires the following be included in a Party’s implementing measures:

1. Designation of national CITES Authorities;
2. Prohibition of trade in violation of the Convention;
3. Penalization of illegal trade; and
4. Authorization to confiscate specimens illegally traded or possessed.

The Toolkit’s recommendations expand on CITES’ requirements and they are further elaborated, as relevant, below.

#### *6.4.3 CITES Management and Scientific Authorities*

Article IX of the Convention provides that each Party “shall” designate at least one Scientific Authority and one Management Authority. According to the Secretariat, a Party’s relevant legal instrument may either authorize designation of these CITES Authorities or expressly authorize such designation. Additionally, the Secretariat indicates that legislation should also clearly provide the necessary powers for each CITES Authority to carry out its responsibilities. Furthermore, the Secretariat looks at whether the legal instrument ensures opportunity for the CITES Authorities to communicate and cooperate with other relevant government agencies, such as Customs and police. The Wildlife and Forest Crime Analytic Toolkit provides a similar framework for analysis of legislation.

##### 6.4.3.1 Designation of National Authorities

The NPWA does not expressly designate either a Scientific Authority or a Management Authority, nor does it provide for or recognize other authority for the designation of CITES Authorities. This is a fundamental deficiency in the legislation, and in fact, as it currently stands, the NPWA could create confusion as to authority regarding CITES Permits.

Paragraph 97 of the NPWA provides that “[t]he Director may issue to any person a permit . . . to import or to export or to re-export any specimen of a protected species or listed species.” Although it does not expressly indicate as such, this paragraph could be read as to designate the role of Management Authority to the Office of the Director of National Parks and Wildlife, and in fact, DNPW interprets this provision as ascribing DNPW with authority to act as the Management

and Scientific Authorities. According to the CITES website, the Management Authority is the Director of National Parks and Wildlife, Department of National Parks and Wildlife, and the Scientific Authority is the Deputy Director of Research and Planning, Department of National Parks and Wildlife. However, the legislation itself is not sufficiently clear for CITES purposes, which requires an express designation or express provision of authority to designate. Furthermore, it does not appoint a Scientific Authority. Ultimately, the legislation does not expressly designate CITES Authorities, nor does it expressly authorize the Minister, Director or anyone else to designate Management and Scientific Authorities.

Part III of the NPWA, paragraphs 17 – 22, create a “Wildlife Advisory Board.” One of the functions of the Board is to “*advise on the import, export and re-export of wildlife specimens into and out of Malawi.*” Broadly speaking, this is the job of the Management and Scientific Authorities and should remain their purview. Additionally, according to paragraph 18, the Director of National Parks and Wildlife serves on the Wildlife Advisory Board as an *ex officio* participant. It is not clear how the Wildlife Advisory Board and the Director of National Parks and Wildlife cooperate to perform their potentially overlapping tasks, nor is there a mechanism for resolving disagreements or instating a hierarchy of decision-making.

The Wildlife Advisory Board appears to constitute a forum for public input into wildlife-related decision-making; as such, its role could be more clearly delineated by defining a process for issuance of permits, including a public comment period during which the Wildlife Advisory Board may contribute its advice. On the other hand, according to one source, the Wildlife Advisory Board has never actually been convened. If it does not fulfil its intended functions, perhaps these provisions should be deleted from the National Parks and Wildlife Act to avoid confusion.

#### 6.4.3.2 The Role of National Authorities

If paragraph 97 is meant to designate the Director of National Parks and Wildlife as the Management and/or Scientific Authority, it does not specifically enumerate the powers that attend the role. However, throughout the NPWA, the Director is granted certain powers that are relevant but that do not amount to the totality of powers expected of a CITES Management or Scientific Authority.

According to CITES Model legislation, the CITES Management and Scientific Authorities must have specific enumerated powers, including the following:

Management Authorities must be empowered to, among other things:

- a) Grant permits and certificates in accordance with the provisions of CITES and to attach to any permit or certificate any condition that it may judge necessary;
- b) Communicate with the Secretariat and other countries on scientific, administrative, enforcement and other issues related to implementation of the Convention;
- c) Maintain records of international trade in specimens and prepare and submit an annual report concerning such trade;
- d) Prepare biennial reports on legislative, regulatory, and administrative measures taken to enforce the Convention and submit report to the Secretariat;
- e) Coordinate national implementation and enforcement of the Convention and national legislation with other relevant authorities
- f) Consult with the Scientific Authority on the issuance and acceptance of CITES documents, as well as other aspects of implementation of the Convention;
- g) Represent Malawi at national and international meetings related to CITES
- h) Provide awareness-raising, training, education, and information related to the Convention;
- i) Advise the Minister on action to be taken for the implementation and enforcement of CITES;

- j) Designate one or more rescue centres for seized and confiscated living specimens
- k) Intervene in litigation before a court in any matter related to CITES.

Scientific Authorities must be empowered to, among other things:

- a) Advise the Management Authority on whether or not a proposed export of a specimen of species listed in Appendix I or II will be detrimental to the survival of the species involved;
- b) In the case of a proposed import of a specimen of a species in Appendix I, advise the Management Authority on whether or not the purposes of the import are detrimental to the survival of the species involved;
- c) In the case of a proposed import of a live specimen of a species listed in Appendix I, advise the Management Authority whether or not it is satisfied that the proposed recipient of the specimen is suitably equipped to house and care for it;
- d) Monitor the export permits granted for specimens of species listed in Appendix II, as well as the actual exports of such specimens, and advise the Management Authority of suitable measures to be taken to limit the issue of export permits when the population status of a species so requires;
- e) Advise the Management Authority on the disposal of confiscated or forfeited specimens;
- f) Advise the Management Authority on any matter the Scientific Authority considers relevant to species protection;
- g) Perform any tasks foreseen in the Resolutions of the Conference of the Parties to CITES.

Importantly, paragraph 97 empowers the Director to issue import, export, and re-export permits. Although this is the cornerstone of the Management Authority's powers, the NPWA does not express clearly the preconditions for issuance of CITES permits, as discussed further below. Moreover, none of the powers outlined above are expressly articulated in the NPWA.

Other relevant authorities exist throughout the Act. For example, in paragraph 39, the "Director shall be responsible for regulating and controlling harvesting in the national park, wildlife reserve, or nature sanctuary . . . [and the Director] "shall ensure that the annual harvest does not exceed sustainable yield level." Although this language is not clearly providing authority to make non-detriment findings for export permits, the Director appears to have the information necessary for such determinations, as well as to set annual harvest and export quotas.

Thus, although a few important powers are specified, a self-contained, comprehensive list of enumerated powers is lacking. This is apparently known as draft CITES regulations more clearly designate the tasks of the Management and Scientific Authorities. For implementation purposes, clearly understanding the role and tasks of each CITES Authority is critically important. It is important that the body designated as either the Management or Scientific Authority understand its role in order for it to adequately fulfil its duties, and it is equally as important that other government bodies understand the precise duties of the Authorities to avoid disputes and to streamline government functioning. Thus, incorporating an outline of the duties and tasks of the Management and Scientific Authorities into the NPWA would be useful.

#### 6.4.3.3 Coordination with Other Relevant Legislation and Other Relevant Authorities

For purposes of enforcement, coordination amongst government bodies and agencies is critical. If the Management and Scientific Authorities retain the powers as set out as ideal in the CITES Model Legislation, paraphrased above, a legal mechanism would exist for coordination amongst them. Providing the Management Authority clear instructions to participate in relevant judicial proceedings, as detailed above, creates a crucial link between the CITES Authorities and the

judiciary. However, it is also important that coordination mechanisms include the police, customs, trade officers, forestry and fisheries officers, and others.

The Wildlife Advisory Board, if convened, could serve as a coordination mechanism if it was repurposed to specifically act accordingly. Both the Director of Fisheries and the Director of Forestry serve as *ex officio* members of the Board. Paragraph 99 contemplates consultation with the Minister responsible for Trade and Industry regarding CITES regulations. It could be useful to add a further consultation with Customs to ensure that its role in CITES implementation is well-vetted and understood as well. Some level of harmonisation of government authority is clearly contemplated by paragraphs 6-8. The enforcement authorities outlined in paragraph 8 (and more fully described below) may be exercised by “parks and wildlife officers, fisheries officers, forest officers, environmental inspectors, customs officers, members of the Malawi Police Service, members of the Malawi Army and Honorary Parks and Wildlife Officers as the Minister may designate.”

#### 6.4.4 *Prohibition of Trade*

Article VIII of CITES expressly requires Parties to “prohibit trade in specimens in violation” of the treaty, specifically by “penaliz[ing] trade in, possession of, such specimens, or both.” The need for clear enforcement mechanisms was clear to the drafters of the treaty, and it remains essential for effective implementation of the Convention and control of illegal wildlife trade. Importantly, the treaty text additionally requires that Parties prohibit possession of illegally traded specimens. The Parties and the CITES Secretariat have further elaborated this and have specified that the National Legislation Project looks to whether the legislation includes: (a) all specimens of all species covered under CITES; (b) all types of transactions (exports, imports, re-exports, introduction from the sea, and transit and trans-shipment between Parties and non-Parties); (c) an express provision that subordinates the issuance of permits and certificates to the provisions of CITES; (d) standardized form and validity of permits and certificates; (e) exemptions or special procedures allowed by CITES; and (f) a general clause prohibiting any transactions without a valid permit.

Most of these elements are discussed below; however, the NPWA does not provide for a standardized permit form, nor does it include recognition of any of the exemptions or special procedures allowed by CITES. Paragraph 97 refers to permits “in the prescribed form,” but the legislation does not prescribe the form and validity of any permits or certificates, and no further regulations elaborate as such. Although CITES provides for a number of exemptions, Malawi’s wildlife legislation does not incorporate any of them, suggesting that Malawi applies what the Parties call “stricter domestic measures.” In other words, as to the exemptions provided for in the treaty, Malawi’s legislation is stricter and a permit is required for any type of international trade that meets the terms of the treaty and the legislation. For enforcement purposes, this is an ideal construction because it closes loopholes that CITES otherwise allows; however, for certain purposes, such as trans-shipment and enforcement trainings, exemptions ease administrative burdens and can be helpful.

##### 6.4.1.1 Coverage of All CITES-Listed Species

Adequately implementing CITES is dependent on legislation that covers all CITES-listed species, including both plants and animals. National legislation must also apply all relevant trade controls to all CITES-listed species. Arguably, the NPWA is comprehensive in its scope; however, a close reading reveals that protections afforded different categories of species may confuse enforcement officers and those authorities charged with implementing the legislation, as well as individuals subject to the legislation.

The NPWA includes provisions for several categories of species, including “protected species,” “game species,” “endangered species,” and “listed species.” Each of these categories of species is due varying degrees of protection and is subject to potentially different conditions for import,



export, and re-export. As suggested, the NPWA legislation is broad in that it covers “listed species,” which includes “plant or animal species listed under any international, regional, or bilateral agreement to which Malawi or the Government is a party.” However, conflict arises when this definition is juxtaposed with the definition of “wildlife,” which also defines the scope of coverage. “Wildlife” is defined to mean “any wild plant or animal of a species native to Malawi and includes animals which migrate through Malawi, and biotic communities composed of those species.” The scope of CITES-listed species obviously includes species that are not native to Malawi and that do not migrate through Malawi. If these two definitions are read together, it could be argued that any listed species that is not indigenous to Malawi is not covered by the Act—that excludes most CITES-listed species. This is a definitional conflict that must be addressed.

Although the NPWA seems to concern mostly animal species, “wildlife” under the Act is defined as both “wild plants and animals.” This interpretation of wildlife as including both plants and animals is important for CITES purposes, but it is necessary that the provisions in the NPWA that pertain to plant species, such as the export and import provisions, are not in conflict with the Forestry Act or any other relevant measures. Furthermore, as CITES also covers captive-bred animals and artificially propagated plants, the limitation that only “wild” plants and animals are covered is in conflict with CITES. The NPWA provides in section 54A of the Act that an individual may obtain an “animal captivity license” so some captive breeding in Malawi may be present.

The definition of “listed species” also includes reference to species listed “under regulations made pursuant to section 99”; however, paragraph 99 does not contemplate authority for the Minister to list species as such. This appears to be a mistake in the legislation. Although it may not have much practical effect, the use of the conjunctive “and” in the definition of listed species could be interpreted to mean that in order to be a “listed species,” a species must be listed under a relevant international agreement as well as (*and*) be listed under regulations promulgated by the Director.

The distinctions between “listed species,” “game species,” and “protected species” are also critical for implementation of the NPWA as each is subject to different regulations. “Protected species” are those plants and animals declared pursuant to section 43, which specifies that the “Minister may, from time to time, by order published in the Gazette declare any species of wild plant or wild animal specified in such order to be classified as a protected species under this Act.” According to the Gazette, any mammals, reptiles, and birds in either a national park or wildlife reserve are “protected species.” Additionally, certain mammals, reptiles, and birds found outside of those areas are also protected species, including rhinos, elephants, leopards, and lions, among others. However, this is only a limited subset of protected species—thus, some species are not subject to the NPWA when outside of protected areas. This creates tremendous difficulties for enforcement purposes and creates two perverse incentives. First, it means that certain potentially valuable species, including possibly CITES species, may be freely hunted outside of national parks and wildlife reserves. It also means that poachers and traders can easily falsify the origins of plants or animals in order to obtain legal documents for illegally hunted specimens.

“Game species” represents a subset of protected species that is limited to those protected species that are animals. Section 2 defines “game species” as “species of animals designated as a game species under section 44,” which empowers the Minister to identify and publish in the Gazette a list of “some protected species of animals [that] may be classified as game species for the purpose of hunting.” It is unclear whether the Minister has declared any protected species as being “game species.”

In general, the hunting and take provisions of Part VII of the legislation appear to apply generally to protected species, with the caveat that individual licenses specify which species may be hunted pursuant to that license. The legislation prescribes a number of different licenses, including at least five types of hunting/take licenses: (1) bird licenses authorize citizens or residents of Malawi to hunt specified bird species; (2) game licenses authorize citizens or

residents of Malawi to hunt species as identified in the license; (3) visitor licenses authorize visitors to Malawi to hunt protected species; (4) hunting licenses authorize professional hunters to hunt protected species in specified area, protected or not (a special professional hunter's license is a prerequisite); and (5) special licenses authorize citizens, residents or visitors to hunt or take protected species for purpose of scientific research or scientific, educational or display purposes. Although one of these licenses is a "game license," these categorizations do not clearly make distinctions between which licenses might apply to protected species versus game species.

Distinctions are made, however, with regard to penalties. The penalty provisions appear to be less strict in the case of offences involving game species. These provisions and their lack of clarity are discussed below, but extrapolating from the version of the legislation prior to amendment in 2004, "game species" seems to be a special class of species for which lesser penalties apply when offences are committed (see below for further discussions of penalties).

Because the hunting regulations apply only to protected species, it could be that some CITES-listed species found in Malawi are not subject to the hunting regulations and thus may be hunted without a license and without regulation. While CITES does not specifically regulate hunting or other takes, hunting represents obviously a crucial component of the supply chain and the hunting of all CITES-listed species ranging in Malawi should be regulated.

The legislation also provides for "endangered species," which must be declared by the Minister pursuant to section 43A; however, it is unclear how any such species are treated under the Act.

To retain a protected species for purposes other than human consumption, an individual must obtain a "certificate of ownership," which may be issued by the Minister after confirmation that the specimen was obtained legally. Once a certificate of ownership has been issued, an individual may sell, gift, or otherwise transfer a specimen. In this case, the Minister retains the original certificate of ownership and issues a new certificate to the new owner. This process creates a chain of ownership that should allow for relatively easy tracking of protected species in commerce in Malawi. Practical realities determine how administratively burdensome these transactions may or may not be, but given these regulations, it seems that, at least on paper, the market for protected species could be relatively well-controlled if the law was enforced. Importantly, though, as made clear above, there are a number of "loopholes" with respect to which species may be "protected species" under the NPWA, and many CITES-listed species may not have this same level of protection in domestic commerce.

Aside from questions of whether CITES-listed species are actually covered by the NPWA, it is also important to understand whether the legislation clearly identifies the types of specimens that are also covered, including whole specimens as well as parts and other derivatives. In this case, the NPWA defines "specimen" as "any wild plant or animal, alive or dead, whether or not native to Malawi, and any readily recognizable part or derivative of such plant or animal." This language is similar to language used in CITES and it is likely adequate to give the NPWA the scope required by CITES, but the conflicts outlined above are also relevant here. The NPWA, even with an expansive definition of "specimen," only covers a limited number of species and depending on interpretation, a very narrow scope of species.

#### 6.4.4.2 Coverage of Types of Transactions

For legislation to adequately implement CITES, it must cover all types of transactions considered under CITES. This includes exports, imports, re-exports, introduction from the sea, and transit and trans-shipment. Part XI of the NPWA explicitly concerns import, export, and re-export of wildlife specimens. Additionally, section 97 specifically provides that permits are required for import, export, and re-export of protected and listed species. The NPWA does not include provisions for introduction from the sea or for transit and trans-shipment.

#### 6.4.4.3 Identification of Permit Conditions

Crucially, national legislation that ostensibly controls international trade in wildlife specimens for the purpose of implementing CITES must provide for the necessary preconditions to import, export, re-export, and introduction from the sea. The CITES Secretariat suggests that the conditions to trade must be explicit in the legislation or the legislation must “at least [include] an express provision that subordinates the issuance of permits and certificates to the provisions of the Convention.” The NPWA does neither.

Paragraph 97 only states that if the species is a “protected species,” then a certificate of ownership is required, and if it is a “listed species,” then the terms of any regulations promulgated pursuant to section 99 must be met. In the case of “protected species,” which could include CITES-listed species whose range includes Malawi, obtaining a certificate of ownership is not commensurate with meeting the permit requirements under CITES. Section 88 merely states that

[a]ny person who, under a [hunting] license . . . , takes possession of a specimen of a protected species, other than a specimen for human consumption shall within fourteen days, present the specimen together with is license to the Director and if he wishes to retain the specimen he shall apply in writing or in the prescribed form, if any, to the Director for a certificate of ownership in respect thereof.

Because obtaining a certificate of ownership is conditioned on having a valid license for the specimen, the CITES provision providing that a specimen “was not obtained in contravention of the laws of that State” is met. However, no other permit findings are met, including the non-detriment finding.

In the case of “listed species,” which would include all CITES-listed species, no clear preconditions exist for the issuance of a permit to export because CITES regulations have not been adopted pursuant to section 99. At this time, it seems that there are no clear rules in place for trade in CITES-listed species. Moreover, because the NPWA distinguishes between protected species and listed species, implementation of the permit rules could become complicated and difficult to implement when a protected species is also a listed species. This overlap creates a loophole that contravenes CITES.

#### 6.4.4.4 Express Prohibitions and Offences

CITES identifies a number of activities that national legislation should prohibit. Foremost, the legislation must include a general clause prohibiting any transaction without a valid permit. Section 98 does this, providing that “any person who imports, exports, or re-exports or attempts to import or export or re-export any specimen of a protected or listed species . . . without producing . . . a valid permit . . . shall be guilty of an offence.” Additionally, the Secretariat adds that legislation must also prohibit the following and indicate that breach of any prohibition constitutes an offence: (1) the use of invalid or forged permits and (2) the possession of and trade in specimens that were illegally imported or otherwise acquired.

The NPWA does not fully prohibit either of these activities. It does, however, prohibit the possession, buying, and selling, and the attempt to possess, buy, or sell any specimen of a protected species unless in possession of a valid certificate of ownership. As discussed above, in some cases CITES-listed species are protected species but not necessarily in all cases, leaving a potentially significant gap in the coverage of the NPWA. Further, there appears to be an exemption for specimens for human consumption, according to section 88. In most cases, this likely is an exemption for hunters who intend the specimen for family or local consumption; however, without such an explicit caveat, the exemption could arguably apply to any sort of bush meat and to the buying and selling of meat and other products for human consumption.

When a certificate of ownership is believed to be fraudulent, the certificate may be revoked by the Minister, but someone possessing a fraudulently obtained certificate of ownership is not considered guilty of an offence, unless he refuses to surrender the certificate. This is a significant loophole—even if the fraud was committed directly by the person in possession of the fraudulent certificate, he must only return the certificate to rectify the situation and he would not be guilty of an offence.

Although section 98 requires the presentation of a “valid permit” for import, export, or re-export, the NPWA does not clearly make obtaining or possessing a fraudulent CITES permit an offence under the Act. Including such an offence could help prosecute corrupt individuals engaging in illegal wildlife trafficking.

The Wildlife and Forest Crime Analytic Toolkit provides a deeper contextualization of the range of actions that wildlife legislation should prohibit and make illegal as part of regulating the entire supply chain of wildlife products. Overall, Malawi’s Wildlife Act includes many of the protections and provisions recommended in the Analytic Toolkit, but in a way that is much more general than the Toolkit suggests. For example, the Act addresses the trade and processing of wildlife very generally, whereas the Toolkit identifies very specific offences related to either trade or processing of wildlife. The following charts provide a breakdown of the offences identified in the Toolkit compared with the offences provided for in the NPWA.

In reading the relevant provisions of the NPWA, as identified by the charts below, it is important to consider the definitional limitations of the Act, as outlined above. These limitations constrain the application of the offence provisions and thus may constrain enforcement. In the most important case, the Toolkit contemplates an offence that applies to species that cannot be hunted, i.e. “protected animal species.” Malawi’s legislation does not necessarily have any such class of species for which hunting is strictly prohibited, as the NPWA seems to provide the Director with significant discretion with regard to issuing hunting licenses (section 55), and in fact, the hunting of protected species is clearly contemplated. Thus, whether Malawi’s legislation includes a provision that criminalizes the killing or capturing of protected species, depends on definitional issues and whether the Director opts against issuing hunting licenses for protected or listed species. Perhaps the legislation intends that “endangered species” represent this special category of species, but that is not clear and no specific offense relates to the killing or capturing of endangered species.

Another definitional issue pertains to “protected species” versus “listed species.” Although technically outside the mandate of CITES, it is important that national legislation protect the lines of trafficking in CITES-listed species. Thus, for example, national legislation should include a provision that makes buying, selling, and possessing CITES-listed species that have been illegally obtained, exported, or imported, etc. an offence. However, the NPWA’s provisions that criminalize commerce and possession of wildlife only pertain to “protected species” and not to “listed species.” This is a significant deficiency in the legislation.

Finally, for each offence identified it is important to understand the *mens rea* (mental state) necessary for each crime. The NPWA is unclear as to whether offences are strict liability offences or if they require demonstration of some mental state. These questions may be answered in relevant jurisprudence or via Malawi’s penal code; however, for enforcement purposes, the NPWA itself may benefit from identifying what the necessary mental state is for each offence or whether they are strict liability offences.

#### 6.4.4.5 Summary Illegal Killing or Capturing

<b>Criminalizing the killing or capturing of wildlife</b>	<b>Focus of Regulation</b>	<b>Contained in the NPWA</b>	<b>Relevant sections of the NPWA</b>
<b>protected animal species</b>	Species	Maybe	47(1); 43; 43A; 55
<b>wild animals without valid authorization</b>	License/permit	Yes	35(a); 47(1); 60(1)-(2); 15
<b>wild animals in protected areas</b>	Area	Yes	32, 33, 35(a); 47, 48(h)
<b>wild animals outside licensed boundaries</b>	Area	Yes, if included as a permit condition	47(1)
<b>wild animals above licensed quotas</b>	Quota	Yes, if permit condition	47; 48(f)
<b>young animals; the destruction and damage to nests, dens, and eggs, the removal of eggs</b>	Species and Manner	Yes	65
<b>wild animals outside of season/ unauthorized times</b>	Time	Yes, if permit condition	47; 48(h); 68
<b>Obtaining a hunting license illegally</b>	License/permit	No	None
<b>Use of unauthorized hunting devices or methods</b>	Manner	Yes	33(1) and 47 (general prohibitions); 48 (permit conditions); 64 (fires); 66(1); 67(1)-(2) (Minister may prescribe regulations re weapons); 70(1) (motorized vehicles); 71 (use of domestic animals); 72 (use of substances)
<b>Interference with other people's hunting or trapping</b>	Manner	No	None
<b>Underreporting and misreporting hunting activities or quotas</b>	Quota	Yes	60(1)-(2)

#### 6.4.4.6 Summary Illegal Processing

<b>Illegal processing of animal and plant material</b>	<b>Focus of Regulation</b>	<b>Contained in the NPWA</b>	<b>Relevant sections of the NPWA</b>
<b>Processing illegally obtained or protected plant or animal material</b>	Species	Yes – (for animal species) – as long as Minister has provided as such via regulation	87
<b>Processing without documentation verifying</b>	License/permit	Yes – (for animal species) – as long	87

<b>the legal origin of the material</b>		as Minister has provided as such via regulation	
<b>Manufacturing of prohibited goods made from fauna or flora</b>	Species	Yes – (for animal species) – as long as Minister has provided as such via regulation	87
<b>Operating processing facilities for timber (or other plant or animal material) without a license</b>	License/permit	Yes – (for animal species) – as long as Minister has provided as such via regulation	87

#### 6.4.4.7 Summary Illegal Trade

<b>Trafficking, illegal trade, sale and supply</b>	<b>Focus of Regulation</b>	<b>Contained in the NPWA</b>	<b>Relevant sections of the NPWA</b>
<b>Selling fauna or flora that has been illegally logged, harvested, or otherwise obtained illegally</b>	Species, License, etc.	Yes	86, 88(3)
<b>Transport, sale, and offering for a sale of any specimen of CITES-listed species that has been imported, introduced from the sea, or taken from the wild without the required permits</b>	CITES, Species, License, etc.	Maybe, depends on definitional issues and whether a CITES-listed species is also a “protected species.” Also, the provision does not apply to “transport.”	86
<b>Trade and transport of unlawfully imported specimens</b>	Species	No	
<b>Trade in defiance of trade restrictions or national control measures</b>	Species, License, etc.	No	

#### 6.4.4.8 Summary Illegal Import and Export

<b>Import and export offences</b>	<b>Focus of Regulation</b>	<b>Contained in the NPWA</b>	<b>Relevant sections of the NPWA</b>
<b>export and import of protected species (domestic and CITES)</b>	Species	Yes, but depends on definitional issues	98
<b>without a permit (including invalid or forged permits)</b>	License/permit	Yes, but not specifically to invalid or forged permits	98(b)
<b>above set quotas or above documented quotas</b>	Quota	Maybe for “protected species”; unclear for “listed species.” Also dependent on regulations promulgated per	97, 98, 99; 48 (conditions on hunting permits for protected species)

		section 99.	
<b>in contravention of national bans</b>	Quotas, license	Maybe, see above	97, 98, 99; 48 (conditions on hunting permits for protected species)
<b>inconsistent with valid permits</b>	License/permit	Not explicitly	

#### 6.4.4.9 Summary Illegal Possession

<b>Offenses related to possession</b>	<b>Focus of Regulation</b>	<b>Contained in the NPWA</b>	<b>Relevant sections of the Wildlife Act</b>
<b>Possession and purchasing of CITES-listed species without the required permits</b>	Species and License/permit	Maybe	86 – but only applies to “protected species”
<b>Possession and purchasing of unlawfully imported specimens</b>	Species and License/permit	No	
<b>Obtaining, consuming and using illegally sourced/imported fauna and flora</b>	Species and License/permit	No	

#### 6.4.5 Penalization of Illegal Trade

CITES does not prescribe a particular standard for the imposition of penalties. It does not specify whether offences shall be criminal or civil, nor whether penalties shall include fines or imprisonment. In this way, each Party is left to its own judgment and discretion. However, recently, as the levels of illegal wildlife trafficking rise and the involvement of organized criminal networks ensues, calls have been made for wildlife crimes to be treated as “serious crimes.” This is a term of art defined by the United Nations Convention against Transnational Organized Crime (“Organized Crime Convention”), which has become an important tool to prevent and combat organized crime, including illegal trade in wild fauna, flora, and their parts and derivatives. The Convention applies only to specific sets of offences and, as relevant here, to all “serious crime” with some transnational element. The Organized Crime Convention defines “serious crime” as “conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty.”

Ensuring that wildlife crime constitutes a “serious crime” enables the application of the Convention to a broad range of offences in a flexible manner. This broad definition—i.e. the inclusion of all crimes punishable by at least four years’ imprisonment—creates potential for domestic wildlife crime laws to fit within the umbrella of the Convention’s definition, and thereby offers an effective mechanism for international cooperation in such criminal matters by providing a basis for cooperation on extradition, mutual legal assistance, and international cooperation among the State Parties. In general terms, international cooperation mechanisms may operate either in judicial systems (e.g. extradition) or between law enforcement agencies (e.g. information sharing).

These international cooperation mechanisms of the Organized Crime Convention may provide beneficial resources in the effort to appropriately and effectively enforce wildlife crimes, recognizing that such offenses frequently involve complex elements, such as a multitude of criminal elements or incidents that cross national borders. The effective investigation of wildlife crimes reflects this complexity and involves a variety of methods and time- and resource-

intensive processes, including international cooperation. Jurisdictions will vary substantially in their capacity to meet these challenges and thus international cooperation is essential for ensuring the appropriate investigation and prosecution of wildlife offences.

Prior to 2004, Malawi's wildlife legislation included penalties such that wildlife crimes often constituted "serious crimes," triggering application of the Organized Crime Convention. However, in 2004, the penalty provisions were substantially revised. Unfortunately, these revisions rendered many of the provisions unenforceable because they are contradictory and incomprehensible. This may be the result of simple error or poor drafting. In particular, there are issues with the maximum and minimum penalty amounts conflicting with each other, thus rendering them statutorily unenforceable.

In general, "a person convicted of an offense . . . for which no other penalty is provided shall" for a first offence "be liable for a fine of not less than K10,000, but not more than K4,000 and to imprisonment of up to two years." In the case of a person convicted of a second or subsequent offence, be liable for "a fine of not less than K4,000 but not more than K8,000 and to imprisonment for a term of four years." This section must be edited for consistency and clarity. In the case of the first offence, the fines provided for are unenforceable because the minimum amount is greater than the maximum amount. Additionally, perhaps because of typographical or drafting error, the fines for a first offence seem to be greater than for a second offence. For these types of offences, only the second offence constitutes a "serious crime" because it is subject to 4 years imprisonment.

The NPWA highlights specific offences and provides for unique penalties for crimes involving game species. According to Section 109, a person convicted of an offence involving a) "taking, hunting, molesting, or reducing into possession any game species" or b) "possession of, selling, buying, transferring, or receiving in transfer any specimen of game species" in a protected area is "liable to fine of not less than K4,000 but not more than K8,000 and to imprisonment for a term of four years." Thus, this also constitutes a "serious crime." A person convicted of an offence involving game species committed in an area other than a protected area are "liable to a fine of not less than K5,000 but not more than K4,000 and to imprisonment for two years." Much like the general offence provision of Section 108(a), the amounts listed for game species offenses committed in areas other than protected areas are unenforceable because the minimum amount (K5,000) is greater than the maximum amount (K4,000). This must be edited for clarity. Policy considerations should determine whether game species should be treated as a distinct class of species for penalties purposes.

According to Section 110, a person convicted of offenses involving non-game species "shall be liable to a fine of K100,000 and imprisonment for a term of ten years, and in any case the fine shall not be less than the value of the specimen involved in the commission of any offense." As with the previous sections, it is recommended that Section 110(d) is edited for clarity and enforceability. The first portion of Section 110(d) mandates a penalty amount of K100,000, but the second portion of Section 110(d) states that a fine "shall not be less than the value of the specimen involved in the offence." While it is potentially useful to tie the amount of a penalty directly to the value of the specimen, in this case a conflict exists when a specimen is worth more than K100,000. The language is written such that two potentially opposing mandates are provided. Instead, the drafters may have intended to provide that for these offences a penalty should at a minimum amount to K100,000, but if the value of the specimen is higher, then the penalty should reflect that value. This makes sense as a deterrent; it disincentivizes illegal activity, especially high value illegal activity if the cost of the crime is proportional to the value of the specimen. Because a prison term of at least ten years is also a consequence of an offence, these crimes constitute "serious crimes."

Similarly, according to Section 111, a person convicted of an offense involving the import, export, or re-export of protected or listed species "shall be liable for a fine of K100,000 and to imprisonment for a term of ten years, and in any case the fine shall not be less than the value of



the specimen involved in the commission of the offense.” This is the same penalty language used in the proceeding section covering protected, non-game species. Enforceability issues potentially exist here as well. As above, a conflict exists when the value of the specimen is something more than K100,000, since the language providing for a penalty of K100,000 is mandatory and strict. It does not set K100,000 as either a floor or a ceiling; it simply determines that the fine “shall” be K100,000. It is recommended that this section be redrafted for clarity as well.

Aside from the general lack of clarity and the dire need for simple revisions, the penalty provisions could be revised to act more sufficiently as deterrents. As it stands currently, even when the provisions are enforceable, they may not be high enough because the value of certain specimens of wildlife on the black market is so high. Unless penalties are at least comparable to the market value of specimens, penalties do not act to disincentivize criminal behaviour. A number of factors may be relevant to consider when revising the penalty provisions, including realistic but strong penalties, inflation, market value, and distinguishing certain crimes based on the type of offence or type of species.

Many countries have statutes that enable penalties to rise with inflation. In fact, Malawi has adopted the Fines Conversion Act, which calls for a 10 times increase of the penalties found within the NPWA. This helps raise the amount of any fine imposed under the NPWA, but it remains a fixed rate and is thus not necessarily an adjustment that reflects the current value of the Malawian Kwacha. One solution would be to amend the Conversion Act such that allows for market variability in its adjustments. For example, the U.S. Federal Civil Penalties Inflation Adjustment Act of 1990 ties the adjustment of civil monetary penalties to an annually calculated U.S. Consumer Price Index, which is an attempt to measure inflation produced by the U.S. Bureau of Labour Statistics. Some analogy may exist in Malawi and could be used to adjust annually the multiplier for civil and criminal fines. Otherwise, it could be that the penalty provisions of the NPWA are amended annually apart from the Conversion Act.

Additionally, while a conversion statute might ensure that penalties can be stiff relative to average income generation in Malawi, it still does not account for the relative value of the specimen. In the case of many species, the black market value is far in excess of the range of fines found in national legislation. In certain cases, a fine may only have a deterrent effect if it is higher than the value of the specimen. Tanzania’s wildlife legislation takes this into consideration; when an offence concerns illegal hunting of protected species, for example, the fine shall not be less than two times the value of the animal. Similarly, illegal possession of a trophy carries a fine of not less than two times the value of the trophy. Similarly, Zimbabwe’s wildlife legislation allows for fines valued at three times the value of the rhino horn or ivory concerned when an offence involves such specimens. As the examples of Tanzania and Zimbabwe illustrate, certain offences may be carved out for application of stricter penalties based on either the type of offence or the type of species involved. In Kenya, offences involving endangered or threatened species carry penalties of up to life imprisonment and/or a fine of at least 1 million Kenyan Shilling. Linking penalties to the value of wildlife specimens is challenging in that determination of that value may be difficult, especially since the value derives largely from the black market. To accommodate this challenge, it may be useful to include a caveat that allows prosecutors and judges to seek the advice of experts, or evidentiary or court procedures may allow for the submission of expert testimony in this regard.

In choosing how to strengthen the penalty provisions of the NPWA, many policy considerations must be taken into account, and any new language must be vetted against Malawi’s penal code and other relevant guidelines and procedures. In short order, Parliament should consider addressing at least the conflicts that plague the provisions and render many unenforceable. Either additionally, or at some later date, the NPWA should be reviewed to ensure that overall penalties are sufficiently strict; that certain classes of offences are identified as more serious and subject to particularly strict penalties, either because of the nature of the offence or because of the type of species involved or because of the *mens rea* involved; that when warranted, offences are treated as “serious crimes” under the Organized Crime Convention; and that recidivism is

sufficiently deterred. As one example, Parliament may want to consider providing members of the judiciary with the authority and discretion to decline to release poachers and other criminals involved in wildlife trafficking on bond. In addition to the lack of clarity and conflicts as noted above, which creates unenforceable penalty provisions, these sections of the NPWA may suffer from definitional and scope issues. As the rest of the NPWA is amended, the penalty provisions must also be amended to ensure that they match related offences and prohibitions throughout the Act.

It is also important when choosing how to strengthen the penalty provisions in the NPWA to fully review and firstly consider all recent High Court Rulings that have set legal precedent for the sentencing of wildlife crimes under the NPWA in Malawi. For instance, the High Court Case of *The Republic of Malawi vs Maria Akimu* (Criminal Case Number 372), dated 29<sup>th</sup> December 2003 (see Annex N), provides case law to guide members of the judiciary that they can pass penalty provisions of both a fine and (non-suspended) custodial sentences to first time wildlife crime offenders. It is likely that such penalties can only be used in cases of serious wildlife crime. However, the Ruling alludes that acts of *“trafficking, hunting and possession of trophies [which] affect animals that are endangered species under many international and regional instruments or arrangements to which Malawi is a party”* would likely to be considered serious, especially if it is also proven that the accused was found to be, *“well connected to others with more quantities of these trophies...[and investigation] reveals a network and syndicate well connected”*. As elephants and rhino are CITES listed and most IWT involves organised crime, this High Court Ruling can be used to facilitate prosecutions and already obtain stiffer penalties for serious wildlife crimes under the NPWA.

#### 6.4.6 Confiscation of Specimens

CITES also requires that national legislation contain authorization to confiscate specimens illegally traded or possessed. As noted above, this authorization exists. The Act specifies which authorities may confiscate specimens, the scope of that authority, the procedures for forfeiture and return of specimens, and the disposal of the specimens. The Act specifies that “any Officer” may search and seize with reasonable grounds. Officers under the Act include “parks and wildlife officers[,] fisheries officers, forest officers, environmental inspectors, customs officers, members of the Malawi Police Service, members of the Malawi Army and Honorary Parks and Wildlife Officers [and such other public officers] as the Minister may designate.”

The NPWA includes provisions for search, seizure, forfeiture, and arrest related to wildlife crimes. Sections 8 and 9 provide for the entry and search of any “land, building, tent, motor vehicle, trailer, container, aircraft, or boat.” The search provisions also include baggage and packages. Officers may conduct such searches when “reasonable grounds” exist that a person “has committed or is committing or is about to commit an offence.” Section 9(b) calls for the seizure of “any specimen or article which appears to have been obtained, possessed, used or about to be used in committing an offence.” This would include any specimens, containers, equipment and vehicles involved in the commission of an offence or attempt to commit an offence.

In addition to meeting the basic CITES requirement that the Act provide authority for the confiscation of specimens, the Act also provides for the return of specimens. In the absence of prosecution, or when a prosecution has concluded without a conviction, the specimen is returned to the owner after the Director of National Parks and Wildlife receives written notice of these circumstances from the Chief Public Prosecutor, according to Section 10.

Section 113 allows the court authority to order the forfeiture to the government of any “specimen, domestic animal or any firearm or other weapon, rap, net, poison, material or any motor vehicle, aircraft, boat or any other article taken by or used in connection with the commission of the offence.” Although potentially broad in scope, forfeiture is subject to the discretion of the courts, and thus, forfeiture as a deterrent is only possible when judges exercise their discretion in this regard.

Paragraphs 112 and 113 of the NPWA specifies procedures for the return of property for circumstances in which there is a prosecution with a conviction, a prosecution with no conviction, and in the case of no prosecution. The Act further specifies procedures that the court must follow in cases where the owner of the property cannot be located, including the publication of notice. Finally, the NPWA details the procedures the court must follow when the registered owner of the specimen is not the accused and where that person seeks return of the property. These procedures include provision for a hearing, an explanation of the burden of proof, and the court's options at the conclusion of the hearing.

Upon taking possession of confiscated specimens, the NPWA requires the Director to record receipt and to safeguard any such specimens until the specimens may be disposed of according to the provisions of the NPWA. According to Section 118, when the Director takes possession of a dead specimen, discretion exists to either destroy it or donate it to a recognized scientific or educational institution, or sell it in whole or in parts, or retain it permanently or pending disposal. If corruption is a problem, the Director should opt not to sell back into the marketplace highly valuable confiscated specimens.

The NPWA also contains provisions that apply in the case of confiscation of live specimens. According to Section 118, if a live specimen of any protected species or any listed species is confiscated, the Director must return that specimen to its natural habitat when they are of the opinion that the specimen is capable of normal survival. In the alternative, when the Director is of the opinion that the specimen will better survive if withheld temporarily from the wild, the Director has the authority to withhold the specimen. For live specimen of protected species other than game species or listed species incapable of survival in its natural habitat, the Director may donate the specimen to a scientific or educational institution or retain the specimen. The NPWA also provides for the disposal of "game species" or "domestic animals" incapable of surviving in their natural habitat as the Director sees fit.

#### *6.4.7 Next Steps*

In many ways, the NPWA is a thorough statute offering potentially extensive protection to a number of species and broad authority to the Director of National Parks and Wildlife. That said, an overhaul of the legislation is necessary in order to fully comply with the mandates of CITES and to qualify as having Category 1 legislation under the CITES National Legislation Project. A number of recommendations are made throughout this analysis that, if adopted, would strengthen the NPWA and would more fully accord with CITES' directives for national legislation. However, in order to fully assure compliance with CITES and to have the strongest anti-trafficking legislation possible, measures must be taken to ensure that all relevant laws and policies are harmonized so that they work together seamlessly and do not create situations in which loopholes exist which challenge prosecution and sentencing.

Next steps for Malawi would include for a full review of all relevant legislation, including forestry and fisheries legislation, criminal legislation, customs legislation, and all related policies, measures, and regulations, including wildlife and CITES policies, sentencing guidelines, prosecutorial manuals and guidance, and court procedures. As part of the next workshop, stakeholders and participants may want to identify all relevant legislation, measures, regulations, policies, and guidance as a means of identifying next steps related to this IWT project. Once the scope of the review is identified, hopefully funds could be made available to conduct the necessary work and synthesize the results of other related projects, including work that may occur pursuant to DNPW's IWTCF grant to produce sentencing and prosecution guidelines. For the most effective governance, all of the legal systems relevant to wildlife trafficking must be harmonized. This includes full harmonisation with the Wildlife Policy of Malawi which was last updated in 2000 and is currently under review by the Ministry with assistance from UNDP GEF.

Short of such an extensive review, this analysis provides for a number of quick fixes that address some of the most crucial issues. Working with the understanding that at this time a full amendment process is unlikely, this analysis suggests the a few priority amendments, which do not add provisions and simply rework existing language. These amendments are consolidated in Annex F below and are identified as *Priority Revisions* in Section 3.7, below. These *Priority Revisions* do not include for any new clauses and account for less than 20% of the total Act. Additional recommendations have also been made throughout this analysis for addressing basic issues related to wildlife trafficking and CITES compliance. Draft amendment text has not been provided in these circumstances because addressing these recommendations may require more extensive amendment or more thorough vetting and policy analysis. These recommendations are summarized briefly in Annex G below. Prior to any recommendations being enacted or implemented, review is necessary by the Malawi Law Commission and ultimately the Solicitor General. Funds should be made available for this work to occur collaboratively with DNPW and the Malawi Law Commission, Solicitor General, IELP, and Lilongwe Wildlife Trust.

## **6.5 Recommendations: Domestic Wildlife Legislation**

### *6.5.1 Recommendation 3.2(a): Clear Designation of Cites Management and Scientific Authorities*

The NPWA must clearly designate a Management Authority and a Scientific Authority. The same office may serve in both roles. Based on the framework of the NPWA and existing practice, the legislation could designate the Office of the Director of National Parks and Wildlife as the Management Authority and as the Scientific Authority. However, best practices suggest that the Management Authority and Scientific Authority operate with the least corruption when they are separate offices.

### *6.5.2 Recommendation 3.2(b): The role of the Wildlife Advisory Board*

The role of the Wildlife Advisory Board in evaluating imports, exports, and re-exports must be clarified. To avoid confusion and potentially overlapping powers, the role of the Wildlife Advisory Board should be explicitly limited to commenting on permits during some specified period, after a set of initial findings have been made by the Office of the Director, acting as the Management and Scientific Authorities, and before final issuance of the permit. Alternatively, the provisions providing for the Wildlife Advisory Board to have a role in permitting CITES activities could be deleted since it has never actually been convened.

### *6.5.3 Recommendation 3.2(c): Incorporation of Powers for Management and Scientific Authorities*

Incorporate a specific, but not exclusive, list of powers to be held by the designated Management and Scientific Authorities. This list may be the list included already in the draft CITES regulations, or it could be drawn from the list included in the CITES Secretariat's Model Legislation. In either case, the list of powers must be coordinated with other relevant powers already present throughout the NPWA, including the authority

6.5.4 *Recommendation 3.2(d): Establish a mechanism to facilitate coordination between the Management and Scientific Authorities and other Enforcement Officials*

Establish a mechanism to facilitate coordination between the Management and Scientific Authorities and other officials responsible for enforcement. One step may be to repurpose the Wildlife Advisory Board; another may be to adopt a consultation requirement with Customs. Alternatively, the Inter-Agency Committee on Combating Wildlife Crime could be used for this purpose, since DNPW, forestry, customs, police, and the judiciary are represented and it is an existing, functional committee.

6.5.5 *Recommendation 3.2(e): Minimize Fraudulent Permits*

To minimize the possibility of fraudulent permits, consider adopting a regularized permit form based on the CITES model permit. An example of the permit form should be made available via CITES regulations.

6.5.6 *Recommendation 3.2(f): Definition of “Wildlife” (Priority Revision)*

In order to address interpretative challenges and to ensure that the scope of the NPWA includes all CITES-listed species, the definition of “wildlife” should be amended to delete reference to only species native to Malawi.

Part I, Section 2, “wildlife”:

“wildlife” means any wild plant or animal, ~~whether or not~~ of a species native to Malawi and includes animals which migrate through Malawi, and biotic communities composed of those species.

6.5.7 *Recommendation 3.2(g): Definition of “listed species” (Priority Revision)*

For the sake of clarity and to ensure that CITES-listed species are covered whether or not the Director additionally lists species via regulation, the definition of “listed species” could be amended as follows:

Part I, Section 2, “listed species”:

“listed species” means plant or animal listed under any international, regional or bilateral agreement to which Malawi or the Government is a party, ~~and~~ or under regulations made pursuant to section 99.

6.5.8 *Recommendation 3.2(h): Definitional scope of “protected species”*

By making the definitional scope of “protected species” partially contingent on where the species resides, the NPWA creates enforcement and administrative challenges. This distinction is best removed and can be made by amending the regulation. If the reason has to do with the nature of penalties, the section on penalties already allows for stricter sentencing in cases of poaching inside protected areas.

6.5.9 *Recommendation 3.2(i): Removal of the category “game species”*

For purposes of simplifying the NPWA, the category of species identified as “game species” may be removed as a special class of species. The distinguishing feature of such species is that related offences are treated as lesser offences. It does not appear, however, that any species have been designated as “game species.” As such, the NPWA could be easier to implement and enforce if this category of species was simply removed.

6.5.10 *Recommendation 3.2(j): Same protections for “protected species” and “listed species” (Priority Revision)*

Ensuring that protected species and listed species get the same protections could be achieved in a number of ways. (1) The definition of “protected species” could be amended to incorporate the definition of “listed species.” This would require amending the legislation in a number of places to clarify that listed species are not distinct from protected species. (2) The list of protected species could include all CITES-listed species found in or migrating through Malawi. This can be achieved by regularly updating the list of protected species to include all CITES-listed species found in Malawi. (3) The NPWA could be amended such that the hunting provisions also apply to “listed species.” This is perhaps the simplest fix and requires adding “or listed species” after “protected species” in the following Sections: 45, 47, 53, 54, 54A, 61, and 72(d). For example:

Part VI, Section 45:

Wild plants and animals other than protected species or listed species shall not be subject to the restrictions on hunting and taking under Part VII, but shall be subject to all other provisions of this Act and the provisions of any other written law.

Part VII, Section 47:

(1) Except as otherwise provided by this Act, any person who hunts or takes any protected species or listed species, except in accordance with the conditions of a licence and where so require under this Act, a permit issued and pursuant to this part shall be guilty of an offence.

6.5.11 *Recommendation 3.2(k): Clarifying “endangered species” (Priority Revision)*

Since no “endangered species” are identified under the NPWA, this category of species could be eliminated. In some cases, maybe certain species warrant stricter penalties and these could be “endangered species”; however, maintaining yet another list and adopting such a list via regulation or decree of the Minister is yet another administrative burden. Additionally, another category of species further complicates implementation and enforcement of the NPWA.

6.5.12 *Recommendation 3.2(l): Procurement of Ownership Certificates*

Consider requiring the procurement of ownership certificates for all listed species. This could help control the buying and selling domestically of imported species and indigenous CITES-listed species.

6.5.13 Recommendation 3.2(m): Clear rules for transit and trans-shipment of specimens

Clear rules for transit and trans-shipment could facilitate regulation of specimens travelling through Malawi, and language identifying and clarifying the rules for this type of transaction is important. Additionally, although “introduction from the sea” may not seem relevant to Malawi, it could be and should be addressed through legislation.

6.5.14 Recommendation 3.2(n): Clarification of CITES permit pre-conditions (Priority Revision)

It must be clear that certain preconditions must be met before a permit is issued for import, export, and re-export (as well as introduction from the sea). This can be accomplished in one of three ways: (1) the Minister could adopt regulations pursuant to section 99, (2) the NPWA could be amended to include a list of permit preconditions, or (3) the NPWA could be amended as follows in order to make clear that the CITES permit conditions apply:

Part XI, Section 97:

. . . in the case of a listed species to produce evidence of compliance with [sic] the requirements of any international, regional or bilateral agreement relevant to such species and to which Malawi or the Government is a Party, ~~regulation made pursuant to section 99,~~ or the requirements of this Act or of any other regulations made under this Act.

Note: The latter option is a simpler fix, but for enforcement and implementation purposes, Option 2 is probably the best choice

6.5.15 Recommendation 3.2(o): Inclusion of new clause to make the possession of fraudulent or fraudulently obtained certificates of ownership an offence

Possession of fraudulent or fraudulently obtained certificates of ownership should be an offence under the NPWA. Similarly, language should be added to the NPWA making it an offence to obtaining, possessing, forging, or issuing a fraudulent CITES permit.

6.5.16 Recommendation 3.2(p): Restriction on hunting “endangered species”

If contrary to the recommendation above, “endangered species” is retained as a category of species specially identified in the NPWA, then it could be useful to add a provision to the hunting sections of the Act, prohibiting the hunting of “endangered species.” This would require that the Minister regularly update and publish a list of such endangered species.

6.5.17 Recommendation 3.2(q): Inclusion of a new clause to make it an offence to buy, sell, trade or possess “listed species” that have been illegally imported

Adopt language making it an offence to buy, sell, trade, or possess listed species that have been illegally imported or otherwise obtained.

6.5.18 Recommendation 3.2(r): Clarification of strict liability offences

Clearly indicate which offences are strict liability offences, or otherwise indicate the *mens rea* required for the commission of each offence. Alternatively, or in addition, a suggestion is made below to incorporate mental state as one factor to consider when setting penalties.

6.5.19 Recommendation 3.2(s): Improving the penalties provisions and utilising High Court Rulings regarding penalties (Priority Revision)

Improving the penalties provisions could be pursued through a number of adjustments to the existing language. **However, it is paramount that only penalties (fine rates, length custodial sentences etc.) should be chosen by the Government that truly provide a deterrent effect and not only take into account the Conversions Act, but also the “Serious” nature of wildlife crime and the examples of penalties adopted by other countries within the region.**

In addition, language could be added in each section allowing the judge to choose and the prosecutor to argue for, penalties that take into account a number of factors and that reflect the totality of any given circumstances. This would afford discretion that could account for on-the-ground circumstances, including whether criminal networks were involved in the commission of the crime. For example, a range of fines could be given then language could be included that gave the judge discretion to choose a fine within that range depending on a number of circumstances, such as 1) the biological status of the species involved, 2) the value of the specimen, as determined by government and non-governmental experts, 3) the mental state of the offender, 4) any aggravating circumstances, 5) the involvement of criminal networks, and 6) whether the offence is a repeat offence or whether the offender is a repeat offender. This would be relevant to the following sections of the NPWA:

Part XIII, Section 108:

- (a) In the case of a first offence, be liable to a fine of not less than K XX but not more than K XX and to imprisonment for a term of XX years;
- (b) In the case of a second or subsequent offence, to a fine of not less than KXX but not more than K XX, and to imprisonment for a term of XX years.

Part XIII, Section 109(b):

- (a) in the case of an offence omitted in a protected area, be liable fine of not less than K XX but not more than K XX and to imprisonment for a term of XX years;
- (b) in the case of an offence committed in an area other than a protected are, be liable to a fine of not ~~less~~ more than K XX but not ~~more~~ less than K XX and to imprisonment for a term of XX years.

Part XIII, Section 110(d):

shall be liable to a fine of at least K XX and to imprisonment for a term of ten years, and in any case the fine shall not be less than the value of the specimen involved in the commission of the offence.

Also there is a need to remind prosecutors and magistrates of the legal precedent set by the High Court Case of The Republic of Malawi vs Maria Akimu (Criminal Case Number 372 of 2003) dated 29<sup>th</sup> December 2003 that fines AND custodial sentences (not suspended and with hard labour) can be given in the event of a serious wildlife crime, even in the instance of a first time offender.



*6.5.20 Recommendation 3.2(t): Revisit penalty section when NPWA fully amended*

As the NPWA is amended, revisit the penalty section to ensure consistency with the prohibitions and offences found throughout the Act.

*6.5.21 Recommendation 3.2(u): Harmonize legislative changes in NPWA with changes to be made to the Wildlife Policy of Malawi*

As the NPWA is amended, ensure that all amendments are made in accordance with the revised Wildlife Policy and also that after the policy revisions the Policy can still accommodate for the legislative changes that need to be made to the NPWA.

## 6.5.22 Summary of Domestic Wildlife Legislation Recommendations

### Management & Scientific Authorities

- Designate both a Management and a Scientific Authority
- Delineate powers of the Management and Scientific Authorities
- Designate a role for the Wildlife Advisory Board
- Ensure coordination between CITES national authorities and other relevant government bodies

### Species Covered

- Expand scope of "wildlife" to include species found outside of Malawi
- Reevaluate the different categories of species
- Regularly update list of protected species and consider listing species, no matter whether they are in protected areas or not

### Coverage of Types of Transactions

- Clarify rules for transit and transshipment to facilitate regulation of specimens travelling through Malawi
- Establish legislation to address "introduction from the sea"

### Permit & Certificates

- Adopt regularized permit form
- Establish preconditions for permits for import, export, or re-export
- Address loopholes regarding fraudulent ownership certificates and permits
- Require certificates of ownership for listed species

### Prohibitions and Offences

- Adopt language making it an offence to buy, sell, trade, or possess listed species that have been illegally imported or otherwise obtained
- Clarify the mental state necessary for the commission of offences or include this as a factor in setting penalties.
- Consider including new offences as identified by the Toolkit

### Penalty Provisions

- Ensure consistency throughout the act with respect to prohibitions and offences
- Amend penalty provisions to address unenforceability and to ensure that fines will act as deterrents
- Review to identify prohibitions and offences that may warrant stricter penalties
- Consider amendments allowing discretion to consider multiple factors, including involvement of criminal networks

## 6.6 Other Domestic Legislation

### 6.6.1 Overview

During the IWT Review the Reviewers were not made aware of any wildlife crime case where multiple pieces of domestic legislation were used by a prosecution team to punish a wildlife criminal. It was apparent from the consultations and meetings that many members of the prosecution services and many judiciary officers were not aware of: 1) the relevance of many wildlife crimes to listed offences which are expressed outside the remit of the NPWA e.g. money laundering; and/or 2) the availability and relevance of existing domestic legislation outside of the NPWA that can be used in addition to the NPWA to prosecute wildlife crimes e.g. the Money Laundering and Proceeds of Serious Crime and Terrorist Financing Act, 2006. At the time of writing there was no completed wildlife crime case that had utilised any other domestic statute aside from the NPWA. This is something that needs to be addressed.

In addition to the NPWA, the following existing Acts and Codes could be frequently used to prosecute poachers and/or wildlife traffickers and allow for additional charges than just those expressed in the NPWA:

- i) *The Malawi Penal Code* – with particular reference to matters of compensation (s.32), theft (s.278), with particular reference to the theft of animal parts (s.270), killing animals with intent to steal (s.294) or killing and injuring animals (s.343), receiving stolen property (s.328), corruption (s.90, s.91, s.92, s.94, s.95, s.96, s.396), neglect of office (s.121), assembling for the purpose of smuggling (s.89) and conspiracy (s.404).
- ii) *Malawi Firearms Act of 1967* (as amended) – with particular reference to matters of unlawful possession of a firearm ((s.12 (1) & (2)) and unlawful possession of ammunition ((s.12 (1) & (2))).
- iii) *Malawi Customs and Excise Act of 1969* – with particular reference to imports (s.21) and exports (s.50), the liability of agents (s.129, s.130 & s.131) and the various offences associated with illicit: goods (s.134), documentation (s.135), contraband concealment (s.136) and unlawful behaviour of customs officials (s.139); in addition to the powers of forfeiture, seizure, embargo and abandonment afforded to MRA under Part XVIII.
- iv) *Malawi Immigration Act of 1964* – with particular reference to prohibited immigrants (s.4), and their removal (s.14 & s.19), deportation (s.33), forgery of documents (s.35), aiding and abetting unlawful entry (s.36) and the prescribed offences under Schedule 3, including those related to firearms (part iv), bribery (part ix) and stealing, embezzlement and fraud (part xviii).
- v) *Corrupt Practices Act* – with particular reference to corrupt practices (s.24, s.26 & s.27), corrupt use of power (s.25 (a)&(b)) and ACB powers of seizures etc.
- vi) *Money Laundering and Proceeds of Serious Crime and Terrorist Financing Act, 2006* – with particular reference to money laundering offences (s.35), the making of false or misleading statements (s.37) and the powers of currency seizure (s.38 & s.39) and additional sanction, and confiscation, upon conviction of a serious crime (s.10).
- vii) *Malawi Forestry Act of 1997* – with particular reference to the prohibition of possession or use of weapons, traps, explosives, poisons or hunting animals (s.72) and other forest related offences, particularly those related to wildlife (s.67), trafficking of forest produce (s.69), obstruction of officers (s.71), false documentation (s.72) and the import and export of forest produce (s.74)
- viii) *Animal Protection Act of 1944* – Section 3(1) (a&b) prohibits offences of animal cruelty, including the unnecessary suffering of wild animals once captured e.g. in snares or traps and during transport.

It is recommended that all investigators, prosecutors and members of the judiciary are sensitized and made aware of the wider legal tools that are available in Malawi for apprehending wildlife

criminals. It is also recommended that a guidance note is made on dealing with wildlife crimes under these Acts, similar to what the EU and DoF produced for forestry offences in 2014<sup>28</sup>.

### 6.6.2 Money Laundering Legislation

Wildlife and forest products can generate vast amounts of profit that need to be laundered to disguise their illegal origin. There are many examples of how wildlife and forest crime is linked to money laundering and to the avoidance of currency control and other financial regulations. In few countries are wildlife and forest offences predicate (or underlying) offences for money-laundering. To date, there has been no successful attempt in Malawi to “follow the money trail” by freezing and ultimately confiscating the proceeds of wildlife crime, and identifying and criminalizing those who fund wildlife offences or profit from them. As mentioned above, Malawi has domestic laws against money-laundering that criminalize the transferring, receiving, concealing and possession of proceeds of a crime. However, until recently this law has been overlooked as a tool to prevent and suppress wildlife crime. The Convention against Transnational Organized Crime also contains a provision to comprehensively criminalize money-laundering insofar as it relates to organized crime and other serious offences.

In Malawi the *Money Laundering and Proceeds of Serious Crime and Terrorist Financing Act, 2006* criminalizes most acts listed in Tool I.25 of Section 4.2 of the ICCWC Analytic Toolkit on Wildlife Crime. The Act does not provide for specific money-laundering offences relating to wildlife crime. Nevertheless, the Act does cover predicate offences and, as most organised wildlife crimes would be considered such offences, then any money laundering done pursuant to these crimes should be covered by the current Act. This situation is similar to that of several other countries. More information on money laundering in Malawi is provided below in Section 7.10.

### 6.6.3 Corrupt Practice Legislation

Corruption can involve low-ranking game wardens officials who accept bribes and then turn a blind eye to illegal wildlife and forest activities. However, it can also reach the highest levels of government officials who are involved in policy decisions and law-making in the wildlife sectors. High-level or “grand” corruption is the most damaging form of corruption as it causes significant financial losses and encourages petty corruption at the lower levels of government. The domestic legislation listed above in Section 6.6.1 seems to criminalize most of the activities listed in Tool I.28 of Section 4.3 of the ICCWC Analytic Toolkit on Wildlife Crime, but it does not provide for specific offences pursuant to wildlife sector laws. More information on anti-corruption in Malawi is provided below in Section 7.7.

## 6.7 Recommendations: Other Domestic Legislation

### 6.7.1 Recommendation 3.3(a): Legislation Summary Handbook and Training for Investigators, Prosecutors and Judiciary Officers

In light of the broad spectrum of domestic offences and Acts in Malawi which are relevant to the authorities when combating wildlife crime, it is highly recommended that an awareness and sensitization programme is implemented to ensure that all wildlife crime investigators, prosecutors and magistrates are familiar with all the statute that is available to them for combating IWT. This could be through the production of series of summary guidance handbooks, with associated training workshops, which aim to collate all relevant sections of the various laws and present them in an accessible format. Such work is already underway in Malawi through the IWTCF grant. Similar work has already been undertaken by the Department of Forestry regarding forest crimes in Malawi and may prove helpful<sup>20</sup>.

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<sup>28</sup> Department of Forestry (2014). Forest law enforcement: Dealing with forestry offences - a guide for Forestry Staff. Government of Malawi

## **7.0 Enforcement**

Effective, proactive law enforcement is an essential ingredient in detecting those criminal networks that are causing serious damage to Africa's wildlife. If Malawi's enforcement authorities can share experiences, effectively communicate, commit to implementing established guidelines and protocols and utilise modern enforcement techniques (such as DNA profiling) then detection of wildlife crime is likely to increase significantly.

### **7.1 International Enforcement - CITES**

#### *7.1.1 CITES Overview*

CITES came into force in July 1975. Currently there are 180 signatory Parties to the Convention, including Malawi. CITES provides a legally-binding global framework for ensuring that international trade in species is not detrimental to the survival of those species. An extensive number of procedural mechanisms are in place to ensure detailed and strictly controlled trade in species protected by CITES.

Species governed by CITES regulations are listed under one of three Appendices:

- Appendix I: includes species that are threatened with extinction which are or may be affected by international trade. Commercial trade in wild specimens of these species is generally prohibited;
- Appendix II: includes species not necessarily threatened with extinction, but which may become so without international trade controls. International trade is permitted, although regulated;
- Appendix III: is a voluntary Appendix which any Party can add to at any time, requesting help of other Parties in the management of trade in this species.

There are more than 35,000 animals and plants listed on the CITES Appendices and it is essential that Malawi understands the responsibilities conferred on it as a member of the Convention, in order to ensure adequate compliance, implementation and enforcement.

#### *7.1.1 CITES Management Authority*

The CITES framework requires the designation of a Management Authority to enable full compliance and execution of the Convention's provisions. For Malawi, the Department of Conservation Services at the DNPW is the designated CITES Management Authority.

The various responsibilities of the CITES Management Authority include: the issuance and acceptance of CITES permits and certificates; confiscation and disposal of illegally traded specimens (live specimens, parts, products and derivatives); preparation of Proposals for the CITES Conference of the Parties; training; enforcement; co-ordination with the CITES Secretariat and other Parties; co-ordination with the national Scientific Authority; preparation of annual and biannual reports and circulation of information to other agencies (e.g. INTERPOL, Customs, Immigration, Police). The Management Authority is also responsible for representing Malawi at an international level (for further details concerning the legal basis for the MA and SA see Section 6 of this report).

Malawi's Management Authority is knowledgeable of its responsibilities under CITES and keenly aware of the need to ensure full compliance, implementation and enforcement of the Convention. However, resources, both financial and technical, to adequately implement those responsibilities, are severely lacking. The Head of the Management Authority has an extensive remit, of which

CITES is only one aspect. The time he can allocate to CITES matters is therefore restricted, and the capacity of DNPW to assign other members of staff to the required tasks is narrow.

### *7.1.2 CITES Scientific Authority*

The CITES framework requires the designation of a Scientific Authority to enable full compliance and execution of the Convention's provisions. For Malawi, the Department of Planning & Research at DNPW is the designated CITES Scientific Authority (SA).

The designation and role of the CITES Scientific Authority is detailed in CITES Resolution Conf 10.3. The various important responsibilities of the SA include: making a determination that the export of specimens of species included in Appendices I and II is not detrimental to their survival (a "Non-Detriment Finding" or NDF); making a determination that the import of specimens of a species included in Appendix I is not detrimental to its survival; making a determination about whether the intended recipient of live Appendix I specimens is suitably equipped to house and care for them; making a determination about whether introduction from the sea would be detrimental to the survival of the species involved; provide advice as to whether or not scientific institutions seeking registration meet the criteria established in Resolution Conf. 11.15 (Rev. CoP12); review applications submitted under Article VII, paragraphs 4 or 5; gather and analyze information on the biological status of species affected by trade to assist in the preparation of proposals to amend the Appendices; review Proposals to amend the Appendices submitted by other Parties.

Currently, the ability of Malawi's Scientific Authority to adequately carry out its responsibilities is extremely limited. Although the volume of legal exports and imports is relatively small, and although there are no CITES-registered captive breeding operations in Malawi, there is still a critical need for the capacity of the SA to be significantly enhanced. For example, it appears that the SA is not currently in a position to make Non-Detriment Findings, and is therefore non-compliant with Articles III and IV of the Convention, nor is it able to implement the recommendations contained in Resolution Conf 16.7.

### *7.1.3 Disposal of confiscated specimens & stockpile management*

The following CITES provisions relate to management of seized CITES-listed species:

- Resolution Conf 9.10 (Rev CoP15) on Disposal of Confiscated and Accumulated Specimens;
- Resolution Conf 10.7 (Rev CoP15) on Disposal of Confiscated Live Specimens of Species included in the Appendices;
- Resolution Conf 10.10 (Rev CoP16) on Trade in Elephant Specimens (which includes a specific provision for management of seized ivory);
- Decision 16.84 on management and reporting of seized Rhinoceros horn;
- Decision 16.83 on analysis of large ivory seizures.

Disposal of confiscated live CITES specimens in Malawi is managed under Accession Agreements. For example, the Lilongwe Wildlife Trust (LWT) and DNPW have entered previously entered agreements to import specimens of live animals on welfare grounds

Malawi does have a stockpile of ivory, rhino horn, big cat skins and other seized products, the majority of which are stored in Lilongwe. DNPW has further store rooms for seized and recovered wildlife products in almost all Protected Areas and other major cities (Blantyre and Mzuzu). Items from the regional stores are transferred to the central Lilongwe store when any court cases are finalised, and when there is transport available. Reviewers did not visit any of the Protected Area store rooms although they are reported to be relatively secure. The Malawian Government plan to put their ivory stockpiles out of economic use as part of their commitments as signatories of the Elephant Protection Initiative.

At the time of writing this report, Malawi had recently undertaken a comprehensive inventory of its ivory products in accordance with Resolution Conf 10.10 (Rev CoP16), and submitted the results to the CITES Secretariat at the end of February 2015.

Malawi has had one large seizure of more than 500kg of ivory since Decision 16.83 was enacted – the seizure of 781 elephant tusks that crossed the border between Tanzania and Malawi and was confiscated near Mzuzu. Malawi has undertaken DNA analysis of this seizure in accordance with the relevant Decision with support from the Centre for Conservation Biology at the University of Washington. See Annex H for summary report of this analysis, which found that the majority of the elephants had been poached in Tanzania and Mozambique.

#### 7.1.4 *Elephant Trade Information System*

Malawi does report ivory seizures to the Elephant Trade Information System of CITES (ETIS). However, given current problems relating to data storage and management, it is unclear whether reports concerning *all* ivory seizures are submitted to ETIS and there appears to be some inconsistency between the ETIS database and other records (see Section 5 of this report).

#### 7.1.5 *Monitoring the Illegal Killing of Elephants*

Kasungu National Park is the designated MIKE (Monitoring the Illegal Killing of Elephants) site in Malawi (See Section 5 of this report).

#### 7.1.6 *Legal Trade*

According to Malawi's CITES Annual Reports for 2010–2013, legal exports of CITES-listed species are largely restricted to the following species:

- i) *Crocodylus niloticus* ((source code R and W(150));
- ii) *Hippopotamus amphibious* (source code R)

It appears that the use of the source code R for *Hippotamus amphibious* was mistakenly used, as there are no ranching operations for hippos in Malawi.

Malawi has a quota for the export of 50 leopard trophies, but there is currently a national moratorium. A small number of exports of *Panthera leo* and *Loxodonta africana* are also recorded.

#### 7.1.7 *CITES Training*

DNPW training programmes do not include a module on CITES. There is therefore a significant need for basic training (for all DNPW staff members) and high-level training for senior staff members. Very few people in DNPW are conversant with CITES and its requirements.

#### 7.1.8 *CITES Reservations*

In 1989, Malawi took out a Reservation against the listing of *Loxodonta africana* on CITES. To date Malawi remains the only African elephant range State with such a Reservation.

## **7.2 Recommendations: CITES**

### 7.2.1 *Recommendation 4.1(a) Re-assigning the Scientific Authority into a different institution.*

CITES Resolution Conf 10.3 recommends that: "all Parties designate Scientific Authorities independent from Management Authorities". Given the recommendations made in Section 3 concerning legal designation of the MA and SA, and given that the current Scientific Authority

would require some significant support if it were to comply with its basic roles and responsibilities, it would seem like an appropriate time for Malawi to comply with Resolution Conf 10.3 and reassign the SA to a different institution. For instance, Chancellor College at the University of Malawi has a well-established scientific unit and could therefore be in a good position to take on the responsible role of Scientific Authority.

*7.2.2 Recommendation 4.1(b): Enhancing the Capacity of the Management and Scientific Authorities.*

Without support to enhance the capacity and functioning of the MA and SA, Malawi will continue to struggle to be compliant with CITES. The following activities are therefore recommended:

- i) Providing basic computer equipment (laptop, printer, and scanner) for the MA and SA;
- ii) Providing comprehensive, detailed CITES training for all staff of the designated MA and SA;
- iii) Supporting the development of a three-year work plan and strategy for both the MA and SA (incorporating issues such as the development of NDFs and reporting requirements).

*7.2.3 Recommendation 4.1(c): Enhanced participation in CITES Meetings.*

One of the most effective ways for Malawi to become more engaged in CITES matters, and to ensure that Malawi's interests are adequately reflected in decisions made by CITES, is to participate in CITES meetings. It is therefore recommended that the Malawi Management Authority attend the next 3 CITES Standing Committee meetings, and the Malawi Scientific Authority attend the next 3 CITES Animal Committee meetings.

Resources would be required for attendance at the Standing Committee and Animals Committee meetings as DNPW's current budget is not adequate to accommodate travel to CITES meetings.

Furthermore, in order to receive support for attendance at the CITES Conference of the Party meetings, the MA should be prepared to apply to the Sponsored Delegate programme in accordance with the relevant Notification issued by the CITES Secretariat.

*7.2.4 Recommendation 4.1(d): Enhanced engagement in CITES Task Forces etc.*

It is recommended that Malawi undertake a review of relevant Task Forces and other groups that have been established by CITES and which Malawi should be engaging with. For example, the CITES Rhinoceros Enforcement Task Force established under CITES Decision 16.89. The CITES Secretariat could be requested to assist the Management Authority with this recommendation.

*7.2.5 Recommendation 4.1(e): A Review of possible Proposals to CoP*

There may be species in Malawi that require enhanced protection by CITES, or enforcement issues that Malawi would like to see addressed by CITES. It would be important to therefore hold a meeting of relevant experts at DNPW to discuss possible Proposals that Malawi may wish to prepare for submission to the Conference of the Parties. For example, there appears to have been an increase in international demand for *Cycloderma frenatum*, the Zambezi Flapshell Turtle.



#### 7.2.6 Recommendation 4.1(f): ETIS Database Review

The DNPW ETIS Dataset appears to contain errors and needs careful review and possible amendment. It is recommended that Malawi request assistance from the CITES Secretariat and /or TRAFFIC in this regard.

#### 7.2.7 Recommendation 4.1(g): Removal of CITES Reservation for listing of Loxodonta Africana

Now that Malawi has joined the Elephant Protection Initiative (EPI) and has committed to adhere to the EPI expectations on restrictions of domestic and international elephant trade, then it makes considerable sense for Malawi to work with CITES to remove the current Reservation that Malawi has in place regarding *Loxodonta Africana*. This would also ensure that Malawi is not the only country left with such a Reservation in place.

### 7.3 Regional Wildlife Law Enforcement Networks

#### 7.2.1 The Lusaka Agreement Task Force (LATF)

LATF is "an inter-governmental organisation with the main function of facilitating cooperative activities in/among the Party States to the Lusaka Agreement, in carrying out investigations on violations of national laws pertaining to illegal trade in wild fauna and flora".

There are currently seven Parties to the Lusaka Agreement on Co-operative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora: Republic of Congo, Kenya, Liberia, Tanzania, Uganda, Zambia and the Kingdom of Lesotho. Signatories to the Agreement are: South Africa, Ethiopia and the Kingdom of Swaziland. The headquarters of the Lusaka Agreement Task Force are located in Nairobi, Kenya. Although Malawi is not a Party to the Lusaka Agreement, it has worked in partnership with LATF on wildlife law enforcement cases, such as the seizure of 2.6 tonnes ivory in 2013.

#### 7.2.2 Southern Africa Wildlife Enforcement Network (WEN-SA)

Although WENSA has been largely non-functional since its establishment in 2012, there has been a recent increase in effort to ensure it soon becomes operational. In October 2014, WENSA met in Botswana to, among other things, complete the Terms of Reference for the Network. A representative of DNPW attended the meeting. The objectives contained within the draft ToR include:

- *Implement relevant SADC wildlife protocols and strategies, including the SADC anti-poaching strategy;*
- *Improve the extent and quality of information shared among government agencies and departments within countries and across borders in relation to criminal exploitation of wild flora and fauna;*
- *Strengthen the capacity and increase the effectiveness of relevant agencies through coordinated, multi-national training, and the development of collegial relationships between officials;*
- *Participate in and conduct joint operations and capacity building exercises among agencies within country and between countries;*
- *Facilitate collection, collation and analysis of information relevant to criminal exploitation of flora and fauna and disseminate this information to focal points in each country in a timely manner so that appropriate action may be taken to counteract illicit activities.*

### 7.2.3 *Enforcement co-operation across borders and between neighboring countries*

Aside from the bi-lateral / regional Agreements, Declarations and Protocols that have already been discussed, there is little information available on any further formal co-operation and joint modus operandi between Malawian law enforcement agencies and their Zambian, Tanzanian and Mozambican counterparts. In terms of wildlife crime, there is recent evidence of effective Malawian and Tanzanian cooperation on the 2013 Mzuzu ivory seizure and the subsequent court case, while DNPW and the Zambian Wildlife Authority (ZAWA) are known to collaborate when patrolling the border areas of Kasungu, Vwaza and Nyika protected areas. However, it was unclear to the Reviewers whether a more formal agreement for operational collaboration exist between the countries for law enforcement operations. There was no evidence of any joint working at all between the Malawian and Mozambique authorities with regards to wildlife crime.

## 7.4 **Recommendations: Regional Wildlife Law Enforcement**

### 7.4.1 *Recommendation 4.2(a) Consider ratification of LATF*

There is still an opportunity for Malawi to ratify the Lusaka Agreement: Article 12 (3) of the Lusaka Final Act states the "*Agreement shall remain open for accession by any African State*". The various enforcement stakeholders in Malawi seemed unclear as to whether there had been an active decision not to participate in LATF, or whether the decision simply had not yet been made. As there are financial implications to member States, it is recommended that ratification of LATF is included on the agenda of an IACCWC meeting and discussions held as to where funding for the annual subscription of any official ratification by Malawi could be secured

### 7.4.2 *Recommendation 4.2(b): Engagement in WENSA*

As WENSA develops and becomes operational, it is critical that DNPW actively participates in its activities. It is recommended that DNPW allocate a new focal point for WENSA.

### 7.4.3 *Recommendation 4.2(c): Improved enforcement cooperation between neighbouring countries*

There is a need for Malawi to improve the law enforcement co-operation between itself and its neighbouring countries, particularly Tanzania and Mozambique. It is recommended that DNPW seek to establish the appropriate MoUs and ToRs that will define the modus operandi for rolling and sustained joint law enforcement operations, especially at border posts, and for the sharing of wildlife crime intelligence and tip offs.

## 7.3 **National Law Enforcement – Department of National Parks and Wildlife (DNPW)**

### 7.3.1 *Overview DNPW*

The DNPW is a Government Authority under the Ministry of Information, Tourism and Culture; responsible for the conservation of wildlife and protected areas in Malawi. The Vision and Mission Statements of DNPW are as follows:

#### ***Vision***

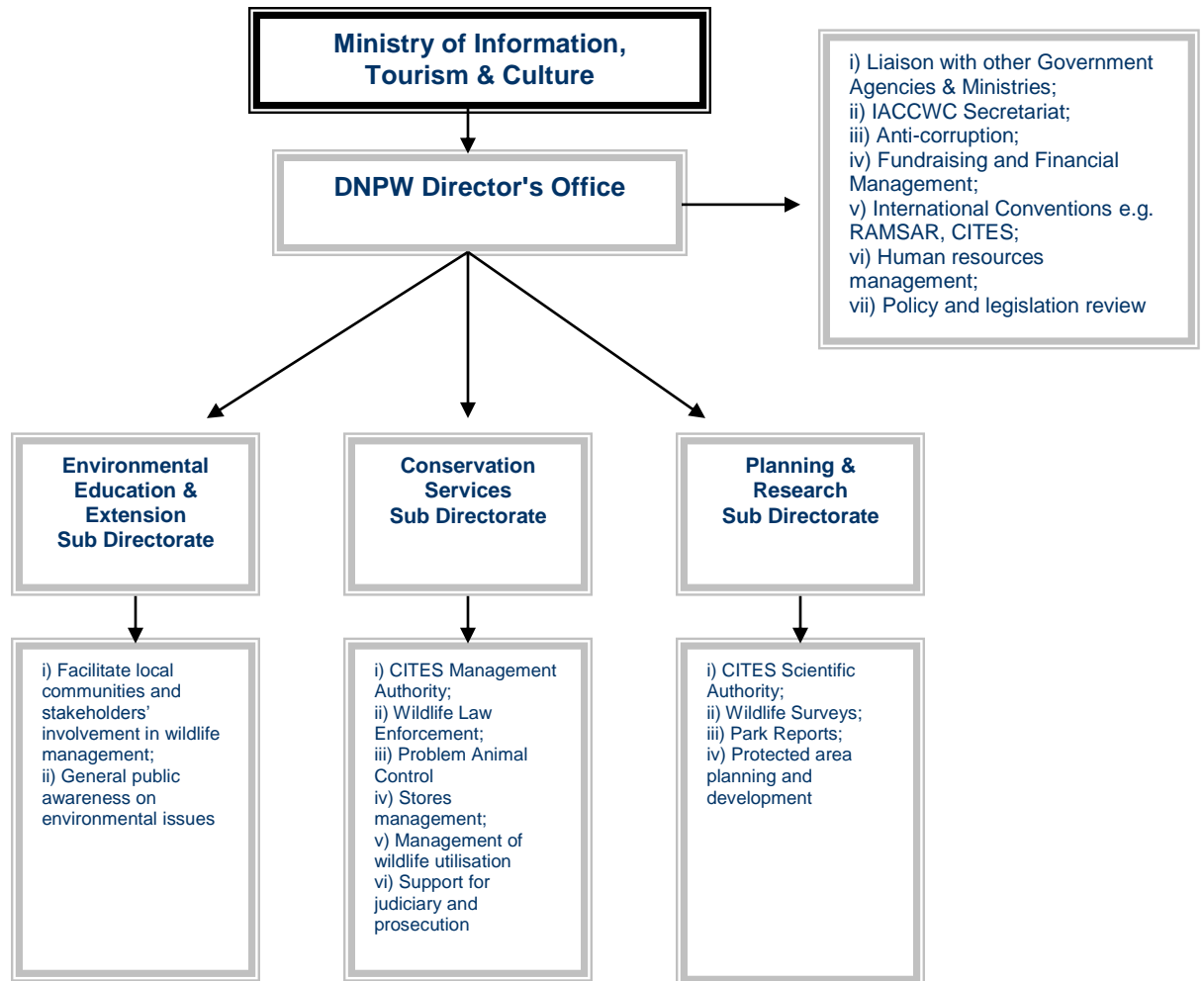
*To become a lead, vibrant and progressive wildlife conservation agency in Malawi.*

#### ***Mission***

*To conserve and manage protected areas and wildlife for present and future Malawians through enforcement of wildlife legislation, adaptive management, effective monitoring and governance with full involvement of all stakeholders.*

Diagram A: Organisational Structure of DNPW

NB only contains roles & responsibilities of relevance to wildlife law enforcement and may now be superseded and subject to some minor amendments)



**7.3.2 DNPW's Budget**

DNPW is provided with an annual budgetary ceiling by the Malawi Government. Using this ceiling, DNPW submit their detailed annual budget for parliamentary approval. In 2014, DNPW's budgetary ceiling was 150,000,000 Kwacha (USD 315,000), excluding salaries. This level of funding is entirely inadequate for meeting even the most basic functions of DNPW. By way of comparison, the annual budget for the Kenya Wildlife Service stands at around USD \$50 million. DNPW believes that the very minimum it needs to function at the most fundamental level is 500,000,000 Kwacha (USD 1,050,000).

A report issued by the Worldwide Fund for Nature (WWF), the World Conservation Union (WCN), and the U.S. Fish and Wildlife Service (USFWS) "warns that budget cuts mean that [many animals, including elephants] are increasingly at the mercy of poachers"<sup>29</sup>. Others have also criticized that the lack of resources prohibiting the extension of protection activities outside

<sup>29</sup> Musa, T. 1995. "Cost-cutting endangers elephant herds." Inter Press Service, 17 February.

protected areas has led to continued poaching in protected areas. A consequence of the lack of resources for DNPW was felt in December 2014, when DNPW had to let several serious poachers with firearms free after arrest, due to an absence of fuel. Masautso Banda, Martin Phiri, Stifano Phiri and Raphael Mwale were all arrested with muzzle loaders and shot guns, but released without charge due to a lack of fuel. This reflects the need for more resources within DNPW. There is clearly an urgent need for a Parliamentary Review of DNPW's annual budget.

### 7.3.3 Human Resources

DNPW has a total field staff of 344 comprising Park Manager grade to scout level ((Parks and Wildlife Assistants (PWAs)). There are also a small number of other staff, including middle and senior managers. There is a need to increase the number of staff at all levels. In Kasungu National Park, for example, there are 46 Park and Wildlife Assistants (PWAs) responsible for patrolling an area of 2,300 km<sup>2</sup>. It is a physical impossibility for these PWAs to cover the entire Park. This lack of on the ground "presence" is well known by the wildlife criminals operating in and around Malawi's Protected Areas, and they take full advantage – poaching in areas that have little or no patrol coverage.

### 7.3.4 Recruitment

The recruitment process for DNPW's staff is centralised through Malawi's Public Service Commission – MPSC (a standard practice for Government Authorities in Malawi). For recruitment of PWAs, DNPW provides the MPSC with a list of required criteria and job profiles, and can sit on the interview panel in order to ask technical questions, however it is the MPSC which makes final decisions concerning recruitment. It seems that DNPW cannot overrule the decisions of the MPSC. For the more senior positions in DNPW (from Senior Technical Assistant upwards), the interview process is different and DNPW management have a greater level of discretion to recruit suitable candidates. There are also some basic minimum requirements for Professional Officers of DNPW (e.g. educated to degree level).

### 7.3.5 Standard Operating Procedures

DNPW's draft "Administrative Orders" provides a detailed breakdown of the Standard Operating Procedures for all DNPW Officers. It covers a wide range of issues, from reporting duties and responsibilities to Management Plan development and management of resource harvesting by communities. These need to be completed and finalized.

### 7.3.6 Codes of Conduct

Studies on wildlife conservation have shown that there is a correlation between patrolling of protected areas and enforcement of anti-poaching laws by wildlife authorities and the level and amount of poaching. A study on rhino and elephant poaching in Zambia concluded that effective law enforcement could have a positive impact on reducing rhino and elephant poaching, but that limited law enforcement manpower would dramatically reduce its effectiveness<sup>30</sup>. It is vital that DNPW PWAs undertake their duties as required by DNPW codes of conduct and standard operating procedures.

Government notice numbers 49 and 52 of 2011 prescribe the conduct of a DNPW officer and a comprehensive Code of Conduct exists for all DNPW staff members which covers areas ranging from knowledge of wildlife legislation to standard of dress and appropriate levels of behaviour. It notes that: "*Officers from all sections and disciplines within the Department are trained to perform*

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30 Leader-Williams, N., Albon, S.D., and Berry, P.S.M. 1990. "Illegal exploitation of black rhinoceros and elephant populations: Patterns of decline, law enforcement and patrol effort in Luangwa Valley, Zambia." *Journal of Applied Ecology*, 27:1055-87.

*both paramilitary and public relations roles to protect and manage the protected areas of Malawi. They are furthermore ambassadors for themselves, the department and the country".* The DNPW draft Code of Conduct supplements Malawi's Public Service Regulations.

### *7.3.7 Disciplinary and Dismissal Practices*

The Malawi Public Service Regulations provides details of disciplinary and dismissal procedures for all DNPW staff members, as stated in the DNPW Code of Conduct: *"An officer whose decisions, actions or conduct does not comply with the standards outlined in this Code, should be subjected to appropriate disciplinary action. Appropriate actions to manage breaches of this Code are clearly described in the Departmental Administrative Orders and the Malawi Public Service Regulations. They should be followed as prescribed."*

Disciplinary matters within DNPW are a cause for concern. Reviewers were informed by numerous stakeholders of situations whereby DNPW staff members that were found to be involved in illegal activities or corrupt practices did not receive adequate disciplinary measures. For example, Reviewers were made aware of PWAs playing a central role in the unlawful selling of elephant and hippo meat, as well as collusion with poachers. Developing a more comprehensive process of enacting suitable disciplinary and dismissal procedures that will result in suitable punishment should therefore be seriously considered by DNPW.

### *7.3.8 Staff Motivation*

DNPW's draft Administrative Orders allow for cash incentives for DNPW officers that have excelled in the course of their duty, for example through acts of bravery or actions leading to the seizure of wildlife products and arrests of criminals. However, resources for such cash incentives have not been available in recent years due to the limited government budget allocation for DNPW. There is also a need, as highlighted below, for DNPW scouts to be better equipped to do their jobs. At present, without adequate uniforms, boots, vehicles, firearms, communication equipment etc., the DNPW scouts are becoming demotivated, corrupt and potentially targeted by poachers. Operation Safe Haven in Liwonde has shown that DNPW scout incentives can work and motivate anti-poaching patrols. Monetary and non-monetary rewards should be offered to individual DNPW scouts for excellent work performance.

### *7.3.9 Equipment and Resources*

DNPW is experiencing a severe shortage of resources and equipment essential for the central functions of the department. It is estimated that less than 10% of PWAs have access to basic patrolling equipment (such as boots, water bottles, weapons and ammunition) – a situation which is not only hindering day-to-day patrolling and protection of Malawi's natural resources, it is also severely compromising the safety and welfare of DNPW's frontline officers. PWAs cannot be expected to confront well-armed elephant and rhino poachers, if they do not have functioning weapons and to both protect themselves and apprehend the criminals concerned.

A critical lack of other equipment such as computers and vehicles is also having a significant impact on DNPW's activities. In many cases, equipment has fallen into disrepair as a result of a complete lack of maintenance. Indeed, DNPW's annual budget contains no provision for equipment maintenance. For example, DNPW used to have a nation-wide radio network, but the equipment was not maintained and is no longer functional (officers currently rely on mobile phone networks which are not present in all Protected Areas).

***This situation is having a severe and negative impact on DNPW staff members at all levels.***

### *7.3.10 Training*

All DNPW officers receive basic training concerning wildlife management and protection, covering areas such as how to arrest, how to fill out a charge sheet and how to collect and present evidence. Senior officers receive higher level training.

Although Reviewers have not seen a copy of the training curricula, it is apparent from interviews that enhanced training, covering issues as diverse as legislation and CITES regulations to basic paramilitary training, for staff at all levels is urgently needed. However, at present there is no selective training and no method to review success of training and suitability of full employment / engagement of PWAs after their initial training has been complete. At the time of writing, the Reviewers are aware that the training centre used by both DNPW and DoF is under-funded and therefore currently no new recruits are receiving internal training from DNPW at present. Nevertheless, it was also confirmed that recently some external support for training of PWAs has been secured for a period of 12 months from ALERT and their associated anti-poaching experts, TTOS.

### *7.3.11 Enforcement Powers*

According to the NPWA, DNPW officers are empowered to investigate wildlife crimes and carry out arrests of suspected criminals. However, DNPW do not have the power to prosecute. In addition, DNPW officers are empowered to seize wildlife products, but not other contraband.

## **7.4 Recommendations: National Law Enforcement – DNPW**

### *7.4.1 Recommendation 4.3(a): Review of DNPW's Annual Budget*

It is imperative that DNPW's budgetary ceiling is reviewed and hopefully increased by Parliament. Until such time as DNPW's budget is increased, many of the challenges expressed in this report cannot be adequately addressed. Support from outside donors may provide a satisfactory short-term level of support, however, for long-term stability, DNPW require an increase in the allocation of Government funds. It is recommended that the Director of DNPW lead this process, initially through development of a short rationale, and subsequently through a process of dialogue with the Permanent Secretary of the Ministry of Information, Culture and Tourism. The Inter-Agency Steering Committee could additionally be requested to engage in this process.

### *7.4.2 Recommendation 4.3(b): Review of Recruitment and Disciplinary Procedures and Completion of Administrative Orders and Codes of Conduct*

Given the number of stakeholders that expressed concern about recruitment and disciplinary procedures at DNPW, particularly relating to DNPW staff members believed to be involved in corrupt practices; it is recommended that a Review of recruitment and disciplinary procedures be undertaken.

Additionally, although Reviewers were not able to undertake a comprehensive analysis of the powers available to DNPW under the rules of the MPSC, it has become clear that the MPSC allows for each public body to list their "Acts of Misconduct". It is therefore recommended that DNPW list their Acts of Misconduct, which, alongside the draft Code of Conduct, could be reviewed with a view to development of a series of protocols which DNPW could submit to MPSC for adoption. Finally, the draft DNPW Code of Conduct and Administrative Orders should be finalised and published.

### *7.4.3 Recommendation 4.3(c): Provision of Equipment & Training*

The equipment and resource needs of DNPW are so chronic and so extensive, it is recommended that a separate proposal be developed, listing and prioritising the equipment and

resource needs of the agency. This will assist efforts to, where possible, identify opportunities to provide DNPW with selective training and equipment. However, it is strongly recommended that issues relating to tackling corruption and recruitment / disciplinary policies should be implemented in advance of future procurement. It is recommended that expert advice is sought on what equipment, training and personal are required. Guidance can be taken from the results of the assessment of wildlife law enforcement practice in Africa that was carried out by the Frankfurt Zoological Society (FZS) and the German Agency for International Cooperation (GIZ)<sup>31</sup>.

#### 7.4.4 Recommendation 4.3(d): Review of MoUs

DNPW currently has draft MoUs in place with MDF and the ACB only. It is highly recommended that DNPW, as the agency centrally responsible for wildlife issues in Malawi, consider entering into MoUs with all other agencies on the IACCWC, in particular FIU, MRA, MPS and DoF. Until comprehensive MoUs are in place, issues relating to data sharing, confidentiality and communication are likely to remain a problem.

## 7.5 National Law Enforcement - Malawi Police Service (MPS)

### 7.5.1 MPS Overview

The Malawi Police Service (MPS) sits under the Ministry of Internal Affairs and Public Security. Its operations are directed primarily by the Constitution of the Republic of Malawi and the Malawi Police Services Act. The Inspector General acts as Head of the Malawi Police Service.

The following provisions of the Constitution detail the functions and powers of the Malawi Police Force:

*1. The Malawi Police Service shall be an independent organ of the executive, which shall be there to provide for the protection of public safety and the rights of persons in Malawi according to the prescriptions of this Constitution and any other law.*

*2. The Malawi Police Service shall enjoy only such powers as are necessary for the protection of rights under this Constitution and the maintenance of public safety and public order in accordance with the prescriptions of this Constitution and the law.*

*3. In the exercise of their functions, members of the Malawi Police Service shall be subject to the direction of the courts and shall be bound by the orders of such courts.*

*4. Political responsibility for the Malawi Police Service shall vest in a Minister of the Government who shall ensure that the discipline and conduct of the Malawi Police Service accords with the prescriptions of this Constitution and any other law.*

Note: there appears to be a discrepancy between the naming of the Police Force / Service in Malawi. Whereby the Constitution details a Police Force, the actual name of the agency appears to be Malawi Police Service. For the purposes of this report, the agency will be described as the Malawi Police Service (MPS).

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31 Frankfurt Zoological Society and GIZ (2014) Anti-Poaching and Wildlife Law Enforcement in Africa  
What works, where and why?

## 7.5.2 *MPS and Wildlife Law Enforcement*

MPS play a significant role in wildlife law enforcement in Malawi. Indeed, in some cases they are the only agency that investigates and prosecutes wildlife crime. DNPW and MPS describe themselves as having a very close working relationship, however they do not currently have an MoU. MPS neither have any specialist officers that focus on wildlife law enforcement, and there is no training for MPS officers regarding wildlife crime.

### 7.5.2 *Police Enforcement Methods*

#### 7.5.2.1 Sniffer Dogs

Using dogs to detect ivory, rhino, pangolin and other species of concern near borders, airports and on roads, would dramatically improve detection of illicit products and assist Malawi to close an important, illegal pathway by which wildlife products leave Africa. Unlike many other countries, Malawi is in the enviable position of having an already-established sniffer dog unit. MPS's canine unit consists of approximately 40 dogs, 18 handlers and a 'Dog Master', who conducts the training of canine teams. These teams are trained for three types of drugs and four types of explosives and some teams are also trained for patrol work. The dogs in the police canine unit are all German shepherd dogs; bred, raised and trained within the program.

The organisation Working Dogs for Conservation recently surveyed the canine unit and found that the infrastructure in Lilongwe and at the airport was sufficient and well-maintained (the airport facilities were under reconstruction). Many dogs seem to have sufficient drive and energy; however some of the dogs seen were not capable of working due to orthopaedic or other problems. Other problems included inadequate dog equipment, with reward toys that were a dangerous size for dogs and of insufficient quality. Husbandry and veterinary capacity were not seen and training techniques were reportedly not current.

#### 7.5.2.1 Covert Techniques

The use of covert techniques such as listening devices, phone tapping etc. are reportedly not usually permitted under Malawian law, although the specific legal provisions for this were not analysed as part of this Review.

#### 7.5.2.2 Forensic Capabilities

MPS and the other enforcement agencies have no access to forensic techniques. All forensic analysis would need to be conducted outside the country.

#### 7.5.2.3 Informants

Informants are used by MPS and DNPW in the investigation of wildlife crime and appear to be providing useful information at Protected Area/local level. There is no mention of informants within the NPWA or Wildlife Policy, and there do not appear to be formal protocols by which the use or payment of informants are managed.

One of the six DNPW informants based around Liwonde National Park was interviewed by the Reviewers. He has been informing for DNPW since 2010 and apparently has his own network of informants that feed him information. The informant expressed a concern about security, as he lives within the local community and fears his identity being discovered. DNPW are aware of his sensitive position and appear to be making some efforts to ensure that his identity remains confidential. In his opinion, although he sometimes does receive financial support from DNPW, it is not reliable. He also requested use of a push bike to facilitate his transport around the local community.



Reviewers saw no direct evidence that the information provided by informants have been used in the investigation and prosecution of wildlife crime, although we were reassured by DNPW management that this was indeed the case.

## **7.6 Recommendations: National Law Enforcement – MPS**

### *7.6.1 Recommendation 4.3(e): Charge Sheet Standardisation*

There is currently no standardised form which is used as a wildlife crime charge sheet. To support enforcement efforts it is recommended that such a form be developed by MPS and DNPW and distributed for use by all wildlife law enforcement agencies. When questioning and charging wildlife criminals, the MPS and DNPW should take into consideration the INTERPOL Publication: *Questioning Wildlife Smugglers: A Technique for Investigating Wildlife Crime*, which can be downloaded by approved Government law enforcement agencies here: <http://www.interpol.int/Crime-areas/Environmental-crime/Resources>

### *7.6.2 Recommendation 4.3(f): MPS Prosecutors to use powers to extend investigations and development of prosecution guidelines*

A major obstacle to effective wildlife law enforcement in Malawi is that suspects are not held in custody for long enough to ensure that all tools and laws available are used to their full extent, resulting in very low fines. It is essential that MPS prosecutors, where appropriate, ensure that enough time is allocated for full investigation. Guidelines for prosecutors in this regard, and in general regarding legal avenues available for prosecuting wildlife crime, should also be developed and distributed across all MPS prosecutors.

### *7.6.3 Recommendation 4.3(g): Forensic Capabilities*

There are numerous forensic techniques available to support wildlife law enforcement, none of which are currently being used in Malawi. It is recommended that a wildlife forensics expert visit Malawi in order to review requirements and develop a comprehensive proposal for the provision of forensic techniques.

### *7.6.4 Recommendation 4.3(h) Development and Support of Informant Networks*

In other countries the use of informant networks has been crucial to the investigation and prosecution of numerous wildlife crimes (for example the work of the EAGLE network in Central and West Africa). It is therefore recommended that Malawi's enforcement agencies, especially MPS and DNPW, develop a set of Guidelines for the Management of Informants. Assistance should be provided by the DPP to ensure that information obtained through the use of informant networks can indeed be used in a court of law. Outreach to the EAGLE network for advice and support is advisable. Additionally, the establishment of a small fund to support informants should be considered.

### *7.6.5 Recommendation 4.3(i): Expand remit of sniffer dogs to include wildlife products*

Given that Malawi already has a functioning canine unit, it is recommended that the organisation Working Dogs for Conservation is contracted to build the capacity of the current unit, specifically by extending their remit to include detection of wildlife products. This would entail working with the Dog Master and handlers to train their current working dogs to additional scents of ivory, rhino, pangolin and any other species of interest to the government or conservation experts of Malawi. This would benefit the police program by bringing in new technologies, training theories and techniques and new search dog science. A full proposal from Working Dogs for Conservation is attached as Annex I to this Proposal.

#### 7.6.6 *Recommendation 4.3(j): Controlled Deliveries*

Although covert techniques appear to not be allowed under Malawian law, it is unclear to Reviewers whether this would include the use of controlled deliveries. Controlled deliveries (an investigation method used to track the illegal product through to the end user in order to identify the actors at all stages of the crime chain) can be extremely effective in wildlife law enforcement. It is recommended that a review of their legality of conducted and if they are indeed found to be legal, then it is further recommended that a strategy for their implementation be developed among the enforcement agencies. The ideal forum for this would be through the IACCWC.

#### 7.6.7 *Recommendation 4.3(k): Training Module on Wildlife Crime*

It is recommended that there be incorporation of wildlife crime into a training module for all MPS officers. Such a module would ensure that all officers are aware of the serious nature of wildlife crime and the methods used by criminals to carry out those crimes.

#### 7.6.8 *Recommendation 4.3(l): MPS Firearms database, cross-cutting and sharing with DNPW*

During the review it was apparent that several poachers had access to guns which had been registered on the MPS firearms database (usually under a different name). It is possible that such guns had been stolen, but it is also possible that such guns had been illegally hired out by the original owner. In any case, once a poacher has been found in possession of a gun, if that gun is cross checked and is found to have been previously registered then it is advisable that the registered owner of that gun is called in for questioning. Furthermore, if that gun owner is found to have been negligent in terms of gun security and/or had broken the law, they should also be prosecuted accordingly and stripped of their firearm licence. In addition, if an unregistered firearm is confiscated then as that person has committed an offence under the Firearms Act then he/she should be banned from ever being able to legally register and possess a gun in Malawi. No convicted wildlife poacher should ever be allowed to register a firearm in Malawi.

It is recommended that DNPW share all names and details of confirmed poachers with the MPS so that these names can be used by MPS to refuse firearm licences. Furthermore, MPS should send DNPW the details of all registered firearms and owners from all the districts which support a Protected Area. This will help DNPW to quickly check records and make additional arrests under the Firearms Act as required.

### **7.7 National Law Enforcement - Anti-Corruption Bureau (ACB)**

#### 7.7.1 *Corruption: A Global Problem*

Given the high value of natural resources being protected by law enforcement officers, who often work in remote locations on very low salaries, it is not surprising that corruption is widely recognised as playing a significant role in wildlife crime across the globe, enabling criminals to operate without fear of detection or prosecution.

Corruption has been observed to facilitate wildlife crime along every part of the chain, often involving a number of actors from a wide variety of institutions and organisations (e.g. CITES authorities, judiciary, police, customs, shipping companies). Poaching and illegal trade can be enabled through bribery, extortion, illegal payments, cronyism, laundering and misuse of diplomatic immunities. Actors may be passively corrupt through turning a blind eye, or collude more actively such as through production of false documentation or providing criminals with access to confidential enforcement information.

An international effort to address this chronic problem was discussed by nations, including Malawi, at the February 2014 *London Conference on Illegal Wildlife Trade*, and resulted in the inclusion of the following commitment within the *London Declaration*:

*"Address the serious problem of corruption and money-laundering facilitating wildlife trafficking and related offences by adopting or amending legislation, as necessary, criminalising corruption and bribery facilitating poaching, wildlife trafficking and related offences, and to institute measures to establish and promote effective practices aimed at the prevention of corruption and detection of money laundering, particularly in cases involving wildlife trafficking."*

#### 7.7.2 *Anti-Corruption in Malawi*

Malawi's Corrupt Practices Act provides a strong anti-corruption legal framework. The Act describes corrupt practice to constitute the following elements:

*"(a) the offering, giving, receiving, obtaining or soliciting of any advantage to influence the action of any public officer or any official or any other person in the discharge of the duties of that public officer, official or other person;*

*(b) influence peddling;*

*(c) the extortion of any advantage;"*

Beyond these elements, the Act has also criminalized additional offences of abuse of office, failure to disclose conflicts of interest, misuse of privileged information and illegal enrichment by Public officers. Sanctions within the Corrupt Practices Act are significant, including 12 years' imprisonment for a person found to be guilty of an offence under the Act. Furthermore, a public officer *"to whom any advantage is corruptly given, promised or offered"* should report these circumstances to the police or Anti-Corruption Bureau (ACB) within 48 hours of the event – failure to do so will result in a fine of K100,000 and 3 years' imprisonment. Furthermore, Malawi's Money Laundering Act criminalizes laundering of proceeds from activities such as illegal wildlife trade (See Section 6). In addition to the Corrupt Practices Act, Malawi is also signatory to the United Nations Convention Against Corruption, the SADC Protocol Against Corruption and the AU Anti-Corruption Protocol.

Malawi clearly takes corruption seriously; however, it does still remain a significant problem within the country. In 2014, Transparency International's Corruption Perceptions Index gave Malawi a score of 3.3 out of 10, which was a slight deterioration on the 2013 score of 3.7 out of 10, and continues to rank Malawi as among the most corrupt countries in Africa.

#### 7.7.3 *The Anti-Corruption Bureau and National Anti-Corruption Strategy*

Malawi's ACB was established under an Act of Parliament of 1995. In 2005, DFID funded a Governance and Corruption Baseline Survey, which among other things revealed that corruption was rampant and that not much was being done by Government institutions to address it. Malawi's National Anti-Corruption Strategy was developed and subsequently launched as Government Policy in 2009. Further Governance and Corruption Surveys took place in 2010 and 2013.

The National Anti-Corruption Strategy makes it mandatory for the Public Sector to address issues of corruption. Each public sector institution is required to:

- i) Develop an Anti-Corruption Work Plan;
- ii) Establish an Integrity Committee to oversee implementation of the Work Plan and report on progress made to the Anti-Corruption Bureau;
- iii) Allocate 1% of its budget to facilitating the operation of the Anti-Corruption Committee.

#### 7.7.4 *Cash Gate*

Since 2013, the ACB has been the lead agency in the biggest corruption investigations so far in the country involving the alleged plunder of over 20 Million USD of public money famously dubbed as “Cash Gate”. So far over 70 suspects have been arrested and some are currently in court facing various charges which includes money laundering. Two convictions have already been handed down over the past few months.

#### 7.7.5 *ACB Capacity*

With only 12 Prevention Officers country-wide, and limited resource envelope, the capacity of the ACB to ensure compliance with and enforcement of the National Anti-Corruption Strategy and the Corrupt Practices Act is restricted. It is therefore important that the public sector is pro-active about addressing issues of corruption and implementing the National Anti-Corruption Strategy.

#### 7.7.6 *Corruption and Wildlife Crime in Malawi*

During the numerous interviews conducted by the Reviewers, corruption was widely thought to be a contributing factor to the level of wildlife crime in Malawi, with many stakeholders believing it to be an issue that required serious and immediate attention. Indeed, many respondents directly implicated DNPW staff, as well as officials from the judiciary and prosecution services and the MPS. More positively, when discussing solutions to the problem, particular emphasis was placed on supporting DNPW to develop a comprehensive strategy for addressing corrupt practices by its officers. DNPW management clearly recognise the need to comply with the National Anti-Corruption Strategy. Although they have not yet developed an Anti-Corruption Work Plan or Integrity Committee, or allocated the mandated 1% of the budget to these activities, an MoU between the ACB and DNPW has been drafted.

#### 7.7.8 *The Importance of Addressing Corruption*

The organised criminal networks involved in wildlife crime are well-known to be intrinsically linked to complex and high-level corruption. If wildlife crime is to be adequately addressed in Malawi, it will be absolutely essential to implement numerous complementary and comprehensive anti-corruption activities. Zero tolerance of corruption should be a fundamental guiding principle of wildlife law enforcement. Without this, it will be almost impossible to break the vicious cycle of corruption, poaching and trafficking. By taking a serious stand against corruption, Malawi will be applauded by the international community and recognised as having made positive steps towards achieving the relevant commitments in the London Declaration. Furthermore, enacting anti-corruption activities will undoubtedly make potential investors more inclined to provide resources for combating wildlife crime in Malawi.

### **7.8 Recommendation: National Law Enforcement – ACB**

#### *7.8.1 Recommendation 4.3(m): Develop an Anti-Corruption Work Plan / Committee within DNPW*

In order to comply with the mandatory Government anti-corruption Policy directions, DNPW must establish its Integrity Committee and develop the Anti-Corruption Work Plan which among other issues address the risk of corruption in fuelling poaching and illegal wildlife trade, and allocate 1% of its budget to the operations of this Committee in 2015/2016 financial year. A full 2-day workshop attended by ACB and DNPW to kick off the work of the Committee and develop the Work Plan is recommended. Terms of Reference for the Committee will be essential.

### *7.8.2 Recommendation 4.3(n): Finalise the MoU between ACB and DNPW*

The MoU between the ACB and DNPW is of critical importance. It does among others provide a mechanism for the two institutions to share information about poaching and illegal wildlife trade, especially about cases facilitated by corruption. It further facilitates collaboration to increase anti-corruption capacity within DNPW. As such it is imperative that it should be finalised and signed as soon as possible.

### *7.8.3 Recommendation 4.3(o): Establish a whistle-blowing mechanism and provide resources for follow-up enforcement efforts*

Currently there are no confidential mechanisms for whistle-blowers to report suspected or actual cases of wildlife crime corruption within Malawi. The establishment of such a mechanism would promote accountability and provide a secure means of reporting potential cases of corruption without fear of retaliation. The funding of this mechanism would be relatively inexpensive but could potentially lead to significant results that would have a real impact on wildlife crime in Malawi.

It is essential that a whistle-blowing mechanism be domiciled at an institution that is independent and one which provides those reporting with confidence that their report will be treated appropriately. It is therefore recommended that the whistle-blowing mechanism be housed at the Anti-Corruption Bureau, and should provide reporters with a toll-free number. The whistle-blowing mechanism, once established, should be widely publicised throughout the country, with a particular focus on Malawi's international border points and airports. A discretionary fund for use by the ACB and other relevant authorities to follow-up on reports to the whistle-blowing mechanism and also increase public awareness on the whistle-blowing line as well the importance of reporting should also be established. Reward mechanisms for tangible reports that lead to arrest and prosecution of corrupt officials should also be considered and the identity and security of whistle blowers must be protected by the ACB at all times.

### *7.8.4 Recommendation 4.3(p): Training & Capacity Building*

A mandatory anti-corruption course should be incorporated into the training of public officials from all sectors that are responsible for the enforcement and prosecution of wildlife crime. Such a course could include a basic overview of the Corrupt Practices Act, explain the impact of corruption on the facilitation of wildlife crime and ensure that all public officials are aware of anti-corruption methods and activities (such as the whistle-blowing mechanism). Other training courses on CITES and wildlife law enforcement in general will further enhance the ability of enforcement officers and prosecution services to ensure a zero tolerance policy on corruption.

## **7.9 National Law Enforcement – INTERPOL**

### *7.9.1 INTERPOL Overview*

Wildlife crime is often trans-boundary in nature. Wildlife is regularly trafficked along the same routes that are used for trafficking of humans, drugs, arms and other illegal products, conducted by organised criminal networks that exploit the high-value / low-risk nature of wildlife crime. INTERPOL is uniquely placed to link national, regional and international wildlife law enforcement efforts, providing a platform for data sharing to other enforcement agencies and enabling quick and secure communication between those agencies. An active INTERPOL National Central Bureau (NCB) is therefore a critical component to combating wildlife crime across the globe.

Malawi is a member of INTERPOL and has established a NCB which sits within the MPS's Criminal Investigation Department. For cases relating to wildlife crime, the NCB has a dedicated Wildlife and Environmental Crimes Officer. The Wildlife and Environmental Crimes Officer is aware of INTERPOL's Wildlife Crime Working Group, although she has not yet participated in any

of its meetings. The Officer is currently participating in Project Waylay, a new INTERPOL initiative aimed at providing support to authorities in investigating consignments of elephant ivory and rhinoceros horn. ECOMESSAGE, the standard INTERPOL format for reporting wildlife crimes, is known to the NCB but currently is not regularly being used.

INTERPOL's Wildlife and Environmental Crimes Officer is well known to the other wildlife law enforcement agencies in Malawi and does occasionally provide information to DNPW concerning global wildlife crime information. However, the Officer is severely limited in her capacity to fully participate and provide support to those agencies, as she has limited training of wildlife law enforcement and currently has no access to a computer, vehicle or reliable method of communication. Of all the ivory cases in Malawi between 2010 and 2014 (see Section 5), Reviewers were aware of only 4 having been reported to the INTERPOL Wildlife Crime Desk.

## **7.10 Recommendations: National Law Enforcement – INTERPOL**

### *7.10.1 Recommendation 4.3(q): Building Capacity*

Many stakeholders interviewed for this Report recognised the crucial role that INTERPOL plays in the investigation of wildlife crime globally. However, the functionality of the INTERPOL NCB in Malawi is currently limited in its capacity to conduct this function. It is therefore recommended that a request for training and support is transmitted to the INTERPOL Head Quarters in Lyon, in order to enhance the capacity and resources available to the NCB. Other training opportunities through the IWTCF and WENSA should also be actively sought.

### *7.10.2 Recommendation 4.3(r): Proactive Use of Existing Tools*

It is recommended that the INTERPOL ACB, in collaboration with the other relevant institutions, ensure that they make full use of the tools available to them wherever possible (e.g. Eco messages). This is likely to significantly assist all enforcement agencies in their capacity to tackle wildlife crime in Malawi.

## **7.11 National Law Enforcement - Financial Intelligence Unit (FIU)**

### *7.11.1 Overview FIU*

The transnational nature of wildlife crime and the very high value of illicit wildlife products means that wildlife offences are usually committed with the primary objective of significant financial gain and the estimated value of illegal trade in wildlife and forest products is between \$10 and \$20 billion per annum. Investigating transnational money laundering and financial flows should therefore be a key element in combating illegal wildlife trade and may indeed expose other crimes being conducted by the same criminal networks and syndicates. However, to date there has been very little focus on tracking and exposing the financial aspects of wildlife crime, with the financiers and kingpins rarely identified and even more rarely investigated or prosecuted.

Malawi's Financial Intelligence Unit's website recognises the serious consequences of money laundering: *"Increased efforts to combat money laundering recognise the link between money laundering and serious crime. Successful money laundering activities not only enrich criminals but also assist in funding more serious criminal activity. Money laundering is said to be closely linked to economic crimes, such as fraud, bribery, corruption exchange control violations and tax evasion and even to international terrorism."*<sup>32</sup>

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<sup>32</sup> <http://www.fiumalawi.gov.mw/Moneylaundering.html> - May 2015

### 7.11.2 Money Laundering Act

Malawi's Money Laundering Act defines money laundering under Section 35:

*35.-(1) A person commits the offence of money laundering if the person knowing or having reasonable grounds to believe that offences any property in whole or in the part directly represents any persons proceeds of crime –*

*(a) converts or transfers property knowing or having reason to believe that property is the proceeds of crime, with the aim of concealing or disguising he illicit origin of that property, or of aiding any person involved in the commission of the offence to evade the legal consequences thereof,*

*(b) conceals or disguises the true nature, origin, location, disposition, movement or ownership of that property knowing or having reason to believe that the property is the proceeds of crime,*

*(c) acquires, possesses or uses that property, knowing or having reason to believe that it is derived, directly or indirectly, from proceeds of crime,*

*(d) Participates in, associate with or conspires to commit, attempts to commit and aids, abets and facilities the commission of any or omission referred to in paragraph (a), (b) or (c).*

As of April 2015 there had only been five prosecutions with convictions under the Money Laundering Act and none of these cases related to wildlife crime. However, at the time of writing, there were two accused persons being tried in the Mzuzu High Court facing charges of money laundering in connection to the seizure of 2.6 tonnes of illicit ivory near Mzuzu in May 2013. However, despite the significant penalties provided for under the Act, including the confiscation of assets derived from serious crime, many prosecutors are not conversant with it, and instead prefer to use the more "traditional" legislation for prosecuting offenders (such as the Penal Code). In addition, cases are often moved through the court system too quickly to enable any detailed financial investigations to take place.

### 7.11.3 Eastern and Southern Africa Anti-Money Laundering Group

Malawi is one of 18 countries that participate in the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG), which has committed to taking effective measures against money laundering activities in the region. One such measure includes a current typologies study by the group which aims to achieve a better understanding for ESAAMLG members on how the proceeds of wildlife crime are laundered in the region.

### 7.11.4 Financial Intelligence Unit

Established in 2007, Malawi's Financial Intelligence Unit (FIU) is an autonomous central national agency, responsible for ensuring implementation of the Money Laundering Act (2006). The FIU doesn't itself conduct prosecutions, but has the powers to request and analyse financial information and pass on any appropriate information to the competent law enforcement and supervisory authorities. The FIU is a member of the Egmont Group of Financial Intelligence Units. Banks and other financial institutions are required to submit records of all transactions of more than 1 million Kwacha to the FIU, in addition to any suspicious transactions. Each Financial Institution has a Compliance Officer that is the liaison point for the FIU and, besides providing reports, also rates high risk customers based on level information available.

A review of the Money Laundering Act has been proposed by the Malawian Government, with the aim of enacting amendments that will lead to increased powers for the FIU including prosecution powers.

## **7.12 Recommendations: National Law Enforcement – FIU**

### *7.12.1 Recommendation 4.3(s): Development of MoUs with DNPW and MPS*

The Money Laundering Act requires that an MoU be in place with the FIU before any information can be shared between those agencies. Given the importance of financial investigations and information in the prosecution of wildlife crimes, it is therefore extremely important that DNPW and MPS are able to share information with the FIU. An MoU should be finalised urgently.

### *7.12.2 Recommendation 4.3(t): Specific Sensitisation Programme for Prosecutors on the Money Laundering Act*

It is recommended that prosecutors are made aware of the details of the Money Laundering Act and are capable of using it to prosecute wildlife crime. A one-day workshop for Chief Magistrates in order to discuss the best approach for this process is recommended, followed by a series of smaller training workshops and development of resources that can be used by prosecutors in their efforts to utilise the Act effectively. The training should take place annually for three years and then its effectiveness (e.g. number of prosecutions for wildlife crime under the Act) should be reviewed.

### *7.12.3 Recommendation 4.3(u): Compliance Officer Training and Information Sharing*

Compliance Officers of commercial banks are at the front line of financial transaction monitoring and should be made aware that wildlife crime is a serious concern for Malawi and is negatively impacting its economy. If information can be passed onto Compliance Officers to assist them in building risk profiles of relevance to wildlife criminals, then suspicious transactions are much more likely to be identified and reported. It is therefore recommended that a training programme for Compliance Officers be developed and implemented as soon as possible. This training could be undertaken by the FIU if resources were made available.

### *7.12.4 Recommendation 4.3(v): Engagement with ICAR and the Financial Intelligence/Investigation Teams of the large International Banks*

ICAR, based at the Basel Institute on Governance in Switzerland, has extensive experience in cross-border financial investigations and asset recovery processes. ICAR is in a position to provide the necessary training and support to assist Malawi in the development of an investigative strategy, with a focus on financial investigation, asset recovery and mutual legal assistance. It is recommended that a proposal be developed between IACCWC, FIU and ICAR to plan for the provision of this support. The large international banks, such as Barclays, may also be in a position to provide some guidance and share appropriate information. .

## **7.13 National Law Enforcement – Malawi Customs**

### *7.13.1 World Customs Organisation (WCO)*

Customs Officers at Border Points are often the very first front-line officers to encounter illegally traded wildlife products, and therefore are a critical link in the wildlife law enforcement chain. The World Customs Organisation takes its role seriously. It has entered into a Memorandum of Understanding with the CITES Secretariat, and now dedicates an entire section of its annual Illicit Trade Report to Environmental Issues. The 2013 WCO Illicit Trade Report detailed numerous seizures of elephant ivory by Revenue Authorities in Africa in 2013, including 4,488 kg seized by the Kenya Revenue Authority, 2,903 kg by the Uganda Revenue Authority and 2,640 kg by the



Malawi Revenue Authority. It further reports on the extent to which criminals are now going in order to smuggle wildlife products:

*"Today wildlife smugglers are applying the same methods and techniques as drug syndicates. If shipped by air cargo, passenger luggage, express courier and mail, the contraband is artfully hidden inside objects or in the false bottom of the luggage, wrapped in aluminium foil and placed in metal containers or mixed with other organic goods such as fruit and coffee to avoid detection by x-ray. Ivory is painted to give it a different appearance and mislead law enforcement officials. Couriers carry parrot eggs and pieces of rhino horn in their underwear."*

In June 2014, the Customs Cooperation Council (the formal name for the World Customs Organisation) issued a declaration on illegal wildlife trade, which (among other things):

***Requests*** Customs authorities to participate actively in enforcement operations aimed at combating wildlife trafficking;

***Urges*** Customs authorities to use the full range of detection and investigative techniques, including risk profiling, intelligence sharing, controlled deliveries, forensic techniques, detector dogs and other non-intrusive equipment; furthermore, to use the full extent of the law to secure an appropriate level of punishment that would act as an effective deterrent;

***Calls on*** Customs authorities to continue to raise awareness, through specialized events and public campaigns, of the problem of wildlife trafficking and its impact on the economy, security and sustainability.

#### 7.13.2 Malawi Revenue Authority

The Malawi Revenue Authority (MRA) was established by an Act of Parliament in 1998 and was launched in February 2000. MRA's Head Quarters are located in Blantyre, with further officers in North, Central (Lilongwe) and Southern Regions. Their stated mission is:

*"To maximise revenue collection through fair, efficient and transparent administration of Malawi tax and Customs laws while providing high quality service to all taxpayers."*

Although the Customs and Excise Act (1969) contains no specific reference to wildlife, and although the primary objective of the MRA is tax and revenue collection, MRA's Customs Officers do have a responsibility for detection of illicit goods and as such, are mandated to conduct front-line wildlife law enforcement at Malawi's borders. Customs Officers provide an especially important role in Malawi given that DNPW do not currently have the capacity for representation at any of the border points. At present there is no Memorandum of Understanding with DNPW, however, the shared roles and responsibilities of the two agencies clearly lends itself to urgent formalisation of the relationship. Reviewers interviewed the Deputy Manager of FAST Enforcement, a unit within the MRA which has mobile law enforcement capabilities and powers of arrest. The FAST team most commonly target smugglers.

#### 7.13.3 Training and Capacity Building in MRA regarding IWT and Customs Act

Currently there are few MRA Officers who have received any CITES or local training in wildlife crime issues. In addition, despite the one high-profile ivory seizure in May 2013, there appears to be limited enforcement being undertaken by MRA in terms of wildlife crime. There are currently no modules on wildlife issues within the basic MRA training courses. The vast majority of MRA Officers would not be able to recognise most wildlife products, nor do they have an understanding about which products are illegal and which are not. It is also doubtful that the majority of MRA Officers would recognise a false CITES permit.

In addition, although recent seizures of timber have resulted in MRA officials using more of the wider range of deterrents available to them under the Customs and Excise Act (levy fine, collect

duty and seize goods and vehicle), such actions seem to have been very recent and are still exceptions rather than common place. In addition, custodial sentences are available under the Act. It is important that all MRA officials are fully aware of the range of powers they have to deter wildlife crime and that they are trained accordingly e.g. can seize goods and vehicles and place fines and/or even custodial sentences.

#### *7.13.4 Form 47 and additional Risk Management for wildlife contraband*

Customs Declaration Form 47 is completed by those transporting goods across borders. The form contains a checklist of illegal items, however these items do not currently include any reference to wildlife products. These forms are retained by MRA in hard copy only and are not numbered, making analysis impossible.

In addition to Form 47, MRA use a profile ranking register system to evaluate the risk of a shipment in terms of customs and excise regulations. A "Green" rating is used for large, trusted companies that have a good finance history and no criminal history and allows import/export without any physical search and only a very basic documentation check (although 2% of "Green" shipments are searched randomly). An "Amber" rating is for companies with a good compliance history, but not worthy of "Green" status. An "Amber" rating means a check for all documents and then a judgement call is taken on whether to proceed with a physical search / scan. Finally, a "Red" rating is allocated to all new clients and those without a good compliance history and/or those importing or exporting from high risk countries and/or between high risk companies. In theory, all "Red" risk shipments are physically searched or scanned and all documentation rigorously checked.

However, although this risk management system is in operation and is widely used by MRA, the Reviewers observed that not all "Red" rated shipments are searched effectively in terms of wildlife products, and that some wildlife contraband is likely to be evading custom officials. This could be because the current Risk Management system does not presently include any wildlife crime indicators or consider wildlife crime when informing risk ratings. In addition, with regards to wildlife crime, the system does not specifically update through the existing electronic system. One of the reasons for this might be because the system is not 100% ICT based i.e. hard copies of physical examination report are completed by MRA officials on the ground and later sent to central offices for updating of the risk management systems via scanners. Hand held electronic devices are recommended for this purpose. The absence of IWT data in MRA risk management decision making, in addition to the potential lag between a crime reported on the ground and the risk management profiles being updated, will be exploited by wildlife criminals.

#### *7.13.6 ENVIRONET*

In June 2009, the World Customs Organisation launched ENVIRONET, an internet-based tool to enable communication and provide a secure method of sharing wildlife crime data between Customs organisations and other competent law enforcement agencies. In addition, it provides access to training materials, identification guides and manuals for enforcement officers. ENVIRONET aims to facilitate cooperation between customs organisations, competent agencies and international organisations to enable detection of trafficked goods and apprehension of wildlife criminals. MRA currently does not access or use ENVIRONET. This should change.

#### *7.13.7 WCO-RILO Programme*

Customs Agencies from Malawi, Zimbabwe, Zambia, Mozambique, South Africa, Swaziland, Lesotho, Uganda, Kenya and Angola are members of the WCO's Regional Intelligence Liaison Office (WCO-RILO) Programme. Malawi is a focal point for this programme, which shares alerts and other enforcement information. Previously these alerts regularly included information pertaining to wildlife crime. At present, wildlife alerts are not currently regularly shared with other enforcement agencies in Malawi.

#### *7.13.8 Customs Enforcement Network*

The Customs Enforcement Network (CEN) was established in 2000, to support information exchange and intelligence-sharing between Customs Agencies globally. MRA does have a focal point for the CEN, but as MRA has very few records of any wildlife seizures in Malawi, there are currently no wildlife records reported on the CEN database by the country's focal point. WCO has encouraged Malawi to develop a National CEN, the software for which is currently being procured.

#### *7.13.9 Porous Borders with Regards to Wildlife*

As mentioned in Section 5, not a single MRA customs border posts held a record of any wildlife crime. This was in contrast to information collected by the Reviewers which confirmed that several border posts are, as expected, targeted by wildlife criminals and that Malawi is frequently used as an IWT conduit. The 2.6 tonne ivory seizure near Mzuzu in May 2014 is an example of this criminal activity, as too are the recent significant cases of hardwood timber smuggling which have hit the newspapers in recent times. In addition, police at KIA have over 30 records of confirmed ivory trafficking in the last 4 years, but MRA at KIA have no records of any such crime. The Reviewers were informed from several sources that many of the Malawian land borders are used by wildlife criminals to smuggle ivory, especially between Malawi and Zambia and Malawi and Mozambique. Upon inspection, the larger border posts – Mchinji, Dedza, Mwanza, Songwe and Mulanje all had good customs presence. However, upon inspection of some smaller outposts e.g. Biriwiri by Ntcheu, which was reported to be very porous with regards to wildlife and timber, there was much less deterrence in terms of number of customs officials. There is a need to ensure that customs effectively search for wildlife contraband at all border posts and for import/export restrictions to be placed on small, porous borders such as Biriwiri, etc.

There is evidence that wildlife products such as ivory are being transported with illegal shipments of hardwood timber. The northern corridor is the largest Malawi port in terms of timber and from Malawi it travels to sea ports in Tanzania and Kenya, which are known wildlife trafficking hotspots. The Dedza port into Mozambique is the second largest port in terms of timber export from Malawi, with shipments heading to the seaports of Nacala, Beira and Pemba. Malawi has no timber export agreement with China, but at least 200 containers of hardwood destined to China have entered Malawi, as they are currently impounded in country by MRA and the Department of Forestry. A significant amount of hardwood enters Malawi illegally from Zambia, in addition to Mozambique. It is likely that a crackdown on illegal timber shipments will also reap benefits for combating the illegal trade of elephant ivory etc. More joint operations between DoF and DNPW should be undertaken.

Recently MRA received a donation of non-intrusive cargo scanners from the Peoples Republic of China. Delivery of two mobile scanners was done in March 2012 with three more delivered in March 2013, one of which was a re-locatable fixed scanner. Customs (Imports) and Customs (Exports) can in theory use these scanners to produce X - ray images of goods being transported in containers, tankers or even break bulks. In addition, the scan images may also reveal concealed items in any part of the conveyance and potential illegal contraband, e.g. ivory. During the Review several people from MRA, freight forwarding companies and border posts were asked about the scanners, but very little information was provided. It appears that the scanners may no longer be in use and/or if in use, are not deployed as frequently as perhaps needed. Also during the Review the Department of Forestry confirmed that very few road blocks manned by themselves with assistance of MPS and MRA have the awareness or capacity to search for illegal wildlife products, in addition to timber products.

## **7.14 Recommendations: National Law Enforcement – Customs (MRA)**

### *7.14.1 Recommendation 4.3(x): Develop and Memorandum of Understanding between MRA and DNPW*

To facilitate closer collaboration and cooperation between CITES Management Authorities and Customs Agencies, the CITES Secretariat and WCO have developed *Guidelines on Cooperation between Customs Administrations and CITES Management Authorities Managing the Trade in Animals and Plants (CITES)*. It is recommended that DNPW and MRA utilise these Guidelines in development of an MoU between the two agencies.

### *7.14.2 Recommendation 4.3(y): Sensitisation of MRA Staff to IWT*

There is a need for widespread sensitisation of MRA staff as to wildlife crime. Distribution of posters, brochures and memos to all regional offices and MRA staff would quickly raise awareness, in advance of more detailed training and capacity building programmes. This should be done at regional offices with senior staff, but also at each and every border post with frontline customs officials. It is recommended that external expertise is sourced to deliver these training workshops. Specialist training on the identification of wildlife contraband during x-ray should also be undertaken, especially for those MRA staff operating the mobile cargo scanners.

### *7.14.3 Recommendation 4.3(z): Training & Resources (Manuals etc) on IWT*

Incorporation of environment and wildlife crime modules into customs training courses will be essential. A train the trainers programme may be the best approach initially, given the large number of MRA staff members. Resources from ENVIRONET may be useful for this purpose.

### *7.14.4 Recommendation 4.3(a.a): Incorporation of wildlife products onto Form 47*

Addition of illicit wildlife products onto the Form 47 checklist would assist customs officers in their ability to detect wildlife trafficking. Such forms could be used as evidence against suspects, should illegal products be detected subsequent to the form being filled in.

### *7.14.5 Recommendation 4.3(a.b) Access to ENVIRONET*

Ensuring that at least one MRA staff member has access to ENVIRONET at each of the regional offices, and ensuring that relevant information is then shared with other staff members will be essential.

### *7.14.6 Recommendation 4.3 (a.c) Designation of Commercial and Non-Commercial Border Posts*

Until resources are adequate enough to improve enforcement of all ports of entry and exit in Malawi, it is strongly recommended that law enforcement resources are used efficiently and that the options available for wildlife criminals to enter and exit Malawi are reduced. Therefore it is recommended that MRA work alongside the IACCWC to develop and roll out a policy to designate “Commercial” and “Non Commercial” Border Posts. This measure has proven to be a very effective border control measure in several countries, including South Africa and Botswana.

In Malawi it is recommended that the “Commercial” Border Posts should include: Mchinji, Dedza, Mwanza, Songwe and Mulanje. All other border posts, including Biriwiri, should be declared as “Non-Commercial” Border Posts. The policy must include for restriction of commercial use i.e. goods import and export, at all Non-Commercial Border Posts. Non-Commercial Border Posts should only be used by saloon cars and passenger buses. All trucks, ranging from small trucks / pick-ups to 30 + 40 foot rigs should only be able to use Commercial Border Posts. This will ensure that customs law enforcement is concentrated at commercial hubs. Ideally MRA should

make it an offence for a truck etc. to use a Non-Commercial Border Post, and permanent infrastructure should be placed at minor borders which physically prevent access of large vehicles across the ports, e.g. concrete bollards. The Road Traffic Directorate should be engaged in this process.

*7.14.7 Recommendation 4.3 (a.d) Better use of MRA mobile scanners and joint MRA / DNPW / DoF road blocks to detected wildlife crime*

It is recommended that the MRA mobile cargo scanners are used more frequently to detect wildlife contraband. If all trucks in the future must only go through the five recommended Commercial Borders Posts, then MRA should consider posting a scanner at each of these five main border posts. All trucks of all sizes should then be scanned by an official trained in the detection of illegal wildlife products. Resources should be secured to ensure maintenance and proper running of the machines. MRA, DNPW and DoF should also use the powers of the NPWA and the Forestry Act to set up permanent road blocks along the roads to Tanzania and Zambia (in addition to those around the Dedza ports), to undertake physical searches of freight, especially those carrying high risk products such as timber and/or are destined to high risk locations, e.g. eastern sea ports. The Road Traffic Directorate and MPS should be engaged in this process.

*7.15.8 Recommendation 4.3(a.e) Incorporation of wildlife into MRA Risk Profiles and upgrade of current MRA Customs Risk Management system*

At present MRA cannot scan, search or monitor every single shipment that passes across Malawi's borders. It therefore uses risk profiles to identify shipments that are more likely to contain illicit goods. This system/software is being used at border control for risk assessing material/carriers at the point of import/export, but it is not without its frailties and neither does it currently incorporate or consider wildlife crime. In March 2015 the US Treasury and US Customs assisted MRA Customs function by helping them develop procedures and building capacity for better risk management using the ASYCUD++ system (Automated System for Customs Data). The ASYCUD++ system, amongst other things, can be used to better regulate the import and export of wildlife species into and from a country. Recently the CITES Secretariat and the United Nations Conference on Trade and Development (UNCTAD) agreed to work together and develop a specific ASYCUD++ module for international trade in CITES listed species, called ACITES. ACITESs will be fully integrated into the UNCTAD's ASYCUD programme.

It is strongly recommended that any upgraded MRA risk management to ASYCUD++ incorporates ACITES and also allows for transition to a fully electronic risk assessment system. MRA officers need to be able to input ground inspection findings into an electronic form and file these records immediately, so that the risk management system can be updated. Such a system will also enable the Customs performances to be reviewed via the analysis of inputted data, e.g. MRA senior managers can easily check how many "Red" rated shipments were actually physically searched by each border office, etc. Furthermore, through the IACCWC, MRA should remain in regular contact with DNPW, and thereby incorporate up-to-date information pertaining to national wildlife crime within their risk profiles. This would greatly increase the likelihood of wildlife being detected by MRA Officers at border points. It is also recommended that any system developed by MRA is compatible with any similar risk management systems used within the private logistics, shipping line, airline and freight forwarding companies (See Sections 7.20.10 and 7.24.1., below) and global systems such as the UNODC's Container Control Programme and various systems employed by INTERPOL. In addition to these recommendations, it is strongly recommended that at least 10%, rather than 2%, of "Red" rated shipments are subject to a random physical search / scan.

In order to incorporate wildlife into an electronic system and help ensure wider compatibility, it is recommended that an expert customs official, e.g. the US Treasury and Customs team already working with MRA to migrate customs to the ASYCUD++ system, be appointed by MRA to review the current and proposed risk assessment systems etc. in relation to helping MRA prevent wildlife

crime. This can be done through the MRA commissioner for customs with assistance from the Malawi focal point for the United Nations Conference on Trade and Development (UNCTAD). The appointed expert customs consultant should be tasked to make recommendations which outline a practical path for implementation of IWT risk management systems across MRA and how the system can link with wider due diligence risk management systems. This process should also be used to remind MRA officials of the relevant sections of the Customs and Excise Act that can be used to deter wildlife criminals i.e. remind officers of their powers to levy a fine, plus duty, plus confiscation of goods AND vehicles, if an offence under the Customs and Excise Act (and other laws of Malawi) is suspected.

#### **7.16 National Law Enforcement – Department of Immigration (DoI)**

As organised criminal networks are usually comprised of individuals from more than one country, the DoI has an important role to play in wildlife law enforcement. Malawi's Immigration Act was enacted in 1964, and has no reference to wildlife trafficking within the prescribed offences. However, the Act can support the prosecution of wildlife criminals who may be travelling on false or forged documents. Furthermore, the Immigration Department of Malawi has a good database on Border Control System which has initially been installed at Immigration headquarters, Kamuzu and Chileka International Airports and will eventually be rolled out to all borders in the Country. This system provides the particulars of the person travelling in and out of the country, his/her fingerprints and an image. For foreign nationals found to be in possession of false documentation, the usual course of action should be deportation, although to date just one formal deportation certificate has been issued by the DoI in response to a wildlife crime conviction.

#### **7.17 Recommendations: National Law Enforcement – DoI**

##### *7.17.1 Recommendation 4.3(a.f): Incorporation of wildlife trafficking into the Immigration Act*

The Reviewers were told that a review of the Immigration Act is likely to occur in the near future. It is highly recommended that an amendment to the prescribed offences, to allow for the inclusion of wildlife trafficking, would be extremely beneficial to support use of the Immigration Act in the prosecution of wildlife crime.

##### *7.17.2 Recommendation 4.3(a.g): False Document Identification Training to All IACCWC members*

It is unlikely that many enforcement officers would be able to adequately identify a false foreign national passport or permit. The case of the man with three names (see Section 5.2) indicates a need for training of enforcement officers, so that they are able to recognise false travel documents. It is recommended that the Immigration Department be responsible for organising and conducting such training among IACCWC agencies.

##### *7.17.3 Recommendation 4.3(a.h): Enhancement of Deportation Documents*

To assist with proper identification of wildlife criminals, it would be extremely beneficial to all enforcement agencies if extra information is included on the deportation documents. Specifically, it is recommended that thumbprints, photo and copy of passport or other identification document. These deportation documents should then be shared with the IACCWC who would then be responsible for distributing the data as appropriate, ideally to all ports of entry and exit.

#### **7.18 National Law Enforcement – Malawi Defence Force (MDF)**

The Malawi Defence Force is led by the Secretary for National Defence under the Ministry of Defence. Its mission is: *"to conduct military operations in order to promote and protect the*

*sovereignty, territorial integrity and vital interests of Malawi against both external and internal threats."*

Since 2007 the MDF has been working with the DoF to support enforcement in protected areas governed by the DoF. Until very recently, the Malawi Defence Force had not worked together with DNPW in the conservation of Malawi's wider Protected Area network. However, given the recent upsurge in IWT and poaching in Malawi, DNPW has now approached the MDF to explore how they can enhance cooperation and a draft MoU is being considered between the two agencies, which would focus in particular on the provision of training and equipment. A joint pilot anti-poaching and wire snare collection programme was completed in Liwonde National Park in late 2014 between the MDF and DNPW. After some initial problems the project was deemed a success and has been extended through support from Operation Safe Haven. The need to expand such programmes into other Protected Areas can be considered by the IACCWC.

## **7.19 The International Airports**

### *7.19.1 Overview*

There are two international airports in Malawi; Kamuzu International Airport (KIA) in Lilongwe and Chileka International Airport (CIA) in Blantyre. The following findings and recommendations are based on the outputs of a full-day workshop with airlines and security staff at KIA; however it is understood that the experiences and challenges at CIA are similar.

Malawi is a land-locked country and as such, the international airports are likely to be more of a target than in countries with sea ports. Traffickers have been known to go to extreme lengths to hide illicit wildlife products – from sedated live animals in suitcases, to bags of baby pythons attached to legs with tape. Ensuring, therefore, that airport staff have the equipment and capacity needed to detect wildlife products is an essential component of wildlife law enforcement. Indeed, analysis of trafficking data (See Section 5) seems to indicate that the scale of ivory trafficking out of KIA is increasing, as are the sizes of shipments. As the Airport Commandant of KIA astutely pointed out: "*Money is a dangerous weapon*".

### *7.19.2 Scanning Equipment*

There are three x-ray scanning machines at KIA:

- 1) Entrance Hall: this is a new scanner and its presence is welcome, however it is not big enough to accommodate large suitcases. It is manned by a police officer;
- 2) Passenger Terminal: this scans the checked-in baggage. This machine has detected the most illicit wildlife products (primarily ivory). It is manned by a police officer.
- 3) Cargo Terminal: this is a very old machine which urgently requires updating. Illicit wildlife goods are rarely detected using this machine. It is not possible for this machine to reply images as the control system for this tool is locked within the office of the General Manager for Malawi Cargo Ltd. It is partially manned by a police officer.

Security staff do have the knowledge to detect ivory but it would be useful to include training on these issues in the general training programme. There is also a need to ensure that the police staff selected to man these scanners are of the highest integrity. Suggestions of significant corruption and collusion between some airport law enforcement staff and wildlife criminals, both at KIA and CIA, were brought to the attention of the Reviewers during this assessment. These need to be addressed.

### *7.19.3 Wildlife Expertise at KIA (and CIA)*

As there are no DNPW Officers posted to the Airport, and none of the KIA staff have had any training in wildlife trade or detection (although the LWT have recently initiated a project that will deliver some training in the identification of wildlife products later in 2015). It is unlikely that staff would recognise a false CITES permit or be able to determine (for example) the difference between elephant and hippo ivory.

### *7.19.4 Airport Data Collection and Management*

The majority of data storage pertaining to wildlife crime is on paper files. There is a log book on scanning machines to record incidents, and the police office at the airport has no computer, so can only use paper files which are difficult to search. The Immigration officers do now have computers with which to detect fake documents and fingerprint scanning equipment (installed by Techno Brain). Wildlife criminals have already been detected thanks to this new technology.

### *7.19.5 Airlines*

Airlines to some extent appear to have an exclusion of liability, and therefore do not themselves take responsibility for illicit goods found on their planes or with their passengers. Kenya Airways (KQ) however, does appear to take some responsibility for the goods being shipped, as they believe that if their airline is found to be carrying ivory or other wildlife products, it will tarnish the image of their airline. For KQ, if the airline sees that the passenger is carrying a product which is illegal in Kenya, they have the authority to offload that passenger, even if the goods are not illegal in Malawi.

In addition, although all airlines appoint an exclusive freight forwarding company to undertake final checks of passenger baggage and cargo etc. before loading, none of the employees the Reviewers met from these companies had any knowledge of IWT issues and all confirmed that neither their own companies nor the airlines currently provide them with any training on how to identify concealed IWT products.

## **7.20 Recommendations: International Airports**

### *7.20.1 Recommendation 4.3(a.i): Computer Equipment for Police at KIA and CIA*

Having no mechanism for electronically transmitting information concerning wildlife crime incidents, for accessing training resources or for rapidly searching data, means that conducting any kind of proactive investigations is currently impossible. Given that currently the highest volumes of wildlife crime are being detected at KIA, it is essential that the police offices there be equipped with computers and printers, and trained in how to use such equipment effectively. It is also important that these systems can interface with any centralized wildlife crime database to be developed and held at DNPW.

### *7.20.2 Recommendation 4.3(a.j): Permanent DNPW Representative at the airports*

All stakeholders interviewed recommended that there be a permanent DNPW presence at KIA and CIA. Such representation and support for KIA and CIA staff would undoubtedly make a significant difference in wildlife law enforcement at the airport.

### *7.20.3 Recommendation 4.3(a.k): Training of freight companies/agents on IWT issues, risks and IWT product identification*

All airlines appoint companies/agents to search the freight that is being exported by air immediately prior to loading as a final check. These companies have no knowledge of illegal wildlife trade or of how to identify wildlife products. It is recommended that they receive regular training as a matter of priority. Priority training should be given to those companies that currently



have contracts with each airline to undertake the final check and clearance of cargo and passenger baggage prior to loading.

#### *7.20.4 Recommendation 4.3(a.l): KIA Security Committee Workshop and Protocol Development*

There is a Security Committee at KIA which meets regularly. The Security Committee provides an ideal forum for discussion of wildlife crime, and development of mandatory protocols for all airport staff members concerning methods for wildlife security. Such a protocol would, for example, ensure increased visibility of wildlife security in the airport, to act as a deterrent for wildlife traffickers. DNPW could assist with the development of the protocol and it may be an appropriate way to introduce DNPW representation at the airport. If the protocol proves to be successful, the Airport Commandant of CIA should be invited to roll out the same process at CIA. It is therefore recommended that an extraordinary meeting of the Security Committee be held as a matter of urgency to draw up the Protocol and plan for its roll-out.

#### *7.20.5 Recommendation 4.3(a.m): Training and Materials*

A cursory exercise at the airport revealed how important it is for basic training to be made available regarding identification of wildlife products. Recently seized ivory tusks were in fact discovered to be hippo tusks – a subtle but important difference given that hippo ivory can be legally exported, provided the required permits are made available. Training of all staff members from airplane workers to Carrying Agents and CID officers is essential in the battle to combat illegal trade.

#### *7.20.6 Recommendation 4.3(a.n): Scanning Equipment*

Given that many shipments of ivory are being carried as Cargo, rather than check-in luggage, it is vital that Cargo shipments can be adequately scanned. Procurement of an X-ray scanning machine would be a significant investment but would make a significant and positive change. In addition, the X-Ray machine as you enter KIA should ideally be large enough to scan large suitcases, however it is recognised that resource constraints may make this a challenge in the short-term.

#### *7.20.7 Recommendation 4.3(a.o): Random Checks of Transit Bags*

For planes transiting through the international airports, transit luggage currently is not being searched. It is recommended that random searches of transit bags be conducted once the Sniffer Dog unit has been trained in the identification of wildlife products.

#### *7.20.8 Recommendation 4.3(a.p): Spot Checks on the Smaller Airports/Air strips*

There are a number of rural airports and air strips that do not officially accommodate international travel, but which could easily be used by organisations as hubs for shipping illegal products into and out of the country. It is recommended that random spot checks on planes at these rural airports and air strips be conducted.

#### *7.20.9 Recommendation 4.3(a.q): Brochures upon Check In*

It is recommended that small brochures about wildlife trafficking be handed to all passengers checking in at KIA and CIA over a one-year period. A survey to establish the effectiveness of these brochures should be conducted after one year.

#### *7.20.10 Recommendation 4.3(a.r): Engage the airline companies within IWT law enforcement*

The IACCWC should look to engage the airline companies that operate from and into Malawi (Kenya Airways, South African Airways and Ethiopian Airways), in addition to Malawian Airways,

in their law enforcement efforts. IACCWC should look to form partnerships, with the assistance of local and international NGOs as required, to empower and enhance leaders in such companies to assist the IACCWC in combating IWT. Such tools could include: industry/enforcement role-specific training programs such as wildlife trafficking; a range of wildlife identification information; engagement in controlled deliveries; and a tool for legal and regulatory requirements regarding IWT in Malawi. In addition, the IACCWC, again with assistance from NGOs as required, should aim to work alongside willing airline companies to help them develop long-term viable operations, policies and procedures that will help ensure that they are not targeted by wildlife criminals. It is recommended that one airline company, probably KQ, is approached first and then, if successful, such policies could form best practice guidance for the industry i.e. drive industry driven information dissemination across the other airline companies. These new communication channels could then be used to share regularly updated information on emerging IWT trends, new technologies, approaches, experiences and best practices for combating IWT in Malawi.

## **7.21 Courier and Postal Services**

Criminals appear to be increasingly utilising postal and courier services for the shipment of illegal wildlife products, particularly ivory out of Malawi. There have been several cases of elephant ivory trafficking using postal companies at KIA to export the contraband. One case is still under investigation by the authorities but it has been suggested that over 500 kg of illicit ivory may have left Malawi via the airports over just a few months in late 2014. These parcels were destined to China and suspected to be from a single order. At present the larger private postal and courier companies such as DHL and Fed-Ex, have scanning capability and apparently scan each parcel prior to shipment. However, during the Review it was confirmed that the staff manning such equipment are not trained in the identification of wildlife products and have not been sensitized to IWT issues and risks. No postal or courier company in Malawi currently has a risk management system that considers IWT. In addition, the smaller courier / postal companies, and the Malawi Post Office Corporation, do not have the resources to have good quality scanners at their sorting offices. They too have no internal training or awareness of IWT issues. It is therefore critical that enforcement efforts include ensuring that the public and private postal and courier services are equipped and trained to detect and prevent wildlife products being traded using their services. It is also important that all companies are aware of the legal issues surrounding IWT and start to share the liability and take more responsibility.

### *7.21.1 Malawi Posts Corporation*

The Malawi Posts Corporation (MPC) is governed by the Communications Act (1998) which mandates MPC to "provide postal and financial services and any other services incidental to transmission of postal articles." All post that leaves Malawi using MPC passes through one of just four sorting offices. MPC currently only have one black and white scanner, based at KIA. MPC employees at KIA (and other sorting offices) have not been trained in the detection of wildlife products. MRA do have an inspector based at each of MPC's four main sorting offices: Lilongwe, KIA, Blantyre and Mzuzu, who has the power to search. MPC does not have a legal mandate to inspect the parcels presented to it, but it does have the power to request MRA to inspect such parcels. However, it seems that in the past MPC did not encourage MRA to use such powers, so as not to upset their customers. In addition, it was clear to the Reviewers that the MRA officials working at the MPC sorting offices had not been trained in the detection of concealed wildlife contraband and had not be made aware of the issues related to IWT. It was apparent that neither MPC, nor the postal based MRA officials, factored IWT issues into their risk management profiles. Nevertheless, the General Manager of MPC was very keen to start to encourage his employees to instruct MRA to search and inspect higher risk parcels e.g. parcels posted to China and East Asia with additional risk factors attached, of which there were less than 50 per day. This means a physical search of each and every one of these parcels by MRA is easily achievable if the intent to deter IWT is there.

### 7.21.2 *Private Couriers*

Reviewers interviewed Fedex and it is assumed that other private courier companies such as DHL have similar experiences and challenges. There have been several confirmed instances of ivory traffickers targeting DHL and attempting to use the company to export illicit ivory to the Far East. Fedex has implemented strict protocols which include a requirement to scan/inspect 100% of their shipments before export. The primary challenges to wildlife law enforcement in this instance are therefore not a lack of detection but rather that:

- i) If Fedex reject parcels, then they do not generally report suspect packages to enforcement agencies;
- ii) The vast majority of Fedex employees are not able to recognise wildlife products or how such products may be concealed.

## **7.22 Recommendations: Courier and Postal Services**

### *7.22.1 Recommendation 4.3(a.s): Approach MACRA to establish sector-wide policy and intervention*

The Malawi Communications Regulatory Authority (MACRA) regulates all public and private postal and courier services within Malawi. It is recommended that IACCWC engage with MACRA to develop a partnership and policy concerning wildlife law enforcement protocols. The IACCWC and MACRA should ensure that courier and postal industry standards, policies, systems and processes include illegal wildlife considerations. It is recommended that IACCWC and MACRA engage experts, including local and international wildlife NGOs and law enforcement experts, to form consortiums that will convene industry champions across sectors and help companies and associations develop long term viable anti-IWT operations, policies and procedures that will shape and disseminate best practices industry wide. The partnership should also empower and enhance leadership of the postal and courier sector in the fight against IWT through awareness, capacity, and the introduction of innovative tools that will help improve the detection of illegal wildlife products. It should also aim to facilitate impactful synergies both between the courier and postal sector and with each sector and the IACCWC, through improved provision of wildlife trafficking information, communications networks, and enhanced capacity at key wildlife trafficking postal hubs such KIA and CIA. Such policies could include fines for the various MACRA member organisations should they be non-compliant with their new IWT obligations. At the very least, the IACCWC should attempt to sensitize MACRA to the issues surrounding IWT and the roles and responsibilities of the courier and postal sector in an attempt to ensure that these companies start to accept their fair share of liability and responsibility with regards to wildlife crimes.

### *7.22.2 Recommendation 4.3(a.t): Request Private Courier Firms to Commit to Combating Wildlife Trafficking*

If the private courier companies issued public statements and press releases confirming their commitment to combating wildlife trafficking, it will likely act as a significant deterrent to criminals. These statements could be made as companies agreed to engage in the suggested actions outlined in the previous recommendation.

### *7.22.3 Recommendation 4.3(a.u): Appointment of IWT focal points in Courier and Postal Companies and training of their key staff*

The IACCWC should work to engage courier firms and postal companies in the fight against IWT and request that they identify focal points within their companies that can more readily interface with the IACCWC. They should also be asked to identify key front line personnel, e.g. those that man scanning machines etc. that require specialised training on wildlife product detection and identification. The IACCWC should then ensure that such persons receive adequate trainings.

#### *7.22.4 Recommendation 4.3(a.v): Scanners and Training for MPC (and others)*

According to information received by Reviewers, MPC has been targeted by wildlife criminals many times. Given that MPC currently has only one black and white scanner at KIA, it is recommended that a new scanning machine be secured for the MPC, and that staff are trained in its use for wildlife detection. It is also recommended that there be a generalised training outreach programme for all MPC staff members so enhance their knowledge of wildlife crime and methods of concealment. This training should be rolled out to as many of the MACRA registered courier and postal companies as possible, including market leaders such as Fed-Ex and DHL. The former has already shown an interest and is willing to better understand how they can help combat wildlife crime in Malawi.

#### *7.22.4 Recommendation 4.3(a.w): Improved Identification and Due Diligence for International Post, including copies of photo identification, business corporation certificates and more thorough checks of sender address details*

There have been a number of occasions in recent years, whereby a parcel has been intercepted containing illegal wildlife products, but the information relating to the sender of that parcel was false, making it impossible for enforcement officers to track down the criminal. This has included false post box numbers and address, in addition to false names and companies. It is therefore recommended that MRA make it a requirement for everyone sending a parcel overseas to also submit a copy of some kind of photo identification or copy of business incorporation certificate. For foreign nationals this must be a passport, and for Malawian nationals it could be a driving licence or voting card. In addition, MRA and MPC should help sensitize all postal staff on how to recognise a false postal address. Across Malawi there is a PO Box registration system that can be checked against to help confirm if the details shown on a parcel being deposited are correct. For example, all PO Box numbers for Kawale are known and are only ever within a fixed range of numbers, meaning that if a parcel is sent from Kawale, but details a PO Box number are from outside of this fixed range, then the package should be immediately deemed suspicious and the authorities informed.

### **7.23 Shipping Line and Freight Forwarding Companies**

IWT shipments layer within licit patterns of shipping trade and transportation, and most wildlife contraband is seized at trans-shipment ports along major shipping liner hubs, from Africa to East Asia. The ease and sophistication with which ivory traffickers are able to navigate through the transport and shipping systems across Africa illustrates the significant risk to MRA that customs officials may be linked to or tarnished by due to this transnational crime. There is evidence that political and organisational corruption, fraudulent shell companies, professionalized illicit facilitators and freight logisticians are all associated with wildlife trafficking in Malawi. East Africa has eclipsed West and Southern Africa as the primary gateway for IWT and East African ports are the fastest growing culprits for wildlife contraband seizures. The vast majority of shipping line exports that leave Malawi head to the East African ports of Beira and Pemba in Mozambique and, to a lesser degree, Dar-es-Salaam in Tanzania. All these shipping options represent high risk destinations in terms of IWT. Between January 2009 and December 2013, there were 77 large-scale (>500 kg) ivory seizures across the world; 64% of which were transported by sea and the majority were from the Eastern African seaports. In recent years Malawi has been linked to several high profile ivory trafficking cases, several of them with connections to the shipping line sector.

Major shipping line companies all have extensive risk management systems, but upon investigation very few of these excellent systems currently take into consideration IWT risks. Furthermore, it seems that current industry standard protocols allow many containers to leave a depot and be taken to a private premises for loading and sealing, often with the exporter using their own private seals (with their own serial numbers) and not the seals of the shipping line company. The industry standard is to leave the onus on the client and/or their freight forwarding

agents to inform the shipping line company as to what is in the container and what the goods weigh. If all paperwork is complete and in order, including any required MRA approvals, then the shipment proceeds without anyone from the shipping line company itself (or customs etc.) ever actually inspecting the container's contents prior to distribution, i.e. there is very rarely any physical check of a container done to confirm that what is declared by the exporter is what is actually inside the container. This problem is compounded as it seems that not all containers are actually being scanned at the ports of Beira and Pemba, as required by the International Shipping and Ports Security System (ISPS). Malawian based shipping line companies are therefore very likely to have been unknowingly targeted by IWT criminals and have inadvertently assisted wildlife trafficking and other serious wildlife crimes.

## **7.24 Recommendations: Shipping Line Companies and Freight Forwarding Agencies**

### *7.24.1 Recommendation 4.3(a.x): Engage the shipping line companies (and Port Authorities) within IWT law enforcement*

The IACCWC should look to engage the shipping line companies operating from Malawi in their law enforcement efforts. IACCWC should look to form partnerships with such companies, with the assistance of local and international wildlife NGOs as required, to empower and enhance leadership within their organisation in terms of combating wildlife crimes. The IACCWC should use these leaders to build contacts with the port authorities and management companies in Mozambique and Tanzania. The IACCWC should seek support to help raise awareness of IWT within the shipping line and freight forwarding sector and to help enable such companies to secure the tools they need to deter wildlife criminals. Such tools could include: industry/enforcement role-specific training programs on wildlife trafficking; a range of wildlife identification information; a blacklist of prosecuted wildlife offenders maintained for targeted risk management to enable companies to decline service to offending clients; engagement in controlled deliveries; and a tool for legal and regulatory requirements regarding IWT in Malawi. It is also suggested that MRA, with assistance from DNPW and local and international wildlife NGOs as required, engage with such companies and try to assist them in including IWT in their own internal risk management systems. Such systems should ideally be compliant with those used by MRA (see Section 7.5.18, above) and other international systems such as the UNODC Container Control Programme and ACITES.

In addition, the IACCWC, again with assistance from NGOs as required, should aim to work alongside willing shipping line companies to help such companies develop long-term, viable operations, policies and procedures which reduce their likelihood of being targeted by wildlife criminals. It is recommended that one shipping line company, an industry leader, is approached first and then, if successful, such policies could form best practice guidance for the industry i.e. drive industry driven information dissemination across the other shipping line companies. These new communication channels could then be used to share regularly updated information on emerging IWT trends, in addition to new technologies, approaches, experiences and best practice industry standards for combating IWT in Malawi.

## **7.25 Non-Governmental Organisations and Wildlife Tourism Concessionaires**

### *7.25.1 Overview*

In Malawi, Non-Governmental organisations (NGOs) (and wildlife tourism concessionaires) play a significant role in the protection of wildlife in protected areas. The roles and responsibilities of each NGO vary greatly. For example, the management of Majete National Park is entirely by African Parks, under a public, private partnership agreement (PPP) with DNPW. This PPP (and others e.g. with LWT at Lilongwe Nature Sanctuary) have proven to be very effective ways for DNPW to help protect areas of high wildlife value within their limited resource means. The same approach has been adopted by other government departments with great success too, e.g. DoF's appointment of the NGO Wildlife Action Group (WAG) to deliver conservation management within

Thuma Forest Reserve, including law enforcement services, has resulted in the forest reserve supporting a growing elephant population when most other elephant populations in Malawi are in significant decline. Unfortunately, the chronic lack of resources within DNPW has often meant that in protected areas with no effective PPP wildlife is under significant threat and is in decline.

Several wildlife NGOs, and private wildlife lodge concessionaires, have had to step outside of their official remit and assist DNPW with conservation management duties. At present, organisations such as Central African Wilderness Safari's, Jumbo Africa, Act to Protect and the Nyika-Vwaza Trust all spend their own time and resources helping DNPW to conserve the wildlife within the specific reserves in which they operate. This includes directly or indirectly assisting with law enforcement, infrastructure improvements and deterring and/or apprehending poachers. This has mostly been done as a measure of good will but, it is reported, often with little or no recognition or reward. It does now seem that many of the NGOs and private concessionaires are starting to become very frustrated and disillusioned with the long-term problems facing DNPW and the constant need for their private interventions. This frustration has, it seems, been mostly aggravated by claims of corruption and mismanagement within DNPW, which have apparently been witnessed and directly undermine the efforts and good will being undertaken by the various organisations. There is a need to address these concerns and build relations and better feelings amongst all stakeholders. It is recommended that a starting point would be for DNPW to engage with and clearly communicate with all stakeholders working under the TFCA World Bank funded project in Nyika National Park. Similar consultation and conflict resolution meetings should then be held for all other national parks and wildlife reserves in Malawi.

Given the widespread and extensive national and international responsibilities of DNPW (and the other wildlife law enforcement agencies) there is no doubt that NGOs can help DNPW in the detection and prevention of wildlife crime at a local level. It is important for DNPW to ensure a good and transparent working relationship is maintained with NGOs, and where appropriate, that clear boundaries on roles and responsibilities are set (for example, whether or not an NGO can conduct investigations or has to facilitate infrastructure improvements). NGOs can also provide expertise and support to the IACCWC when undertake specialist stakeholder trainings, research and campaigns aimed to combat IWT. They are also a very useful source of funds and national and international communication networks. However, to ensure continued assistance from NGOs there is need for NGOs etc. to feel more valued by DNPW. DNPW also needs to ensure that there is a real need for an NGO's assistance before that NGO spends its own time and resources on assisting them. There may be areas which either already have sufficient support and/or which are not really seen as a priority by DNPW for funding. DNPW and NGOs need to be more transparent as to what they want supported, what support they have received, by whom, and for what projects. There is also a need for DNPW (and NGOs) to disseminate their project reports and findings between all the other local wildlife stakeholders, to ensure that all sector players are kept abreast of the latest wildlife conservation news and developments across Malawi. Such measures will help ensure that precious resources are not wasted in duplicated efforts and encourage DNPW to be more transparent with grant expenditure.

## **7.26 Recommendations: NGOs and Wildlife Tourism Concessionaires**

### *7.26.1 Recommendations 4.3 (a.y): Enter into further long-term private, public partnerships with NGOs for the management of Malawi's protected areas*

At the time of writing, a decision was being made by DNPW, through the Ministry of Information, Tourism and Culture, regarding the appointment of a PPP for both Nkhotakota Wildlife Reserve and Liwonde National Park. It is thought that African Parks, who already have a similar and very successful PPP in Majete Wildlife Reserve, are the forerunners although no formal agreement has yet to be signed. In light of the chronic resource shortage in DNPW and the large number of protected areas that DNPW are meant to support, it is highly recommended that these proposed PPPs are approved as soon as possible. This will enable DNPW to focus their resource and expertise on a smaller number of sites, which should, in theory, reduce their financial and

administrative burdens and improve wildlife conservation efforts across the country. Such agreements will enable DNPW to start tackling the current demise in wildlife more efficiently and effectively.

*7.26.2 Recommendations 4.3 (a.z): Enter into shorter-term management agreements with NGOs for specialist training and development to enhance DNPW's management of Malawi's protected areas*

PPP agreements, such as those discussed above, require a 20 year commitment and tens of millions of dollars to implement. They also require DNPW to hand over most of the management responsibilities to a third party for the duration of this long-term agreement. In many cases such a PPP model is the best solution for all parties. However, in some instances alternative ideas / models will have to be explored e.g. for Protected Areas where there is little international interest but where wildlife is still undergoing a drastic decline. In such protected areas, e.g. Kasungu National Park, it is recommended that DNPW consider the value of entering into shorter term park management agreements (e.g. 2.5 to 5 years), with specialist NGOs and other organisations. These agreements would outline how DNPW and partners could work collaboratively to transform park management capabilities through a suite of short, sharp interventions. Ten interventions would be required in most Protected Areas in Malawi, including:

1. The upgrading of the law enforcement field forces
2. The establishment of a site level rapid response investigations unit
3. The establishment of a locally recruited & trained construction team
4. The establishment of a mechanical workshop
5. The establishment of a tailoring workshop
6. The establishment of a game proof fence repair and maintenance team
7. The establishment of a road grading and maintenance programme
8. The establishment of a conservation research programme
9. The establishment of a community wildlife crime sensitization programme
10. The establishment of a public/private 'Advisory Board' that would oversee the project and advise and help raise funds for future work post intervention

This shorter-term model is considered a suitable alternative in circumstances where the longer and more costly PPP investments are not possible and DNPW is still facing resource constraints. All work would be undertaken with the view to build capacity in DNPW so that at the end of the 2.5 to 5 years they are ready to run operations themselves.

*7.26.2 Recommendation 4.3(b.a): Communications between DNPW and NGOs (and Wildlife Concessionaires)*

A forum for NGOs etc. and DNPW to discuss openly both their achievements and their challenges would not only ensure regular communication, it would also provide a platform for developing effective collaborative strategies for combating wildlife crime in partnership. This forum could be in the form of a regular 6-monthly meeting at the DNPW headquarters. It would also provide NGOs with an opportunity to voice any concerns that they may have regarding wildlife conservation issues and also help them feel that their ideas and concerns are being listened too. This will build rapport between stakeholders and help build long-term support for DNPW from local NGOs.

*7.27.3 Recommendation 4.3(b.b): Establish an "Association of Wildlife NGOs of Malawi"*

It was apparent from the NGO meetings that communication between wildlife NGOs in Malawi is limited and many operate in isolation from one another, despite often implementing similar work and trying to work towards similar goals. It was proposed at the NGO workshop that some funds should be secured to enable wildlife NGOs in Malawi to establish an association which will help them work more effectively together. Working more collaboratively also provides opportunities for

wildlife NGOs to lobby more effectively for change and encourage action from decision makers on pertinent issues, e.g. management of ivory stockpiles or stiffening penalties for wildlife crimes. Once formed, it is recommended that the association draws up ToRs and RoPs and meets at least twice a year. It is also recommended that the chairperson of the Association is permitted by DNPW to sit on the Wildlife Advisory Board. The Association should work alongside, but remain independent from, the Coordination Unit for the Rehabilitation of the Environment in Malawi (CURE) as it shall only focus solely on specialist wildlife related issues.

#### *7.26.3 Recommendation 4.3(b.c): Support for NGOs in Proposal Development*

NGOs can sometimes access funding that would not be readily available to a government agency. However, in order to access those funds the NGOs need to be fully transparent and work hand-in-hand with government so that they have their full support and endorsement of such proposals in order to maximise the likelihood of success. It is therefore imperative for DNPW to provide the necessary access to information and support with initiatives that could encourage funds to be drawn to Malawi (provided the projects are within DNPW's mandate and provided they follow DNPW's wider goals and objectives). It is important that all NGOs are treated fairly and opportunities to collaborate on projects encouraged. It is also important that local NGOs, who shall be long-term partners, are given the opportunity to support larger international bodies when qualified to do so. This will help ensure sustainability and promote local stakeholder rapport and good feeling.

### **7.27 Specialist Wildlife Crime Enforcement Units**

#### *7.27.1 Overview of Wildlife Investigation Units*

There is no specialist wildlife crime investigation unit currently in Malawi, although DNPW have some reactive capability and the MPS have a proactive intelligence unit that undertakes criminal investigations, including investigations of wildlife crime. DNPW aspires to operate such a unit if resources are made available, but at present enforcement of wildlife crime is invested in a number of institutions, typically MPS, DoF and DNPW. One key recent development was the establishment of the IACCWC which enables these stakeholders to work collaboratively and crucially, for them to share information. It is the IACCWC that currently co-ordinates wildlife crime enforcement, although at present it requires more funding to enable it to convene regularly and enable the Committee to develop a standing agenda, diary dates for the forthcoming year and other routine arrangements that will ensure effective enforcement.

#### *7.27.2 Effective Wildlife Crime Law Enforcement*

Law enforcement is one of the main tools to reduce wildlife crime, it involves any government action or intervention taken to determine or respond to criminal activity. It is often the most immediate and visible way to combat this crime. It increases the costs and risk to criminals through the probability of being caught, convicted and of deterrent sentences. It is essential that enforcement activity increases the risk of arrest and prosecution to those involved in organised crime. If they do not believe they will be caught no level of deterrent sentence will be effective. Equally if the risk of arrest and prosecution is successfully increased, but sentences are a mere slap on the wrist, then that too is ineffective. Both elements need to be tackled simultaneously. Therefore professional police, wildlife and forestry enforcement, border control services and prosecuting arrangements are prerequisites for effective deterrence and the delivery of justice.<sup>33</sup>

Effective enforcement comprises:-

- Sensitisation
- Prevention activity

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<sup>33</sup> UNODC, "Public safety and police service delivery", in Criminal Justice Assessment Toolkit



- Reactive Investigation
- Proactive investigation based on developed intelligence
- Targeted disruption based on developed intelligence
- Seizure of assets of perpetrators, including money laundering investigation
- Specialist prosecutors

Wildlife crime has traditionally had a low profile within many investigative agencies across the world; in a competition for resources it fares consistently poorly against violent crime, other crime against the person and high profile crime such as corruption.<sup>34</sup> This lack of profile reflects the *perception* of Governments priorities; in turn it mirrors how the threat is perceived by much of civil society. This is a critical factor in enforcement; for public perception about how serious a particular crime is, has a direct correlation with their willingness to provide information and assistance to enforcement agencies. In short, if Government is perceived to take it seriously everybody else will follow suit.

### 7.27.3 Roles and Responsibilities of a Specialist Unit

Investigating wildlife crime involves different proactive, disruptive and reactive investigation methods. All these activities are most effective when they are driven by information collected, analysed and developed by a central unit on behalf of all stakeholders. That unit will then provide the stakeholder organisations with actionable information to enable them to utilise hard pressed resources in a targeted, cost efficient fashion. The intelligence can be used to target areas for prevention activity, for targeted disruption as well as to direct investigative activity. Protocols can be developed to ensure information security between units and agencies.

While it is important to gather information from a wide range of sources, it is likely that the information will vary in quality, and the sources will vary in reliability and motivation. It is essential that information be subjected to some form of analysis and processing by trained personnel before it is disseminated or used. A vital factor in the effective exchange of intelligence is also the speed at which material can be transmitted to the relevant agencies or investigators who may be in a position to respond to it.<sup>35</sup>

### 7.28.4 Importance of a Specialist Unit

The disparate enforcement agencies whose responsibility it is to investigate wildlife crime all have limited budgets and a very wide remit, none of which is conducive to enable any of them to prioritise its investigation. Each agency is juggling with conflicting priorities and wildlife crime is very often low down that list. Experience in many jurisdictions shows that the development of specialised enforcement units for any category of crime raises its profile and enables investigators to develop crime specific skills. Examples are serious fraud, domestic violence, and sexual offences amongst others. It also allows for the pooling of resources and expertise into small units which will complement and drive the general level of enforcement across the country<sup>36</sup>. A specialist unit will also be able to develop arrangements to liaise directly with the rapid reaction units operating in the protected areas and exchange information and intelligence in real time. This network development will ensure that investigative and evidence gathering opportunities are not missed by time delays, so often present when front line teams and investigative agencies operate independently.

It is extremely difficult to quantify the extent of wildlife crime for; in general, the authorities only become aware of what they intercept. The totality of criminal activity is unknown, it is like an iceberg, and we only know the extent of that which we can see. For example, it is likely that the

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<sup>34</sup> Adrian Linacre, "Nature of wildlife crimes, their investigations and scientific processes", in *Forensic Science in Wildlife Investigations*, Adrian Linacre, ed. (Boca Raton, Florida, CRC Press, 2009), pp. 1-2.

<sup>35</sup> UNODC Criminal Intelligence Manual for Analysts

<sup>36</sup> UNODC, "Public safety and police service delivery", in *Criminal Justice Assessment Toolkit*

number of actual illicit ivory seizures by authorities around the world (and Malawi) account for no more than 10% of the total illicit trade. As a result, to those not directly connected to the issue, it may appear to be less extensive than it really is. However, we do know that endangered species are reducing, seizures of smuggled products are increasing and it is an issue which requires an urgent and appropriate response.

#### *7.28.5 Specialist Intelligence*

The introduction of a specialist unit will also enable it to develop proactive investigation skills that have a proven track record in combating wildlife organised crime. Proactive investigation results in prosecutions that do not rely on evidence from members of the public with the uncertainty that that entails. Critically it allows investigators to concentrate on the central characters and locations involved in organising the criminal activity. Evidence is compiled covertly, in conjunction with prosecutors to build a compelling case for court. When criminals are faced with evidence compiled in such a way, they very often admit their guilt and in an effort to mitigate the length of their sentence, offer to assist investigators. Additional work should take place on asset tracing alongside the main enquiry, as depriving an offender of their criminal spoils is another significant deterrent factor.<sup>37</sup>

Techniques may be used such as:-

- Test purchasing
- Controlled deliveries<sup>38</sup>
- Development of Informants and an informant handling system/protocols
- Integrity Testing
- Use of undercover officers
- Financial Investigation and asset recovery in conjunction with the FIU

At present there is no civil service establishment for such a unit, however, there is much goodwill and commitment within the stakeholder agencies for a phased introduction, as detailed below in Section 7.28.

### **7.28 Recommendations: Specialist Wildlife Crime Investigation Units**

#### *7.28.1 Recommendation 4.3(b.d): Establishment of Phased Specialist Wildlife Crime Investigation Unit (WCIU)*

Given the current chronic lack of equipment and resources available to front-line wildlife enforcement officers, and further given the serious and urgent nature of wildlife crime taking place in Malawi, the establishment of a specialist wildlife crime investigation unit is highly recommended. It was discussed at an IACCWC meeting on the 7th November, 2014, that DNPW should ideally house and lead such a unit. In February 2015 GIZ funded a specialist organised crime investigations expert to visit Malawi and make recommendations on how this could be achieved, should funds be secured.

The findings of the study are presented in the full report contained in Annex J. The recommendations mentioned in the report have been given initial approval by several key decision makers and stakeholders, including: members of the IACCWC, including the Chairperson, the Director of DNPW and representative members from MRA, INTERPOL, FIU and

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<sup>37</sup> Association of Chief Police Officers UK, Practical Advice on Financial Investigation 2006

<sup>38</sup> The International Consortium on Combating Wildlife Crime is implementing a project entitled “Establishing national controlled delivery units” in over 20 countries with funding support from the World Bank’s Program on Forests (PROFOR). Activities include a workshop, experimental controlled delivery operations and the establishment of national controlled delivery units within participating countries.

ACB; the Principal Secretary for the Ministry of Information, Tourism and Culture; the Deputy Inspector General Operations of MPS and members of his staff; the Acting Commissioner Customs and Excise of the MRA and members of his staff; the Director of Public Prosecutions Office; the Director of FIU and a representative of the FIU on the IACCWC; and, the Director General of the ACB and his staff.

In summary, the following recommendations were made as to how best establish a specialist operational Wildlife Crime Investigations Unit (WCIU):

1) *Consolidate Wildlife Criminal Intelligence*: Utilize and strengthen the existing criminal intelligence division within MPS to collect and deliver actionable information for use by the IACCWC and the operational WCIU in DNPW.

The MPS unit has good security protocols in place, and are well trained in the use of the internationally recognised intelligence software system – IBM i2. It is important that seizures and arrests for wildlife offences are linked to the wider fight against serious criminality and that collaboration of intelligence between States is possible, due to the transnational nature of the wildlife crime. To retain integrity, the criminal intelligence arm should sit outside of the IACCWC, but feed in information to the IACCWC as requested and permitted.

2) *WCIU Phase 1*: A core group of investigators selected to form the operational WCIU housed in DNPW, comprising:-

- Lead Investigator from DNPW
- Seconded Investigator from Malawi Police Service (Secondment 1 year minimum)
- Seconded Investigator from MRA (Secondment 1 year minimum)

Other relevant IACCWC members may identify lead investigators in their own agency, those individuals can act as direct points of contact for the WCIU and be recipients of any additional skills training provided by the project. In this way, centres of excellence may be developed in the stakeholder agencies. In the event of a spike in workload, additional personnel could be attached to the WCIU on a short term secondment; details to be determined by IACCWC. It is crucial that this phase is supported by external technical assistance on a permanent basis during a minimum period of 4 – 6 months.

3) *WCIU Phase 2*: Assuming that phase 1 is showing signs of success against the performance measures set, and to develop sustainability, it may be appropriate to hold a functional review within DNPW to determine Phase 2 of the WCIU. Once agreement and budget has been provided then appropriate recruitment can take place under this next phase.

Three options might be considered:

1. The unit remains staffed by secondees from constituent agencies on rolling programme.
2. New staff recruited externally.
3. Applications from existing seconded staff for permanent WCIU/DNPW positions could be considered.

4) *WCIU Phase 3*: Dependent on which option is adopted during phase 2, Phase 3 will comprise a gradual process of induction, training and mentoring of new staff to enable them to take on their responsibilities. The provision of technical support is again required during this phase to ensure that standards are maintained through and after transition. It should be a minimum of 2 months, but might require as much as 4 months dependent on the options taken.

#### *7.28.2 Recommendation 4.3(b.e): IACCWC to define scope for WCIU engagement*

Commencing any investigation after the event is the most difficult and costly method of investigation with limited chances of success. Reported wildlife crimes vary from a few grams

worth of ivory to several hundred kilos on an industrial scale. It is essential that any reactive investigation is undertaken professionally and that each of the agencies is able to retain its own investigative capacity. However, it would make sense for only the most serious of these offences to be investigated by the WCIU.

#### *7.28.3 Recommendation 4.3(b.f): Establish DNPW Rapid Response Units in protected areas*

There is also a need to train specialist Rapid Response Units (RRU) within DNPW's protected areas. The RRUs should be formed from a new selective recruitment drive and initially trained and retrained by an external expert for several years. Each RRU should have a broad range of tasks including:

- a) Briefing & debriefing of patrol teams.
- b) Mapping and monitoring of patrol coverage.
- c) Interviews and interrogations with those suspected of wildlife crimes, those accused of wildlife crimes and those convicted of wildlife crimes in the PA and the surrounds.
- d) The investigations of specific poaching incidents, or trafficking offences within PA and the surrounds.
- e) The investigations of reports of poaching incidents or reports of trafficking offences.
- f) The preparation and co-ordination of road blocks, raids and searches.
- g) The gathering, management and processing of information that may be of intelligence value or of counter intelligence value. This would include the management and rewarding of informants.
- h) The collection, recording and proper preservation of all and any evidence that can connect a suspect to a wildlife crime in the PA and its surrounds.
- i) Involvement in all prosecution of wildlife crime cases relevant to the PA and the surrounds.
- j) Recruitment, training and support of community rangers around each PA.

It is essential an each RRU works as a small elite team that operates independently from the main wildlife scout staff provision. The RRU members should be subject to arduous and highly selective training and retraining cycles and quarterly appraisals. An external independent expert is likely to be required to recruit and train these elite squads. The RRU's would undertake investigations and gather information and intelligence at the front line. Each RRU leader will therefore need to be trained and trusted to engage effectively with the central WCIU.

#### *7.28.3 Recommendation 4.3(b.g): Promote and Strengthen the DNPW Wildlife Emergency Response Unit (WERU)*

A Wildlife Emergency Response Unit (WERU) is currently being operated in joint partnership between DNPW and LWT. WERU is an emergency veterinary service in which a mobile wildlife veterinarian is on call, resourced and available to respond to any incident, when a wild animal is found in distress as a result of a wildlife crime, e.g. found injured etc. in snares, gin-traps etc. by a RRU or standard wildlife scout. WERU's wildlife veterinarians are also available to help undertake wildlife crime scene investigations, especially to determine cause of death to an animal in certain instances when the cause is otherwise unknown, e.g. poisoning. This helps ensure that records of deaths by "natural causes" are not exaggerated and potentially used to cover up wildlife crimes. It is recommended that WERU be widely publicized and engaged by all DNPW teams across the country, as it will be a very useful tool for gathering expert medical evidence at the scene of a crime. Such evidence can then be passed on and later used by a prosecution team. It is recommended that resources are secured to help ensure WERU's longevity.

## **8.0 Judiciary and Prosecution Services**

### **8.1 Malawi Constitution**

Malawi's Constitution describes a legal system that is open, transparent and owned by the People of Malawi. Its fundamental principles include the following statements:

*i) All legal and political authority of the State derives from the people of Malawi and shall be exercised in accordance with this Constitution solely to serve and protect their interests;*

*ii) All persons responsible for the exercise of powers of State do so on trust and shall only exercise such power to the extent of their lawful authority and in accordance with their responsibilities to the people of Malawi;*

*iii) The authority to exercise power of that State is conditional upon the sustained trust of the people of Malawi and that trust can only be maintained through open, accountable and transparent Government and informed democratic choice.*

### **8.2 Malawi Judiciary and Prosecution Services**

In compiling this report, Reviewers met with the Senior Resident Magistrate for Lilongwe, State Advocate for Public Prosecutions and Head of Prosecution Services for the Malawi Police Service.

#### *8.2.1 Malawi Prosecution Services*

Malawi's Prosecution Services are housed within the Ministry of Justice which has the following Mission Statement: *"To promote the rule of law through provision of professional legal services in a transparent and accountable manner in order to ensure a just, fair and democratic society."*

Malawi's Ministry of Justice is divided into the following offices:

- *Minister's Office*
- *Attorney General Chambers*
- *Directorate of Public Prosecutions*
- 
- *Department of Administrator General*
- *Department of Registrar General*
- *Administration and Support Services*

In compiling this report, Reviewers met with the Senior Resident Magistrate for Lilongwe, State Advocate for Public Prosecutions and Head of Prosecution Services for the Malawi Police Service.

#### *8.2.2 The Judiciary*

It was not possible to conduct a fully comprehensive review of Malawi's judicial system as part of this IWT Review process. Reviewers did, however, assess the ability of the system to adequately enforce wildlife law. For a more comprehensive judicial review, the UNODC *Criminal Justice Assessment Toolkit* may provide an effective mechanism.

The organisation and structure of the judiciary in Malawi allows for its independence from central Government. The judiciary is represented on the IACCWC by the Senior Resident Magistrate for Lilongwe, who is currently the IACCWC Chairperson. The IACCWC therefore provides for interaction and communication between the wildlife law enforcement agencies and the judiciary. The majority of wildlife crime cases are heard by the magistrate courts in the various districts, although cases of serious wildlife crime are often referred to the senior magistrates within Lilongwe and Blantyre. The High Court has been used to pass judgement on a small number of

wildlife crime cases, often upon appeal from the prosecutors. The outstanding case regarding the Mzuzu seizure of 791 tusks is to be heard at Mzuzu High Court in the first instance. However, generally there are not enough magistrates and judges to cope with the back log of court hearings and wildlife crimes hearings are often postponed and delayed. In several instances they do not make it to court at all.

At present most courts do not have access to electronic communications and word processing technologies. Most court case files and evidence are stored only as hard copy and are archived after 5 years. Upon archiving, the case files are not easily accessible, so the availability of legal materials to judges is limited. Few courts outside of the major cities have access to current legal materials such as statutes, case reports and other literature. There is a court registry, but it operates using a hard copy system, thus it is challenging when one tries to find and share past case files between courts and judges. In short, court proceedings etc. are well recorded but it is difficult to keep track of the files once they have been moved from court.

### 8.2.3 Attorney General

Malawi's Attorney General is the senior legal advisor to Malawi's Government. According to the Constitution, the position may be held by either a Cabinet Minister or a public officer. Currently the trend is for the Minister of Justice and Constitutional Affairs to hold the position and it is therefore a political office.

### 8.2.4 Court Structure and Proceedings

Malawi's Criminal Procedure and Evidence Code (1973) sets out the different grades of Magistrate's Courts within Sections 13 and 14:

- The Supreme Court of Appeal.
- The High Court: *"may pass any sentence authorized by law."*
- A Resident Magistrate's Court & A First Grade Magistrate's Court may: *"..pass any sentence, other than a sentence of death or a sentence of imprisonment for a term exceeding fourteen years, authorized by the Penal Code or any other written law";*
- A Second Grade Magistrate's Court may: *"...pass a sentence of imprisonment for a term not exceeding five years or a fine not exceeding K200\* or both";*
- A Third Grade Magistrate's Court may: *"...pass a sentence of imprisonment for a term not exceeding twelve months or a fine not exceeding K150\* or both";*

*\* Note that the Conversion Act has application here.*

If a subordinate court *"is of the opinion that greater punishment should be inflicted for the offence than it has the power to inflict, the court may, for reasons to be recorded in writing on the record of the case, instead of dealing with him in any other manner, commit him to the High Court or to another subordinate court of higher grade than itself for sentence."*

If the Resident or First Grade Magistrate's court passes a sentence of more than two years, or if it is a case involving a first offender, the case is then automatically passed up to the High Court. All cases in the High Court are heard by a Jury of 12 people.

The location of subordinate court proceedings are determined by Section 68 of the Criminal Procedure and Evidence Code, which states that any case shall: *"...be tried by the subordinate court nearest to the place at which the offence took place, or where the accused was apprehended or is in custody..."*.

### 8.2.5 High Court Recognition of Wildlife Trafficking as a Serious Offence

A 2003 High Court Case (R v Maria Akimu) concerning ivory trafficking, recognised wildlife trafficking as a serious offence. This set case law precedent in Malawi, enabling the Judiciary and Prosecution Services, from that point forwards, to treat wildlife trafficking as serious organised crime and enable magistrates to pass custodial sentences, in addition to fines, for first time offenders of serious wildlife crime. The full High Court Ruling can be found in Annex N.

The 2003 High Court Judgement stated:

*"Processing, trafficking, hunting of trophies should in recent times be considered as a serious offence sui generis. Much of the trafficking, hunting and possession of trophies affects animals that are endangered species under many international and regional instruments or arrangements to which Malawi is a party. Under these, Malawi must not only resort to steps reducing threats to the species but eliminate completely all conduct that threatens these species."*

### 8.2.6 Directorate of Public Prosecutions

The Directorate of Public Prosecutions (DPP) is a public office established under the Constitution of Malawi, whose Director is appointed by the President, following Parliamentary approval. The primary responsibility of the Directorate is the prosecution of all criminal cases and the functions of the Directorate are laid out in Article 99 of the Constitution. The office of the DPP is part of the executive arm of government, although the Constitution requires that the Directorate be entirely independent of any authority in carrying out its duties. The DPP has the authority to take over criminal proceedings instituted by any other authority. MPS are not under the DPP, they are also an executive arm of government, however DPP has the power to direct police to conduct investigations into criminal matters, and also can direct MPS to institute criminal proceedings in a competent court. Police prosecutors conduct criminal proceedings on behalf of DPP and the Public.

Under the constitution of Malawi, only the Director of Public Prosecution has vested authority to conduct all public prosecutions. Agencies such as the ACB and MPS have delegated authority to prosecute subject to consent by the Director of Public Prosecutions. The ACB prosecutes corruption cases and other cases as long as they were established in the course of investigating a corruption case. At the time of writing the DPP had not be involved in prosecuting any wildlife crime cases in Malawi, although they have recently been engaged to assist with the Malawi-Tanzanian seizure 2013.

### 8.2.7 The Prosecution of Wildlife Offences in Malawi

It appears that the vast majority of wildlife prosecutions in Malawi have taken place in lower grade courts and prosecuted by lower ranked officers of the MPS. As a result, the fines received were extraordinarily small and not in any way reflective of the seriousness of the crimes committed. For example, a case of ivory trafficking heard in Rumphi Magistrates Court resulted in a fine of just 20,000 Kwacha (USD 40). Worryingly, Reviewers additionally found that 20,000 Kwacha is the average fine given nationally for ivory trafficking – an extraordinarily low amount that must provide no deterrent at all to wildlife criminals.

This problem appears to be well known and recognised by many stakeholders in Malawi; many of which raised concerns with the Reviewers that wildlife cases were being held in courts that were too low-grade, and that the serious organised nature of wildlife trafficking was not being recognised in the judicial and prosecution system. The current system of wildlife crime prosecution is clearly in need of review and revision.

Two exceptions presented to Reviewers were:

**a. Criminal Case No. 677 of 2014.** Axin Shang (a Chinese National) was heard at the Senior Resident Court in Lilongwe. Mr Shang was found guilty of trafficking 50 kg of ivory disguised as wooden boards and given the maximum sentence available under the Wildlife Act of 1,000,000 Kwacha and was given a deportation order to leave Malawi immediately.

**b. Criminal Case No. 237 of 2014.** Michael Kingsley Phiri (a Malawian National) was heard at a First Grade Magistrate's Court in Lilongwe. Mr Kingsley was found guilty of possession and trafficking of 74 kg of ivory and was given the maximum sentence available under the Wildlife Act of 1,000,000 Kwacha.

A greater challenge for wildlife cases is that the problems extend beyond the field of wildlife law. For example, it is understood that there are very few police prosecutors with extensive legal training (some training not extending beyond 3 months) which means that training is often restricted to the Penal Code only.

#### *8.2.8 Length of Investigations*

In order to conduct proper investigations of offences and suspects, it is important that the relevant enforcement agencies be given the time needed to properly investigate any cases. One of the challenges expressed to Reviewers was that wildlife offenders often plead guilty immediately upon arrest, and as such, significant pressure is felt by certain members of the prosecution services to hear and complete the case immediately. Some cases were reported to have been finalised within 48 hours of initial reports being received, and before many of the relevant agencies had even been aware of the existence of the case. Indeed, several months after cases were heard, DNPW appear to not have been properly informed of those cases.

As a result, criminals apprehended ordinarily are not investigated thoroughly by the relevant agencies, such as the ACB and FIU. No links can be made between a current case and other pending cases. Additionally, neither INTERPOL nor Immigration are in a position to determine whether or not the individual is wanted for crimes in other countries. This is a serious block to any kind of proactive investigations, and indeed is one of the key reasons for an almost complete lack of strategic, proactive and complex investigations into wildlife criminals and networks operating within Malawi.

#### *8.2.8 Outstanding Prosecutions*

It appears that many more poachers are arrested, often in possession of suspected illegal firearms, than are sentenced at the magistrate courts (see Section 5.5.4, above). This may be a consequence of the chronic backlog of cases that the magistrates are having to process (see Section 8.2.2), and/or it could be a result of something more underhand e.g. a bi-product of corruption or collusion. For example, the Reviewers were informed of a community run covert "Poachers Association" in the Nyika-Vwaza area which raises funds collectively to pay off officials and release accused persons if they are one their "members". Data provided by DNPW from Vwaza Marsh Wildlife Reserve revealed that significantly more poachers had been arrested than prosecuted and upon investigation it was apparent that almost 15 wildlife crime cases were still outstanding at Rumphu magistrate court alone. In addition, data provided by the Nyika-Vwaza Trust showed only 50% of poachers apprehended in Nyika National Park in 2013 and 2014 have actually faced prosecution and had cases heard in court. Furthermore, WAG arrest around 100 poachers a year in Thuma Forest Reserve, Salima and hand them onto the authorities. However, between 2010 and 2014 the MPS office in Salima has just 10 records of people that were convicted and sentenced by the local magistrate court. A similar situation emerges from other Protected Areas such as Liwonde National Park, Kasungu National Park and Lengwe National Park.



This is a serious matter that needs addressing as the consequences are significant. The current situation provides negligible deterrent to poachers and known notorious poachers will continue to reoffend. For example, DNPW datasets show that a Mr Kondwani Msiska was arrested in April 2011 for illegal entry into Nyika National Park, conveying a firearm and hunting in a protected area. He was also found in possession of an unlicensed firearm, live ammunition and some game meat. This case was never heard in court. Then, in May 2014, Mr Msiska was arrested again by DNPW in Nyika National Park, having been suspected of committing exactly the same offences as in April 2011. He was again also found in possession of an unregistered firearm. To date Mr Msiska is yet to face trial for either the first or second case and it is assumed that he is still at large and free and able (armed) to continue his criminal activities in and around Nyika National Park. Such incidences must be stopped.

### *8.2.9 Insufficient Deterrence through Inadequate Prosecution and Weak Sentencing*

Weak sentencing is a chronic and widespread problem that is not just restricted to Kasungu district (as described in Section 5). There are many examples from across the country where a meagre fine has been attributed to a poacher, who has then gone on to reoffend (and then, all too often, has again been given a meagre fine and gone on to reoffend again etc.). For example, in Nyika National Park, Mr Mwiza Chakaka Nyirenda was found guilty in July 2011 of: illegally entering Nyika National Park, conveying a firearm and killing a game species. He was fined MK 35,000 (ca. \$75) and paid the fine. In February 2014, Mr Nyirenda was arrested again by DNPW in Nyika National Park, found in possession of game meat, and charged for the same three offences that he was convicted of in July 2011. He has not yet been prosecuted for the February 2014 offences. Another example is Mr Henry K. Ng'ambi, who was convicted and fined MK 80,000 in October 2011 for killing a protected species in Nyika National Park with an unlicensed firearm. He paid the fine and then, in February 2012, Mr Ng'ambi was back in court and given exactly the same punishment by the same magistrate, when found guilty of having again committed the exact same offences which he was previously found guilty of less, than 6 months prior. Again he paid the fine, was free to leave and, in theory, continues his poaching activities.

This problem is exasperated when magistrates also fail to follow best practice. For example, Mr Frackson Mhone was arrested and convicted four times between February 2012 and April 2014 for the same offences: illegal entry into Nyika National Park, conveyance of an unregistered firearm; and, killing of a protected species. In February 2012 he received and paid a fine of MK 55,000 (ca. \$120), in April 2013 he received a 12 month suspended sentence, but in February 2014, while still on suspended sentence, he only received a fine of just MK 60,000 (ca. \$130). Finally in April 2014 (again while still on suspended sentence) he received his lowest fine yet of just MK 40,000 (ca. \$90). In all instances he paid the fines and never served a custodial sentence, despite twice being found guilty of game offences while serving a suspended sentence! In addition, Mr Mhone was only charged under the NPWA and did not face any additional charges under any other Act of Law, including the Firearms Act, against which Mr Mhone had very probably committed several offences. From the data received during this review, the Reviewers recorded at least 16 cases between late 2013 to late 2014 where poachers reoffended and still only received minor fines, many of these were also found in possession of an illegal firearm during the first and subsequent arrests.

Data collected by WAG from Thuma Forest Reserve and Dedza-Salima Forest Reserve in 2014 illustrates these issues related to inadequate prosecution and weak sentencing. See Figure 18, below.

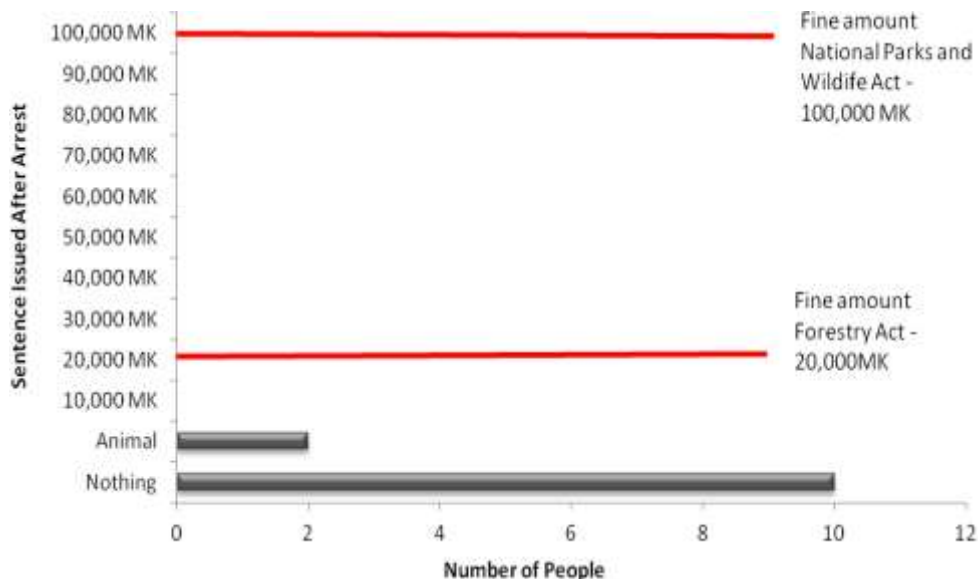


Figure 18: Sentences issued to those arrested by WAG in Thuma Forest Reserve for trafficking and/or possession of protected species. Note that the only people fined for trafficking or possession offences were the two taken to the Group Village Headman, who were fined a pig and a goat. All others were released by police or received only a suspended sentence.

### 8.3 Recommendations: Judiciary and Prosecution Services

#### 8.5.1 Recommendation 5(a): Alert to All Prosecution Services

In the very short-term, in order to raise awareness of the serious and organised nature of wildlife crime, it is recommended that an Alert be issued by the DPP and the Attorney General to all members of the prosecution services. This Alert will ensure that Magistrates and Prosecutors are all aware that wildlife crime cases require proper investigation and that the value of certain trafficked products is high enough to warrant promotion of cases from subordinate courts to higher courts (no lower than First Grade Magistrates).

#### 8.5.2 Recommendation 5(b): Series of Regional Sensitisation Workshops

Reviewers recommend that a series of regional workshops are undertaken for magistrates and other members of the prosecution services. These workshops would focus on ensuring that magistrates are able to use the NPWA (as amended, based on recommendations from this Review), as well as introducing the need to use other relevant acts in the prosecution of wildlife crime (such as the Money Laundering Act). The recent IWTCF grant has ensured that some of this work will be commencing within the next 12 months.

#### 8.5.3 Recommendation 5(c): Engagement of the Director of Public Prosecutions

In order to resolve the challenges concerning lack of investigation time and subordinate court hearings, it seems pertinent to engage in dialogue with the Director of Public Prosecutions. The Reviewers' recommendation is that it be made mandatory for all cases relating to ivory and rhino horn, regardless of the perceived value of the product, and regardless of whether the suspect has pleaded guilty:

- i) Always be held in a First Grade, Registrar's Magistrate's Court or High Court;
- ii) Always be given a minimum of 7 working days before the court hearing, in order to conduct the required investigations;

iii) Always be formally and immediately reported to the DPP.

After one year, the above can be reviewed and amended if necessary (e.g. to extend to other wildlife products). Reviewers suggest that the IACCWC request the support of the DPP in the development of an appropriate process for implementing this recommendation.

#### *8.5.4 Recommendation 5(d): Development of materials and guidelines for judiciary and prosecution services*

To date, there has only been a handful of custodial sentences for wildlife crimes, and the average fine for trafficking ivory in Malawi is just MK 20,000 (ca. \$40). A booklet detailing the NPWA and other relevant legislation (such as the Firearms Act, Money Laundering Act etc.), as suggested above in Section 6.7.1, should be developed and distributed to all prosecutors and magistrate courts. In addition, the development of prosecution and sentencing guidelines would avoid overly weak sentences and assist with standardisation of sentencing, ensuring that IWT is treated as a serious offence. The IWTCF grant to Malawi has ensured that some of this work is likely to commence in 2015.

#### *8.5.5 Recommendation 5(e): Online Course on IWT and the Law in Malawi*

To address the problems associated with lack of training concerning the NPWA and other relevant legislation, an online course could be developed in collaboration with a Malawian or International University. This course should be free to those taking it, and for those successfully completing the course, a qualification and certificate would be given. If the course was proven to be successful then consideration should be given to upscale it and increase its remit.

#### *8.5.6 Recommendation 5(f): Establishment of Specialist Wildlife Prosecution Committee*

It is recommended that a select committee of prosecutors from the DPP, MPS and IACCWC is formed to help handle all serious wildlife crime cases being investigated. The committee should form the focal point for prosecution of wildlife crime in Malawi and should have the responsibility to ensure that all other prosecutors across the country are well sensitized on wildlife crime, including its organised nature, and the range of tools and laws available to prosecutors to deter and secure convictions. Resources should be made available from the respective agencies to ensure the sustainable longevity of this committee. Donor assistance may be useful in helping to establish the committee and could cover early operational activities while central government funds are being secured. The committee should work alongside the specialist WCIU.

#### *8.5.7 Recommendation 5(g): Review of outstanding wildlife crime court cases and additional resource allocation to remove backlog of wildlife crime cases*

Once a specialist wildlife prosecution committee is established, and has clear ToRs and RoPS, then one of the first tasks it should undertake is a review of the outstanding wildlife crime cases across districts, and an investigation into the rationale behind some of the more dubious sentences that have been passed. Once the review is completed, extra effort and resource should be attributed to working through the backlog of cases to ensure that wildlife criminals are suitably punished for their multiple crimes. This will offer significant deterrence to further criminals and will also generate lots of valuable wildlife crime data for inclusion in any forthcoming Centralised Wildlife Crime Database.

## **9.0 Drivers & Prevention**

### **9.1 Overview**

The economic and social drivers behind the IWT can be wide and varied – from political unrest to poverty and food insecurity. Although this study was unable to provide a comprehensive analysis of the drivers of IWT in Malawi, it seems clear from our interviews conducted with stakeholders and community members, that rural poverty is a factor in their participation in poaching. However, for the middle men and kingpins of IWT, many of whom are not Malawian nationals, the primary driver is clearly the very high value of most trafficked wildlife products, combined with extremely low detection and prosecution rates for criminals. Malawi's geographic position, within the middle of some of Africa's richest wildlife reserves, is also an important consideration, as are Malawi's relatively porous borders and close proximity to the East African sea ports of Pemba and Beira (see Section 1, above).

### **9.2 Unsustainable Development**

Protected wildlife areas, such as national parks and wildlife reserves, account for about 11.7% (1.1 million ha) of the total land area of about 9.4 million ha in Malawi. The occupancy of such large land areas by national parks and wildlife reserves has created serious conflicts between the government and the interests of rural communities. The Malawi Government's goals for establishing protected areas include wildlife conservation, while rural communities view the protected wildlife areas as potential land for settlement and agricultural development. This is particularly problematic because overall wildlife does not yet play a major role in Malawi's economy due to a relatively low animal population density and limited tourist infrastructure. Outside of the protected areas, wildlife is treated as an open-access resource and traditional authorities generally no longer regulate the activities of their own people, nor do they deter outsiders from utilising wildlife that occurs within their territories. To most local Malawians wildlife is viewed as natural resources provided by nature, or God, as a source of livelihoods which, as God given, is therefore unlimited ("God shall always provide"). The indifference of traditional authorities, coupled with the rapid increase in Malawi's human population (estimated at ca. 16 million), with an annual increase of 2.9% (last figure from 2008) has resulted in the depletion of many large mammals outside of protected areas and in high incidences of human-wildlife conflicts. The main causes for this depletion are illegal hunting, problem animal control and habitat destruction. Habitat destruction is in the main part driven by agricultural expansion, human settlement, uncontrollable fires and the unsustainable harvesting of wood for energy consumption. Tackling the fuel wood crisis will be an essential part of wildlife conservation management in Malawi.

These problems and conflicts are common place across developing countries, especially those that contain a large percentage of the populace that are living in poverty. Malawi is one of the world's poorest countries and consequently over 15% of the populations' income is derived from forests (e.g. the illegal harvesting and trade of forest resources) and 96% of Malawians still rely on charcoal and firewood for their energy requirements. Due to this high level of interdependence between livelihoods and the environment, it is not surprising that as the population of Malawi rapidly increases, the extent of forest/wildlife areas decrease (Malawi has the world's 5th highest deforestation rate – about 3.5% of forest cover is being lost annually). This significant loss and degradation is considered not only a major threat to the wildlife of Malawi, but also to the many thousands of poor and vulnerable Malawians that depend on wildlife for their survival. It is generally accepted that the continued loss of forest habitat will have a devastating impact on both the people and wildlife of Malawi, while also having other far reaching negative impacts, e.g. deforestation and forest degradation contribute to ca. 20% of Malawi's total green-house gases. Furthermore, fewer trees means less carbon storage and therefore further climate change related problems such as floods, droughts, species decline, soil erosion etc. and then the obvious knock-on expenses and risks for the Malawi Government<sup>39</sup> and Malawians to deal with.

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<sup>39</sup>Ministry of Natural Resources, Energy and Environment (2010) Malawi State of Environment and Outlook Report – Environment for Sustainable Economic Growth. Malawi Government, Lilongwe, Malawi

### **9.3 Poverty**

Malawi ranks 174<sup>th</sup> out of 187 on the United Nation's Human Development Index, placing it among the very poorest nations in the world. Life expectancy in Malawi is 55 and the percentage of the population with "some" secondary education is 10.4% (female) and 20.4% (male). In addition, a significant proportion of Malawi's population (72.2%) lives below the globally recognised poverty line of less than \$1.25 / day. Approximately 85% of Malawi's 16.3 million people live rurally, often concentrated around environmentally sensitive areas. The vast majority of Malawians depend on natural resources. The value of ecosystem services is therefore extremely high and the need to preserve Malawi's environment critical for the long-term welfare of the country's people and wildlife. Poverty in local communities results in habitat destruction and loss of wildlife, e.g. people cut trees and burn charcoal to earn a living. Furthermore, most of the poaching including elephant killing, is done by people from poor households who are recruited by middle men who make lots of profit from dealing in elephant products, especially ivory, further up the supply chain.

It is therefore not surprising that Malawi has been a beneficiary of poverty reduction programmes, including rural development programmes, for several decades. Currently, these programmes are mainly implemented in accordance with the Second Malawi Growth and Development Strategy (MGDS II) 2011-2016, which was finalized and approved by the cabinet in April 2012. The MGDS II was submitted to the International Development Association (IDA) and the International Monetary Fund (IMF), in the context of preparation of the World Bank Country Assistance Strategy (CAS) 2012/13-2015/16. The MGDS is designed to implement Malawi's long term aspirations as spelt out in its Vision 2020. It strives to foster more inclusive job creating growth to address unemployment and reduce poverty. The emphasis is on productivity and economic diversification, especially in agriculture. The MGDS takes into account issues of environmental sustainability, but the link between poverty reduction and sustainable use of natural resources, agriculture and wildlife is not prominent.

Malawi's main donors are World Bank, African Development Bank, European Commission (EC), Norway, Germany, Department for International Development (DFID), United States Agency for International Development (USAID), and China, which established diplomatic ties with Malawi in 2007. These account for more than 90% of Malawi's development assistance. Other donors include the traditional United Nations (UN) institutions (notably the United Nations Development Programme (UNDP), UNICEF, the World Health Organization (WHO), and the United Nations World Food Programme (WFP), Global Fund, Japan International Cooperation Agency (JICA), the Icelandic International Development Agency (ICEIDA), and Ireland. The Malawi government is leading coordination of donor support through its Development Assistance Strategy (DAS) which is a coordination plan aimed at improving the effectiveness of aid inflows to Malawi and defining what the government and Development Partners (DPs) have to do to implement the Paris Declaration on Aid Effectiveness.

The DAS sets out principles, roles and structures, and has an action plan and a monitoring framework. In early 2010, in line with DAS, DPs and the government established sector working groups, whose responsibilities include guiding prioritization of donor aid at sector level. Wildlife and the environment is not a priority area, although tourism, which is predominately wildlife based, is. Furthermore, it is apparent that the interest of various DPs in Malawi's wildlife crisis is growing, especially in light of the international attention that IWT related issues have generated in recent years (see Section 1, above). The UK, US, German and Norwegian Embassies in Malawi have all recently supported some small but specific wildlife work, and in the future more formal in country programmes are currently being considered by several countries.

### **9.4 Role of Communities in Protecting Malawi's Wildlife**

All protected areas in Malawi are surrounded by people, usually with no buffer zone between the protected areas and community areas. There is, therefore, an important and inherent link between efforts to reduce the drivers of IWT and engagement with local communities.

#### 9.4.1 Participation of Local Communities

##### 9.4.1.1 Wildlife Policy and Local Community Participation

The Wildlife Policy of Malawi (2000) (WP) and the NPWA present significant opportunity for community involvement and participation in the management of Malawi's wildlife, especially on customary land and open areas like wetlands. This stronger orientation to the involvement of people, user groups, in the natural resources management policies sets the stage for the creation of Community Conservation Areas (CCAs) and Wildlife Management Authorities (WMAs). This is also in line with the Malawi National Environment Policy which calls for the involvement of the private sector, NGO and community based organizations in the protection, conservation, management and sustainable utilization of Malawi's natural resources and for the promotion of a community based management and revenue sharing system.

The WP, which is currently under review, outlines the extent to which DNPW aims to collaborate with relevant communities. Section 3.2 of the WP states that DNPW, in conjunction with the communities...will:

- *Protect wildlife against illegal use;*
- *Manage the national parks, wildlife reserves and other areas under its authority;*
- *Reduce the detrimental effects of wildlife on human life through appropriate measures;*
- *Build up capacity in the sector;*
- *Develop, co-ordinate and promote wildlife-based tourism.*

And in full collaboration with the communities will:

- *Determine the type of consumptive and non-consumptive utilisation activities to be permitted in each of the national parks, wildlife reserves and other areas under its authority;*
- *Prevent illegal settlement and cultivation and regulate introduction of exotic plants and animals in order to maintain the ecological integrity and/or the aesthetic qualities of the respective national parks, wildlife reserves and other areas under its authority.*

The WP continues to state that:

*Communities shall manage wildlife resources on communal land. They will be encouraged to form Multiple Use Wildlife Areas. Local knowledge is expected to be essential in sustainably utilising wildlife resources and in improving problem animal control approaches. Furthermore, communities will support the management of national parks, wildlife and forest reserves in their areas. In this, communities shall be involved at all stages in the planning and implementation.*

During the Review it was apparent that these policy aspirations are not being fully implemented. Local communities are not fully engaged in, or at times even supportive of, the above participatory roles. They are not involved in law-making or law enforcement; to the contrary, it seems that it is the community members themselves that are the principal source of poaching in Malawi. Consequently considerable conflicts exist between law enforcement officials and local community members who are trying to improve their livelihoods. There are few community led, or based, wildlife promotion and/or wildlife crime prevention campaigns, and even fewer community lead wildlife-tourism based initiatives (although the latter do exist around Majete Wildlife Reserve after several joint projects run by African Parks and USAID). In terms of community use, the type of consumptive and non-consumptive utilization of natural resources that are permitted have been set by DNPW, but the magnitude allowed is in conflict with what the communities need or want. The communities also seem to want to use the reserves as a source of meat and protein, in addition to the permitted sustainable harvest for fuel wood, food and basic housing materials, e.g. thatch. Community Associations have been set up around several protected areas as governance

structures to resolve such disputes and also, in theory, to promote effective engagement of community members in DNPW's plans and programmes.

#### 9.4.1.2 Community Associations

Community Associations (CAs) have several governance layers in their attempt to provide community representation. The lowest level governance layer is that of the village resident. Above them each village is represented by a Village Natural Resource Committee (VNRC). Each VNRC is formed from four persons elected from a village, including: a Chairperson, Treasurer, Secretary and one other. As there are usually several hundred villages surrounding each protected area, the VNRCs then nominate a smaller number representatives to become members of the Group Village Natural Resource Committee (GVNRC), which represent several of the VNRCs, again with a Chairperson, Treasurer, Secretary and one other. Each GVNRC has voting rights to elect nominated members from across several GVNRCs to become members of the overall CA Board, again with nominated Chairperson, Treasurer, Secretary and, in this case, several others. The most senior chiefs and the DNPW park manager also usually sit on this board. Each CA board is an umbrella body for the communities living around that specific protected area and, in theory, each CA represent all the villagers that live within the border zone of that protected area when they, local leaders and DNPW all meet to discuss pertinent wildlife conservation issues.

The CA system is not a new structure. The first one was established around Nyika National Park by DNPW in the late 1990s, with assistance from the Gesellschaft für Technische Zusammenarbeit (GTZ) during the Border Zone Development project. This community conservation governance system has since been adopted at Liwonde National Park, Nkhotakota Wildlife Reserve and Kasungu National Park. In principal, this structure is commendable and the communities interviewed by the Reviewers remained generally positive towards it. However, the CA system does not seem to currently be used in the way that was perhaps first envisioned by GTZ, i.e. for actively engaging communities in collaborative conservation management and joint decision making. Rather, the current system is principally used as the only mechanism for sharing financial benefits and eco-tourism revenue generated at park gates. The obvious potential link between the CA and potential community income means that the CA system is always likely to be perceived as useful by the community members. However, in general it seemed that while CAs were excellent at promoting messages of conservation and promising income to communities, they were either too bureaucratic (e.g. Nyika-Vwaza Association) or had in all reality too little funds (e.g. Liwonde National Park Association) to reach their obvious potential and fulfil their promises.

More can be done by DNPW to better use CA network for the purpose of community sensitization and collaborative adaptive protected area management. All communities raised concerns regarding DNPW and their own CA's decision making and accountability when administering community projects. It was reported to the Reviewers on several occasions that over the years the CAs had tended to become generally less, rather than more, representative of the communities. Information does not seem to flow well between the CA governance layers and between DNPW and the CAs. It was widely felt that many ideas and requests made by VNRCs and their villagers up through the CA layers were not heard or considered when projects and beneficiaries were selected by DNPW and the CA board. In fact, the villagers themselves felt that in general DNPW were doing very little to address their concerns. This restrictive communication between CA governance layers and lack of information sharing is an important challenge for DNPW to overcome. It is also important that the projects selected for the benefit-sharing scheme pack more of a punch and impact a wider representation of the local communities.

Mistrust regarding the financial management of CA incomes has, to a large extent, been fuelled from the lack of financial transparency provided by both the CAs and DNPW on fund receipts and expenditures e.g. it was claimed by many VNRCs that have never had a financial statement connected to a project administered through the CA/DNPW system. This problem is further

compounded by a general absence of good financial practice e.g. the Nyika-Vwaza Association was established in 2000, has since received and spent tens of millions of kwacha, but, according to the Association's current Chairman, has never been subject to a single financial audit by an external company or DNPW. The Nyika-Vwaza Association could not present any audited accounts, even internally audited, for the past 20+ years. These issues are compounded further by reports of house-holds at the lowest end of the revenue-sharing CA system very rarely ever seeing any tangible benefits, i.e. the finances flow downwards and tend to dry up before reaching the most needy and numerous. It seems that any CA revenue sharing is only done through community level projects and there are no benefits directly allocated at the household level.

Nevertheless, the biggest challenge facing the CA system, and therefore DNPW successfully managing to engage communities in wildlife conservation management, is not financial transparency, but financial sustainability. Nearly all CA funding comes from a percentage of DNPW's tourist entrance and concession fee sharing process. These funds are quite modest and at present are inadequate for sustained CA activity, unless a CA's income is supplemented by donor support. The VNRCs themselves generate little (Nyika-Vwaza Association – from membership fees and fundraising events) or no revenue (Liwonde National Park Association). In short, there is almost no funding for CAs from their base upwards. The Reviewers received little evidence to suggest that the CA system is financially viable and, at present, it was felt that most of these CAs would become inactive once donor support is ceased. This is a significant issue, as if the communities have little incentive to engage with the CA/DNPW, then communities will very quickly grow even more disenchanting and disengaged from any collaborative management activities. Unfortunately, it was brought to the Reviewers attention that many of the VNRC level members already feel disenfranchised, mainly due to a perceived lack of DNPW funding. DNPW need to ensure that the CAs themselves fully understand that they should also make significant effort to raise funds for project implementation (and also keep wildlife alive to attract tourists!). Not all financial onuses should fall on DNPW. Such action would also help each CA become a little more independent and therefore able to influence decision making in DNPW more effectively.

#### 9.4.2 Community Support

##### 9.4.2.1 Wildlife Policy and Community Support

The WP states that DNPW will help support local communities and:

- *Ensure that a fair percentage of the revenues generated within any national park or wildlife reserve is shared amongst Treasury, the management of that park or reserve, and communities living adjacent to it;*
- *To the extent possible, provide economic opportunities to communities neighbouring national parks or wildlife reserves;*
- *Ensure equitable and efficient allocation of opportunities for Malawian, especially the local communities being most directly affected by the wildlife resources, to participate in the benefits of wildlife conservation and management without prejudicing desirable foreign investments and the importation of expertise.*

##### 9.4.2.2 Permitted Community Resource Utilization

Since 1985 DNPW has allowed local communities living around protected areas to collect on a sustainable basis some basic resources (e.g., thatch-grass, mushrooms, termites and Saturniidae caterpillars) and practice beekeeping. Often such schemes fail and this failure has, in part, resulted in the demise of many large mammals in Malawi's protected areas. For many years there was no formal regulation, or practiced permit system, in place between the communities and DNPW for this utilization. More recently, DNPW, with support from DPs, have tried to implement a more business focused approach to such activity and have introduced Resource Utilization Agreements (RUAs) with community based organisation (CBOs) wanting to sell permitted park products. For example, with support from USAID, local enterprises, based on community



harvested ecosystem products, have been established around Nyika National Park and income from sales (forest honey, specialty coffee, baobab juice, mushrooms etc.) have generated revenues that flow back into the rural area households surrounding Nyika. This reportedly encouraged communities to arrest poachers and stop vandalism at the national park<sup>40</sup>. DNPW, and partners, have also started to support local communities through the integration of wildlife conservation within traditional agricultural practice. For example, the introduction of “conservation agriculture” in villages around protected areas reportedly increased community yields, improved food security and decreased labour needs adjacent to several protected areas<sup>41</sup>. Nevertheless, in such schemes the actual proven benefits to wildlife are to some degree unclear and are certainly difficult to measure and draw sound conclusions from.

#### 9.4.2.3 Community Conservation Income Generating Schemes and Co-Management

The main objective of these schemes is to diversify the rural peoples’ economic base, and consequently encourage them to adopt wildlife management as an adjunct to encroaching subsistence agriculture and/or poaching. However, although such schemes all provide some local evidence and plausible argument that they can improve livelihoods and reduce pressures on wild resources, there is little direct evidence that this has actually occurred on a significant scale, or that such schemes have directly facilitated the growth of an actual social connection between the communities and wildlife authorities and/or have helped drive an actual change in community perception of, and behaviour towards, wildlife conservation. It is likely that some enterprise-driven initiatives provide some incentives for wildlife conservation, but many do not and others may even have negative effects on biodiversity<sup>42</sup>. This is in part due to the governance issues highlighted above in Section 9.2.1 but this issue also reflects what was reported to the Reviewers by the VNRCs and DNPW wildlife scouts on the ground.

Therefore, when supporting communities through sustainable harvesting, rural development and income generating schemes, it seems essential that DNPW seek to study and better understand the social and economic viability of such programmes and demonstrate this viability to rural households. Furthermore, the benefits generated and shared from such schemes must also be carefully analysed. They need to be compared to the benefits generated or shared by households who are implementing or supporting wildlife crime, especially now international IWT markets have significantly increased the financial incentives attributed to poaching. There is a need for wildlife organisations, rural development organisations and development partners to help DNPW evaluate, integrate and possibly re-strategise their current approach to collaborative wildlife conservation and community support in Malawi. There is a need to try and ensure that more tangible benefits are delivered on the ground at the house-hold level. This will include a need to review the current mechanism for DNPW feeding 25% of funds raised through tourism back into CAs and the wider community.

#### 9.4.2.4 Revenue based Benefit Sharing Scheme

This revenue sharing scheme is in its infancy and the amount of funding is relatively small, e.g. the total revenue DNPW generated annually from total non-consumptive uses between 2004 and 2009 ranged from MK 10 million to MK 25 million, and only 25% of this amount is available for benefit sharing<sup>43</sup>. It is important to ensure that the system is functioning well and is more

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<sup>40</sup> USAID/Malawi. 2009b. Final Project Report: Community Partnerships for Sustainable Resource Management (COMPASS II). Covering Period: April 1, 2004 – May 31, 2009.

<sup>41</sup> TLC: Total Land Care Malawi. 2009. Technical Proposal: Kulera Biodiversity Project. Submitted in response to USAID/Malawi - Annual Program Statement (APS) Solicitation Number 674-09-002. Cross-Sector Community Based Natural Resource Management And Biodiversity Protection In Malawi.

<sup>42</sup> USAID/Malawi (2014). Malawi Biodiversity Projects Evaluation :Prosperity, Livelihoods and Conserving Ecosystems (PLACE) USAID-612-TO-13-00003

<sup>43</sup> Government of Malawi (2011) Economic Valuation of Sustainable Natural Resource Use in Malawi. GOM.

transparent in advance of the larger tourism receipts that are expected from future years. Such issues that need clarification include those discussed above in Section 9.4.1 and relate to: governance; financial management; and, sustainability of the CA system. At present, the Reviewers were informed that the 25% revenue share is specific to each protected area (i.e. Liwonde communities receive 25% of revenue from Liwonde).. However, given that there are a number of protected areas in remote locations which receive very little income, a system that collects all protected area revenue and then allocates equally from a central pot would seem more equitable, although issues of surplus would have to be considered. Discussions with community members in Liwonde and Vwaza Marsh revealed that the allocation of funds for small scale projects such as bridges or schools had indeed been initiated, but that most projects had not been completed and/or did not have the impact that was initially hoped from them. There is little to no evidence that such projects have helped reduce wildlife crime.

There is also a need for local communities (and potential donors) to better understand how projects and other benefits are chosen by the CA/DNPW, as although communities appeared happy with the idea of benefit sharing, they questioned the current administration of the scheme. It appears that the mechanism for choosing projects and for allocation of finances is not well understood by the recipients, causing some level of distrust and concern. There was also distinct confusion as to why construction projects had been selected over income generation schemes and questions raised over procurement procedures. Examples were cited of when payments from DNPW being held back or used to fund political meetings rather than community income. This problem is further compounded by the suggestion that DNPW do not currently share statistics, such as the number of tourists visiting a park, or the monthly revenue generated from a park, which the VNRCs. This information would help NVRC members better understand how benefit sharing payments are calculated and would probably remove some of the suspicion that communities have towards the scheme i.e. the Reviewers suspect that communities think the amount of revenue collected by the tourism in the parks is much higher than it actually is. Due to resource limitations, DNPW rarely meet the VNRCs and the frequency of these meetings should increase so that new ways to collaborate and jointly promote eco-tourism can be agreed.

#### 9.4.2.5 Eco-Tourism Opportunities

One forthcoming opportunity that aims to promote ecotourism and wildlife conservation in rural areas is the GIZ funded “*More Income and Employment in Rural Areas of Malawi*” (MIERA) project. MIERA will support value chain development for sustainable tourism in cooperation with national and regional stakeholders. It aims to improve the level of engagement of local small producers and micro, small and medium sized enterprise in the eco-tourism business sector. DPs should be encouraged to work with DNPW and CAs to implement more of these types of programmes, as it is essential for communities that they start to see tangible economic benefits from wildlife conservation. More employment opportunities are needed in rural areas to physically draw people away from the protected areas and to reduce the financial necessity for them to enter them and poach. DPs can play an important role in this, however so can the private sector, particularly the tobacco industry. Only when there is a viable, highly profitable economic alternative to forest resource utilization, is it likely that any co-management systems for protected areas will produce wildlife gain.

## **9.5 Management of Protected Areas**

### *9.5.1 Protected Areas of Malawi*

There are nine National Parks and Wildlife Reserves in Malawi: Nyika National Park, the largest at over 3,000 km<sup>2</sup>; Kasungu National Park, the second largest at over 2,000 km<sup>2</sup>; Lake Malawi National Park; Liwonde National Park; Lengwe National Park; Majete Wildlife Reserve; Mwabvi Wildlife Reserve, the smallest of the parks, at 350km<sup>2</sup>; Nkhotakota Wildlife Reserve; and, Vwaza Marsh Wildlife Reserve, which covers an area of 1,000 km<sup>2</sup>. Other protected wildlife areas in Malawi include: the three urban Nature Sanctuaries in Lilongwe, Blantyre and Mzuzu

respectively; Lake Chilwa, a RAMSAR wetland of international importance; and, a series of 71 Forest Reserves (under the mandate of the DoF), including: Mulanje Mountain Forest Reserve (which supports 17 endemic plant species and 15 endemic animal species); Thuma Forest Reserve, Salima-Dedza Forest Reserve, Phirilongwe Forest Reserve, Mangochi Forest Reserve and Namazimu Forest Reserve which all support elephant populations; and several Forest Reserves that have been designated as Important Bird Area (IBAs), including: Nchisi Mountain Forest Reserve, Dzalanyama Forest Reserve, Lake Shore Forest Reserve, Misuku Hills Forest Reserve, Mtangatanga and Perekezi Forest Reserves, South Viphya Forest Reserve, Thyolo Mountain Forest Reserve, and Uzumara Forest Reserve (amongst others already mentioned). There are also proposed plans by Government, as part of the Sustainable Land Management Project for the River Shire Basin, to undertake assessments and submit a RAMSAR application for wetland habitats at Elephant Marsh, in Southern Malawi.

The protected area boundaries in Malawi are legally defined, clearly mapped and communities and authorities are both well aware of these boundaries. The former however, as described below in Section 9.5.2, do not necessarily respect them. In some sections the boundaries are demarked by fencing, but in most instances beacons are used. These beacons are not always clear or secure and, due to resource constraints, the boundaries cannot be regularly patrolled at all times.

#### 9.5.2 *Wildlife Management Plans and Research*

DNPW are mandated by Government to manage all wildlife in Malawi, inside and outside of National Parks and Wildlife Reserves, in accordance with the WP and NPWA. However, due to the important role that the DoF plays in managing wildlife in Forest Reserves, it is essential that DoF and DNPW work more closely through the IACCWC, if effective national wildlife management plans are to be developed. DNPW are responsible for the development of management plans for each protected area and for the publication of species conservation plans as required. At present, only draft management plans have been produced by DNPW for protected areas outside of existing PPP agreements. The majority of these draft plans are outdated and there is a need for DNPW to complete new plans. Encouragingly, new wildlife management plans will soon be produced for each of the protected areas within the Zambia-Malawi TFCA, and under the UNDP GEF/World Bank funded Sustainable Land Management Project for the River Shire Basin, an updated management plan for Liwonde National Park and the adjacent forest reserves will be delivered. Nevertheless, a management for all protected areas in Malawi is needed.

The absence of comprehensive and accurate wildlife datasets prevent the development of effective management plans. Annual Reports for most protected areas are produced by DNPW and include information on law enforcement efforts, human wildlife conflicts and animal population estimates (see Annex M for a recent example from Liwonde National Park). The work completed by DNPW is commendable, especially when considering the chronic resource limitations facing their research teams. However, although the surveys undertaken can provide an indication of wildlife numbers, the methods deployed are not considered best practice and consequently the figures produced can not necessarily be relied upon and deemed very accurate. For example, the ICUN Elephant Database categorises over 50% of the elephant population estimates in Malawi as “low quality guesses”, and states that the surveys used were not standardised or rigorous<sup>44</sup>. This significantly limits the interpretation of status and trends of elephants (and other species) across Malawi. Therefore, more rigorous, repeatable and applied wildlife research is necessary to inform effective conservation management of wildlife by DNPW.

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<sup>44</sup> Blanc, J.J., Barnes, R.F.W., Craig, G.C., Dublin, H.T., Thouless, C.R., Douglas-Hamilton, I., & Hart, J.A. (2007). *African elephant status report 2007: An update from the African Elephant Database. Occasional paper of the IUCN Species Survival Commission No. 33*. IUCN/SSC African Elephant Specialist Group. IUCN, Gland, Switzerland. Vi +276 pp.

Some high quality scientific research has recently commenced in country. In 2014 a partnership between DNPW and Conservation Research Africa (CRA), an NGO which is managed by a senior mammal researcher from the University of Bristol, UK, was agreed. CRA have since been running various research programmes on bat and carnivore species in several of Malawi's protected areas. In addition, biodiversity census across Malawi is likely to be implemented in future years as part of the Malawi Reducing Emissions from Deforestation and Forest Degradation (REDD+) programme and several biodiversity assessments are planned in Liwonde National Park in 2015/16 as part of the Sustainable Land Management Project for the River Shire Basin. However, at present there is a significant absence of effective historical wildlife research reports and no comprehensive species inventories (fauna or flora) exist. This makes it difficult for DNPW to make informed decisions as to how best protect Malawi's wildlife. For instance, one area that needs urgent attention is an updated list of rare and threatened species in Malawi that would warrant listing as "protected species" under the NPWA.

## **9.6 Threats to Protected Areas**

### *9.6.1 Overview*

At the recent National Elephant Action Plan (NEAP) workshop held in Malawi in January 2015, DNPW and local wildlife NGOs undertook an analysis of threats to elephants and the conservation of wider wildlife species in Malawi. In summary the main threats to wildlife in Malawi were identified as:

- Illegal killing and trafficking of wildlife
- Habitat loss (encroachment) and fragmentation
- Human population increase
- Inadequate institutional capacity
- Poor governance and corruption across law enforcement agencies
- Lack of awareness and collaboration on wildlife conservation and management issues across all stakeholders
- Conflicting Government policies and legislation, e.g. conflict between mining and wildlife policies

The majority of these threats have been discussed elsewhere in this Review. Those that require further consideration are outlined below.

### *9.6.2 Inadequate Institutional Capacity*

Research undertaken in 2011<sup>45</sup> indicated that the Protected Areas experienced the following constraints:

- Inadequate staff capacities (skills, experience and numbers).
- The number of scouts was lower than the required number leading to some areas not being adequately patrolled.
- Inadequate financial resources and field equipment (boots, radios, rain coats, torches, cooking utensils, water containers and GPS).
- Inadequate and poor management and eco-tourism infrastructure in PAs
- Weak participation by the local population, particularly in terms of: ownership, employment, investment opportunities and professional skills enhancement
- Weak linkages and collaboration between DNPW with other Ministries, private sector, donor or aid agencies;
- Lack of aggressive marketing of wildlife resources and their products.

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<sup>45</sup>Government of Malawi (2011) Economic Valuation of Sustainable Natural Resource Use in Malawi. GOM.

### 9.6.3 Landuse Conflicts

According to DNPW, the primary challenge to conservation inside Malawi's protected areas are land use conflicts. Communities feel a sense of ownership of these areas, and the vast majority does not see any benefit from the protected area status of the land. As a result, parcels of environmentally-sensitive land are being lost to agriculture, and certain communities are actively positioning themselves to "move back" into designated sites. In Nkhotakota, for example, it has been reported that 600 ha of the protected area has been replaced with fields of cannabis. Other significant examples of illegal encroachment include the Lengwe Extension area and the Kasungu National Park western boundary (which has lost ca. 100 ha), both of which have principally been encroached for the purposes of agricultural expansion and settlement; and the commercial farming of orchids in Nyika National Park towards the Phoka area and the North Eastern (Nkhalanga) area, where reports of commercial orchid farms are common.

DNPW feel that such conflicts arise due to the following reasons:

#### *i. An Absence of Land Tenure Guidelines*

Most protected areas are under threat of being settled or being grabbed for farming by local leaders who sell or give it to their subjects or even foreigners. This especially happens along the boundaries of protected areas. For example the purpose of the gazetted buffer zone of Kasungu National Park was to cushion wild animal activity between the park and human settlements. However, this buffer zone has been taken by local chiefs after the Kasungu Flue Cured Tobacco Association became defunct. The result is that the people have now even bought pieces of the buffer zone and are cutting the trees for sale as firewood.

#### *ii. An Absence of a Buffer Zone*

The intention of people in many protected areas is to cultivate right up to the protected area boundary lines. Then, when elephants, buffalo or hippo come out of protected area they immediately come face to face with people and are vulnerable to poachers who shoot or poison them. Many people have also attempted to claim compensation when wildlife and especially elephants have caused damage to their property, or even loss of life in villages, but the WP says there shall be no such compensation.

### 9.6.4 DNPW/Community Conflicts

In addition to land use conflict, there are reported disputes between DNPW officials and local community members and leaders. The roles, rights and responsibilities of DNPW officials and local communities are clear, but conflicts have arisen not just due to land use conflict, but also poor scout conduct, disagreements on access, the harboring of poachers, and mistrust over the benefit sharing scheme amongst several other issues. Communities are aware of restrictions and regulations imposed by DNPW but in many communities they now seem unwilling to respect and adhere to them. A common cause of conflict are clashes over access rights, especially with regards to where and what communities can and cannot legally harvest from a site. DNPW scouts feel that communities take advantage of the harvesting schemes, using the schemes as a cover to undertake illegal poaching activities; whereby communities feel that they are being unfairly targeted by DNPW scouts when they are undertaking a supposedly permitted activity e.g. gathering caterpillars, etc. Violent encounters from both sides have been reported.

The result is a breakdown in relations between these key wildlife conservation stakeholders. For instance, it is reported that most local people do not cooperate now, when there is an activity aimed at protecting the community from wildlife, such as clearing along the fences. Some local leaders even deliberately instruct their subjects to settle in or cause damage to protected area habitats e.g. a senior chief has been selling land from the Kasungu National Park buffer zone to people, yet the buffer zone is in a different chief's authority. Furthermore, local communities are clearing the buffer zones and vandalizing protected area infrastructure; and most people do not

want to take part in stopping the malpractice. In the communities surrounding Vwaza Marsh Wildlife Reserve, the Reviewers were informed by many community members that local people deliberately kill wildlife for no other reason, but to take revenge on DNPW. It is therefore no surprise then that communities admit to harbouring poachers. There is a clear need to try and resolve conflict and encourage incentives and education / training programmes that are aimed to change attitudes and behavior of both the community members and DNPW scouts.

#### *9.6.5 Poaching Incentives for Communities*

The incentive for communities to report poachers to DNPW is made even less when the very same people DNPW want them to report are able to provide the community with a source of cheap meat from their more traditional poaching of small antelopes, fish and birds. Around most protected areas in Malawi there is a thriving commercial bush meat trade, run by vendors who have small “shops” or “restaurants” in villages or small towns, and who also pass through villages selling discounted meat from bicycles and baskets, etc. Conflicts between DNPW and local communities mean that communities are less likely to report the people perpetrating this illegal trade. Another benefits provided by poachers to communities includes the provision of wildlife products for use in traditional medicine and for display during traditional practices to local leaders and traditional healers, e.g. animal skins for ceremonial purposes and elephant toe nails, tips of trunks and skin for traditional medicine or potions. Finally, the introduction of more organized and profitable IWT networks in Malawi has dramatically increased the risks to wildlife, as community members now also find non-formal employment and a source of house-hold income from an organised criminal network that can recruit them to poach high-value species such as elephant, rhino and turtles that they later sell overseas.

#### *9.6.6 Illegal Hunting*

##### 9.6.6.1 A Poaching Crisis

Illegal hunting is one of the main reasons for wildlife depletion in Malawi. Poaching levels are reaching alarming levels and the annual economic losses due from poaching to Malawi have been calculated to be in the order of MK 1.2 billion (USD 8.4 million)<sup>46</sup>. In Kasungu National Park, the elephant population was ca. 2,900 in 1978 but there are now less than 50. In Nyika National Park, eland and reedbuck populations have been reduced to just a few hundred, down from 1,203 and 2,184 animals respectively in the early 1990s. In Lengwe National Park, Jumbo Africa and DNPW made 97 separate arrests in just three months between July and September 2014. In Liwonde National Park, Operation Safe Haven – a joint law enforcement venture between IFAW, DNPW and MDF – collected over 3,500 wire snares, confiscated 17 poaching boats, 10 gin traps and 7 spears, while also making over 30 arrests, between November 2014 and February 2015. In addition, Nyika-Vwaza Wildlife Trust reported that ca. 60% of the poachers arrested in Nyika National Park between January and September 2014 were found in possession of an illegal, unregistered firearm, complete with associated live ammunitions (as a side note, none of these poachers were charged under the Firearms Act of Malawi). The majority of species that are targeted are large mammal species, especially those that are frequently eaten as bush meat i.e. antelope and buck species, warthog etc. Nevertheless, poaching of elephants (as presented in Section 5) and other endangered species in Malawi is also a significant problem.

For example, black rhino became completely extinct in Malawi in the early 1980's and was since re-introduced into both Liwonde and Majete National Parks as a gift from the South African Government. However, several of the animals that were reintroduced back into Liwonde National Park have already been lost to poachers (all since 2012), and at the current rate they are predicted to be locally extinct again within the next two to three years. These losses have been as a result of snare related injuries. Although the snares were likely to have been set for another

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<sup>46</sup> Government of Malawi (2011) ECONOMIC VALUATION OF SUSTAINABLE NATURAL RESOURCE USE IN MALAWI

species, due to the indiscriminate nature of snares, they not only kill the target species but also critically endangered species such as rhino. At the time of writing, March 2015, another rhino is reported missing in Liwonde National Park and is suspected to have been killed by poachers. Interestingly, although it is considered that highly organized criminal networks are probably not yet directly targeting Malawi's rhino (see Section 9.7.4, below), a rhino horn must be perceived as having some value as in some of the snared rhino carcasses the head, including the horn and transmitter, had been removed from the animal and was missing.



Removal of snare from rhino in Liwonde National Park and a fatal injury caused by a snare to another Liwonde rhino in 2014

#### 9.6.6.2 Poaching Methods

Wire snares represent the most commonly used hunting technique, although recently firearms are becoming more and more commonly used. Hunting with dogs is also a common technique, as is the indiscriminate poisoning of watering holes and food as bait. The poisoning of water holes is a problem across many of Malawi's protected areas and it not only impacts the large targeted mammals, but also the smaller and often rarer species, e.g. the poisoning of water holes in Liwonde National Park has caused significant declines in the globally important population of Lillian's lovebird *Agapornis lilianae* that occupy the park – the number of lovebirds found dead at a poisoned pool ranged from 5 to 50 individuals annually between 2000 and 2012, and 32% of the population is threatened by poisoning<sup>47</sup>. Poisoning, like all hunting, including fishing, is prohibited by law in Malawi. No hunting associations exist and it is illegal to possess a firearm (and other weapons and traps) within Malawi's protected areas. The NPWA does make provisions for the hunting of "protected species" and "game species", but in practice only a handful of such licenses are issued by DNPW each year, and recently only for the control of crocodile populations on Lake Malawi and a few other high risk rivers. Currently commercial or trophy hunting is generally not permitted in the country.

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<sup>47</sup> Mzumara, T. I., Perrin, M.R., & Downs, T. C. (2015). The drinking habits of Lillian's lovebird and incidents of poisoning at waterholes. *African Journal of Ecology*, pp 1-10

#### 9.6.6.3 Permitted Hunting

The one exception to this is the community hunting of birds at the Lake Chilwa RAMSAR site. This site covers approximately 2,300km<sup>2</sup> and comprises 2,077 km<sup>2</sup> of natural habitats (open water, Typha swamp, marshes and floodplain grassland) and 233 km<sup>2</sup> of cultivated areas (wetland rice, irrigated rice and dimba). It supports a waterfowl population of ca. 354,000 which by far exceeds the 20,000 waterfowl Ramsar criteria. The Lake and its associated wetland support over 160 different bird species and has been proposed as a Biosphere Reserve. Because the wetland is under customary tenure, the Government cannot restrict community hunting rights. Population pressure around the lake is high, with up to 164 people/km<sup>2</sup> and an estimated 77,000 people living in the wetland itself. Poverty is high and most people live a subsistence lifestyle growing maize and/or rice, as is the case for most people living around all other protected areas in Malawi. The lake is used extensively for fishing by the local communities throughout the year and during times of food shortage (usually November to March). Bird hunting is also carried out to supplement and sustain the food resources of the local population. The birds caught at the Lake were traditionally either eaten and/or sold for a small income. However, commercial hunting soared in the mid-1990s and an estimated 1.2 million birds are being trapped annually. In response, the Government is in the process of designating the lake as a Community Conservation Area under the NPWA, with the aim of trying to sustainably manage the waterfowl utilisation in partnership with the local communities, WESM and Bird Life International.

#### 9.6.6.4 Commercial Drivers of Poaching

The drivers of illegal hunting and poaching in Malawi are complex, but are, in large part, directly or indirectly linked to poverty and the low risk to high reward ratio that wildlife crime offers to the thousands of low income earners in the country. The majority of poaching is not for the pot, i.e. it is not subsistence level poaching. Instead, poachers are killing and trading in wildlife to supplement their other small agricultural based incomes and, in many cases, it is their principal income source. Formal employment in rural Malawi is extremely rare and people need to find sources of income, including from local commercial trades in bush meat and traditional medicines. Poaching of certain species, especially elephant, is directed by organized criminal syndicates who recruit local and/or regional poachers and pay them ca. MK 143,000 (\$ 325) per tusk. Although the syndicate middle man is more likely to be aware of the extent, consequences and impact of his own part in such wildlife crime, it is much less likely that many of the recruited community members are aware of the wider consequences of their actions, especially as there are extremely high levels of illiteracy in rural villages.

#### 9.6.6.5 Community Awareness

Most poachers are aware that it is illegal to poach (see Section 9.7, below), but they are unlikely to fully know the full serious nature of their crime and the potentially stiff penalties that could be used against them. It is clear that more regular updates, meetings and reports with the communities through the VNRC system is needed to ensure that communities are fully aware of the issues and consequences related to wildlife crime. For instance, DNPW feel that people are not aware of the purpose of protected areas and so do not care what happens to the resources being protected. DNPW also feel that people do not understand why they can't kill wildlife and so will continue to poach and threaten wildlife and PWAs. The DNPW scouts feel underpaid, under equipped and poorly incentivized to engage and educate communities and prevent poaching, especially when the poachers have firearms. There is a need to undertake sensitization campaigns and educational programmes, especially adult literacy projects, in the villages surrounding protected sites. Currently, such campaigns are implemented by local NGOs such as LWT, WESM, WAG and CEPA





Poached buffalo at Lengwe National Park, 2014 © Jumbo Africa



Elephant with a snare injury, Liwonde National Park, September 2014

Photo Credit: Sarah Glyde

## 9.7 Community Survey Results

Reviewers interviewed 60 people from villages surrounding Liwonde National Park and then Vwaza Marsh Wildlife Reserve (see Annex K for the questionnaires and Annex L for the questionnaire analysis). Analysis of the significant findings of these questionnaires is as follows:

### 9.7.1 Perceptions

Community perceptions of the protected areas were highly contradictory. For example, the statements: "*The National Park is part of the world's heritage and should be protected at all costs*", and "*Wildlife resources in your area are good as they bring the community many benefits*" respondents gave a mean response of 4.98 and 4.90 respectively (where 1 = strongly disagree and 5 = strongly agree). There is therefore a strong abstract perception among community members that the National Parks are a positive aspect of life in Malawi. Conversely, however, for the statement: "*National Parks deny you access to wildlife resources, which prevents you from improving your standard of living*" respondents gave a mean response of 4.69. Additionally, for the statement "*there is too much wildlife in your area*" respondents gave a mean response of 4.83. These seemingly contradictory responses indicate that despite a general understanding of National Parks being positive, the real perceptions of the majority of community members may actually be significantly negative. This conclusion was supported by conversations held with community members outside of the survey process, who, although supportive of the concept of wildlife conservation, were actually very concerned about the perceived negative impact that protected areas were having on the welfare of their communities.

### 9.7.2 Human Wildlife Conflict (HWC)

HWC is a significant challenge to wildlife management in Malawi and is, indirectly, one of the main causes for the depletion of the country's wildlife. For instance, between 1986 and 1996, of the 7083 various large mammals known officially to have been killed in Malawi, 22% were illegally killed in protected areas, while 78% were killed in protection of the human life and property outside of protected areas<sup>48</sup>. These problems seem to have continued into more recent times. For instance, in Liwonde National Park, between 2011 and 2014, DNPW recorded 6,584 incidences of crop raiding by elephants, in addition to 44 human deaths, 6 human injuries and 135 damaged houses, all as a result of elephant human conflict in the area. In response, 15 elephants were shot under DNPW's problem animal control programme. Interestingly, this is over twice the number of elephants that were reported as having been illegally killed by poachers over the same time period. In the week preceding the Reviewer's community survey in Liwonde, a number of people had been killed adjacent to the National Park, reportedly caused by elephants which had entered community areas to raid crops. It was therefore unsurprising that 100% of all questionnaire respondents identified crop damage as a major problem, or that 93.2% of respondents identified "*death of local people*" as a cause for concern. Local communities around Liwonde seem to have hatred towards elephants which will undermine anti-poaching efforts. This is worsened by an absence of compensation for elephant caused damage or death.

If a HWC incident results in a death, then DNPW have a policy of seeking out the animal and killing it. If no death is reported, then a response is determined on a case by case basis, primarily focused on driving animals back into the protected area. There are currently little DNPW efforts aimed at mitigating against HWC (such as the use of elephant resistant crops), aside from the expensive provision of an armed guard and the less effective drum banging and stone throwing – although a strong desire has been expressed by DNPW for initiating such mitigation programmes if resources can be secured.

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<sup>48</sup> Munthali S.M. 1998. *Game meat utilisation and trade in Malawi*. Consultancy Report. WWF/TRAFFIC International.

### 9.7.3 Poaching Drivers

The number of snares being recovered each year in protected areas indicate considerable levels of poaching by community members (for example 1,322 snares were recovered from Vwaza Marsh alone between January and September 2014). Nevertheless, the survey results showed a widespread comprehension that poaching is illegal (mean response 4.53) and that poaching needs to be decreased (mean response 4.66). However, it remains unclear whether communities truly believe that poaching is their given right, or whether they believe it to be wrong – as evidenced by the mean response of 3.95 to the statement "*Poachers are outcasts in your village*". For example, in some specific protected areas, a cultural tribal tradition of wildlife hunting presents a significant challenge to wildlife conservation e.g. the Phoka tribe, who are concentrated around Nyika National Park and Vwaza Wildlife Reserve, have historically always been a tribe of shifting cultivators and male hunters. Feedback from our community surveys in Vwaza Marsh indicated anger to the Government from these community members for trying to repress their traditions and prohibiting access and hunting in the two protected areas. This is something which many of the Phoka people will apparently never accept, and therefore a driver for poaching and conflicts in these specific areas.

However, the primary cause of poaching was identified as being poverty (identified by 64.4% of respondents). In addition, food shortages were also listed as an important cause of poaching (identified by 45.8% of respondents) and many community members also wanted more meat in their diets. This suggests that a lack of sustainable alternatives may force many local community members to hunt in and harvest from protected areas due to the high need for forest products and forest based incomes to support their livelihoods. Other significant causes were 'opportunity to make money fast' (54.2%) and 'greed' (52.5%), which suggest that many of the community based poachers are now linked to more organized and commercial based poaching syndicates, as such syndicates pay poachers significantly more for killing an elephant etc. than they can probably hope to earn from their normal village and traditional hunting activities. Poverty and the opportunity to make significant income, relative to alternatives, are serious threats to wildlife in Malawi, especially in light of the many ineffective deterrents that have previously been outlined in this report.

Other causes for poaching included medicine (11.9%), traditional ceremonies (13.6%) and witchcraft (8.5%). Wildlife parts that are commonly used for such purposes include, but are not exhaustive of: felid and buck skins and tails, feathers, quills, hippo teeth and genitals, carnivore teeth and claws, elephant skin, toe nail and the tip of trunks. There are records of poachers being arrested with such items in their possession: e.g. in Liwonde National Park on 3<sup>rd</sup> September 2014, a man from Machinga district was arrested in the park and found with 9 spears, 3 panga knives, 6 tails of sable antelope, 20 porcupine quills and 1 piece of elephant trunk (he has yet to be prosecuted in court and is out on bail – case file SR/21/09/14). However, although wildlife parts are clearly linked with certain traditional beliefs, ceremonies, social status and are socially acceptable, even desirable, in many local communities and by some tribes e.g. Ngoni, hunting for such purposes is not considered to be one of the major drivers of IWT across Malawi.

### 9.7.4 Communities and IWT

The more organised crime associated with IWT usually involves people outside of communities, with local people paid low sums to poach on behalf of the crime networks. This seems also to be the case in Malawi, with a mean response of 3.45 to the statement "*Poachers in the area come mainly from within the local community*" indicating a mixture of local and outside influence. When asked specifically about those poaching for ivory tusks, 77% of respondents indicated that poachers came from both Malawi and other countries. Nationalities of foreign poachers identified by respondents included China (42.4%), Zambia (22%), Mozambique (16.9%) and South Africa (15.3%). The Reviewers were informed from the community members, local community based organisations (CBOs) and DNPW informants, that there had been a recent high demand for ivory from foreign people. The Reviewers were informed that foreign people often set up small

businesses near the protected areas and then recruited local people through those businesses to kill wildlife. The Reviewers were also informed that often middle men (both foreign and Malawian) also travel by car from the larger towns and meet with local poachers, place their orders and/or collect their wildlife contraband from the poachers' homes or secret meeting places. The middle men will nearly always contact the local poachers by phone prior to making such visits. In terms of other species, the buck species etc. these are killed directly by community members for selling as local bush meat.

Interestingly, there was very little community knowledge regarding rhino poaching and the price paid for a rhino horn was not known. There is only one case of rhino horn trafficking that has been recorded by the Malawian authorities between 2010 and 2014 (although in March 2015 two Malawian nationals were reportedly arrested for trying to illegally export rhino horn out of South Africa). Rhino horn is much more difficult to identify and is therefore often under detected. However, the majority of rhino poaching incidents in Malawi stem from snare, rather than firearm related, injuries. It is therefore less likely that Malawi's rhinos are currently under attack from highly organized syndicates, with links to international markets, in the same way that Malawi's elephant populations currently are. This may yet change of course, and if it does, the small numbers of rhino left in Malawi will be at significant risk of extinction. The rhinos in Malawi are vulnerable and require significant proactive protection. It is advised that DNPW take measures to ensure this protection is already in place before the lucrative international rhino horn markets become reachable from within Malawi.

#### *9.7.5 Poaching and Corruption*

As identified elsewhere in this report, corruption plays a significant role in wildlife crime in Malawi. This is also perceived at village level, with 61% of respondents stating that they were aware of incidents in which wildlife scouts, the military or police were involved in poaching and wildlife crime. It was also reported to the Reviewers that the illegal selling of bush meat and wire snares by scouts is common practice. This perception is clearly damaging the relationship between wildlife enforcement officers and community support for conservation. It is imperative that work is conducted to reverse this perception if the communities are to become more positive towards conservation initiatives in their areas.

#### *9.7.6 Methods for Decreasing Community Poaching*

When asked about what the community believed would help to reduce poaching in their areas, 100% of respondents agreed that education was a key component. Employment opportunities (91.5%) and harsher penalties (84.7%) were also strongly considered to be of importance. See table below.

**Table 1:** Responses to the question: "What do you think would help to decrease poaching of wildlife in your area?"

	<b>% Agreeing</b>
Education in the villages about the reasons to conserve wildlife	<b>100.0%</b>
Improved food security for local people	<b>74.6%</b>
Access to land for villagers to grow crops	<b>22.0%</b>
Better healthcare facilities in your area	<b>28.8%</b>
Improved law enforcement	<b>79.7%</b>
Harsher penalties for poachers	<b>84.7%</b>
Employment opportunities for local people	<b>91.5%</b>
<b>Other (specify)</b>	<b>61.0%</b>
Promoting/increasing power of VNRC	<b>65.8%</b>
More income generating activities	<b>34.2%</b>

## **9.8 Recommendations: Drivers and Prevention**

### *9.8.1 Recommendation 6(a): Integration of Wildlife Conservation into Rural Development Plans and Coordination with Humanitarian Organisations and Rural Development Partners*

The enormous and important task of improving the welfare of rural local communities in Malawi is not only the responsibility of those responsible for wildlife conservation. A coordinated approach alongside organisations and government agencies responsible for humanitarian and rural development concerns will be essential if the standards of living and employment opportunities for those communities located around environmentally sensitive areas in Malawi is to be improved. It is highly recommended that DNPW host a series of workshops to bring relevant government departments (tourism, culture, agriculture, public works, environmental affairs, forestry etc.), CAs, local leaders, private sector representatives and both humanitarian and wildlife conservation NGOs to develop a series of innovative integrated recommendations that will link wildlife conservation with wider rural development plans. Joint proposals for DPs should be developed that will generate support for communities, reduce poaching and encourage a more holistic approach to conservation. When developing such recommendations and proposals, it will be important for DNPW to consider the recommendations outlined below.

### *9.8.2 Recommendation 6(b): Undertake a review of the viability of enterprise based, income generation and community conservation schemes for wildlife gain*

A huge number of small scale community based, wildlife conservation income generation schemes have been implemented throughout the border communities of Malawi's protected areas for decades. In spite of this work, Malawi's wildlife is still in plight and is now reaching crisis point. There is a need to undertake social, economic research on the scale, magnitude and long-term viability and impact of such co-management schemes against the benefits derived from wildlife crime and poaching. There needs to be particular and specific attention given to the new risks associated with the emergence of domestic and international commercial IWT markets, and a comparison of value chains and benefit distribution across community households. The cultural drivers of poaching also need to be better understood. The research should aim to make recommendations how the scale and magnitude and long-term viability of community based

wildlife conservation schemes can be improved. The research should also consider the political, social and economic incentives and deterrents that may also be required to help safeguard long-term collaboration and achieve measurable wildlife gains.

*9.8.3 Recommendation 6(c): Support more ecotourism initiatives that promote greater employment opportunities and value chain development for local communities*

According to the Malawi Growth and Development Strategy (MGDS), the medium term target for tourism is to establish Malawi as a principal and leading eco-tourism destination in Africa. Apart from looking for tourists outside Malawi, there is also an opportunity to increase domestic tourism. According to the World Travel and Tourism Council, tourism is expected to generate 7.1 percent of new jobs annually in Malawi. Over 90% of community members stated that if there were more local jobs then there would be less poaching. In many protected areas wildlife conservation can create job opportunities for the local communities. In Majete, it is reported that a total of 132 staff from local communities have been employed as fence attendants and general labourers, with a total sum of more than MK2 million (ca. US\$14300) being spent on salaries per month. This is of obvious benefit to the surrounding communities. DNPW should seek opportunities to promote more wildlife tourism to drive more rural employment opportunities. It will also be important to assess the effectiveness of the forthcoming GIZ MIERA programme and to consider rolling out similar projects if it is proven successful.

*9.8.4 Recommendation 6(d): Ensure that community conservation and income generation schemes directly address both the key humanitarian issues and the most significant wildlife threats*

Habitat loss through agricultural encroachment and deforestation/degradation is the biggest threat to wildlife in Malawi, and is a consequence of a growing rural population's ever increasing food and energy demands, and its high dependency on land and forests for that provision. In addition, large mammals in Malawi are under significant threat from poaching and IWT. Bush meat is often a local community's cheapest and most readily available source of meat and protein. Fuel and food security need to be urgently addressed if habitats and animals are to be protected. A review of the success of all previously introduced income generation / community conservation schemes should be undertaken to identify those projects which had greatest measurable impact on reducing house hold fuel demands and improving food security, without damaging the local environment. All future income generation schemes should offer clear financial incentive and economic viability, but also include an element for resolving the fuel wood crisis and reducing bush meat demand, while introducing alternative cheap meat sources etc.

*9.8.5 Recommendation 6(e): Ensure that any community support scheme has impacts measurable at the household level*

Any community based wildlife conservations scheme should be administered so that there are real and tangible benefits provided at the household level. Projects and funding should be administered to help ensure that a significant proportion of the funds and benefits flow from the bottom up and not just trickle from the top down.

*9.8.6 Recommendation 6(f): Review of Community Benefit Schemes and expand a scheme to all protected areas in Malawi*

Whilst it is encouraging to see Malawi initiating a programme for community support as a percentage of revenue, there is a clear lack of understanding from the communities, and other stakeholders, as to how the programme works and how recipients are targeted. Reviewers therefore recommend that a short Community Benefit Strategy Document is developed by DNPW, with input from relevant stakeholders. This document can then be translated into the local languages and distributed among the park staff and the VNRCs. Such a strategy will hopefully ease concerns about the lack of transparency and also help coordinators to focus on key targets

for the schemes. As the notion of such schemes seem popular with local communities, once a clear and effective benefit sharing system has been agreed, it should be rolled out to the border communities of all protected areas in Malawi.

*9.8.7 Recommendation 6(g): Review of the Natural Resource Committee Community Association System, Structure and Sustainability*

Whilst the VNRC CA system is commendable, in practice there are some clear issues with the system which are hampering DNPW collaboration with local communities and contributing to misunderstandings and mistrust between stakeholders. DNPW need to engage partners to help them undertake a review of the structure and sustainability of the system. Recommendations should be made as to how improvements can be made to: reduce bureaucracy; increase community representation; improve communication across governance layers; improve communication with DNPW; increase financial sustainability; increase financial accountability; reduce influence of and dependency on DNPW; increase householder level benefits; widen benefit sharing impact; increase community awareness; and promote wildlife conservation.

*9.8.7 Recommendation 6(h): Increase capacity and improve governance of Natural Resource Committee Community Associations*

DNPW and partners should assist CAs by helping them to identify training opportunities, which could include: financial management; proposal writing; strategies for local fundraising; basic project management; ICT skills; and report writing. Some basic resources such as computers and associated software may be required for each CA. In addition, DNPW should insist that each DNPW park manager and each CA must write at least one annual report detailing the financials and descriptions of projects administered by each CA/DNPW that year. This report must be translated into local languages and communicated to all VNRC level Chairpersons. In addition, DNPW should look to raise enough resources to ensure that extension staff visit households to discuss these reports and also to invite all VNRC level chairpersons to meet with their park management, on site, at least twice a year. At these meetings further updates, made directly from DNPW, can be provided to reduce the chance of mistrust and misunderstanding amongst the lower CA governance layers.

*9.8.8 Recommendation 6(i): Audit of all Natural Resource Committee Community Associations' and DNPW benefit sharing accounts*

To overcome the issues of mistrust, and to reduce the opportunities for corruption, all bank accounts and funds that are secured and administered by each CA must be subject to an annual financial audit. This audit should be undertaken by an external auditing company registered with the Malawi Accounting Board / The Society of Accountants in Malawi (SOCAM). DNPW should make it a pre-requisite of receiving government funds that a percentage of the funds provided must be set aside for the sole purpose of an annual financial audit. If a CA fails to submit audited accounts within 6 months of the end of the previous financial year, then DNPW should maintain a right to withhold further fund allocation to that CA until the audit has been completed. In addition, DNPW should do all they can, to try and ensure that the National Audit Office of Malawi issues a short annual statement on their behalf which concisely outlines that all revenue shared with the various CAs was correct and proper with regards to the agreed terms of the DNPW benefit sharing scheme.

*9.8.9 Recommendation 6(j): Education Programmes, including Adult Literacy*

Whilst DNPW does have a clear goal to conduct education within local communities, there is a crippling lack of resources available to undertake such programmes over a sustained period. There is no money, for example, for transporting children into the Parks or education officers out of them. However, particularly given that education was clearly identified by 100% of those interviewed as an important method for reducing poaching, it would be important for DNPW to

develop a more comprehensive strategy for conducting education in and around all of its protected areas. One of the most important educational programmes that should be introduced is that of adult literacy. Unfortunately, even though primary education is free in Malawi, the country still has one of the highest levels of illiteracy in Africa, particularly amongst women (men ca. 25%, women ca. 45%, of the total Malawian population). There is a need to start tackling these basic skills before more complex education activities covering subjects such as human wildlife conflict and mitigation, in addition to alternative livelihoods, are introduced later. Several local NGOs, including LWT, have expertise in delivering adult literacy programmes in line with the National Adult Literacy Programme.

*9.8.10 Recommendation 6(k): Undertake more wildlife conservation research to inform management plans and policies and produce a DNPW strategy for wildlife research*

DNPW should consolidate and promote any existing high quality research programmes running in country to encourage further commitments. In addition, they should seek yet further opportunities to collaborate with additional international research organisations to further the Department's scientific capability. Further research is urgently needed to understand the status of various wildlife indicator species / species groups that can help evaluate ecosystem conditions within protected areas. There is also an urgent need for wildlife research to be undertaken that can help update national lists of rare and threatened species. Such inventories will inform policies and decisions relating to which species are most deserving of being listed as "protected species" in the NPWA. Additional research into the conservation status of those species being targeted by the IWT is also needed, so that species action plans can be developed and applications for CITES Proposals considered. There is also a need to better understand the dynamics of human wildlife conflict in Malawi and develop tangible ideas for mitigation. It is recommended that DNPW work with local and international organizations to develop a 5 year wildlife research strategy that will outline all priority areas for research and draft outline proposals for their implementation.

*9.8.11 Recommendation 6(l): Complete Management Plans for all protected areas in Malawi and develop Conservation Action Plans for all endangered species*

DNPW should seek support from partners and funders to complete updated management plans for all protected areas in Malawi. These plans will need to be informed from quality research. There is also a need to undertake species actions plans for all endangered species in Malawi. Draft species actions plans currently exist for lion, rhino and elephants. These plans need to be reviewed, updated and additional plans produced for other endangered species as required. These management and species plans need to be developed in partnership with the DoF to ensure that wildlife within forest reserves is also included in decision making and wildlife conservation activities.

*9.8.12 Recommendation 6(m): Implement proactive high specialist level law enforcement for the protection of Malawi's Black Rhino populations*

At present the black rhino populations in Malawi do not seem to be under direct attack from commercial poachers. This could change at any time, especially considering the exceptional value that rhino horn products are traded at on the black market. It is strongly recommended that DNPW seek expert advice from existing specialist rhino law enforcement teams from other countries e.g. the ZAWA and FZS rhino protection unit in North Luangwa National Park, Zambia, and start to implement similar measures in advance of any emerging crisis. The populations of black rhino in Malawi are small and concentrated. If professional rhino poaching syndicates started to target Malawi, it is very likely that the populations will very quickly be driven to extinction. DNPW need to be ready to help ensure that this does not happen.



*9.8.13 Recommendation 6(o): Review Problem Animal Control and improve knowledge and mitigation of Human Elephant Conflict*

Local communities dislike elephants and, to a large extent, for good reason. In order to improve community relations and protect elephants, there is a need for DNPW to better understand the drivers of human wildlife conflict, especially human elephant conflict, and also implement some non-lethal mitigation measures. A number of stakeholders expressed concern to Reviewers about the scale of Problem Animal Control (PAC) following incidents of Human Wildlife Conflict (HWC). In Kasungu National Park, for example, it was reported that 15 elephants have been killed in recent years as a result of PAC – which is alarmingly high given the very small elephant population there. It therefore seems important to undertake a review of the HWC incidents and subsequent PAC cases, in order to analyze the sustainability of current methods and to see where long-term non-lethal mitigation methods (such as the use of bee hives, chili plants, etc.) may be implemented. There is also a need to ensure that when a problem animal is legitimately killed outside of a protected area, then the meat from that animal is fairly and freely distributed to the local communities the animal had been troubling. There have been reports of Government officials confiscating PAC meat and then selling it outside of the communities for considerable profit. Such behavior, if true, is not only unlawful but also breeds community resentment and anger, particularly as there is no other community compensation scheme that currently exists for damage or death caused by wildlife.

*9.8.14 Recommendation 6(p): Ensure that DNPW employees adhere to Codes of Conduct*

It is unacceptable that DNPW employees are involved in the illegal killing or trade in wildlife in Malawi. In addition, 79.7% of community members stated that better law enforcement is required to stop poaching. There were many reports from the communities that scouts are not only corrupt but also lazy and do not undertake their patrols. At present the DNPW scouts are perceived as part of the problem by communities and not the solution. This perception needs to change. It can only change by PWAs doing their best with the resources they are provided with. As an absolute minimum this means adhering to the DNPW codes of conduct at all times, and therefore reducing the potential for conflicts with communities and minimizing, as best possible, the opportunities for poaching. The codes of conduct need to be finalized and then all DNPW park managers must provide copies to all field staff and ensure that all staff adhere to them. Any DNPW employee found in serious breach of these codes must be subject to effective disciplinary action and considered for dismissal. DNPW field staff must set an exemplary example with regards to conveying a commitment to conserving Malawi's wildlife. If they do not, then why should anyone else.

*9.8.15 Recommendation 6(q): Implement wildlife crime and land tenure sensitization campaigns around communities*

Over 85% of community members felt that the low penalties given to poachers was one of the main reasons poaching was common. There is a need to sensitize local communities around protected areas that wildlife crime is a serious crime and wildlife criminals will soon be punished more severely. The communities should be made aware of cases when poachers receive custodial sentences and well informed that if they are caught poaching, then they will face tough penalties. The LWT/DNPW "Stop Wildlife Campaign" should be extended to cover all protected areas and include radio and SMS updates on wildlife crime and legal cases in Malawi. The IACCWC should ensure that once landmark court cases are completed, that they pass on details of the rulings to local police stations so community police officers are briefed and can disseminate the updates through villages. The local DNPW extension staff can also undertake similar actions and ensure that the messages are repeated and well understood. In addition, DNPW should seek advice from the relevant Government department to produce a simple guidance note on land tenure in relation to wildlife and wildlife conservation in Malawi. This guidance note must be shared with all VNRCs across the country.

*9.8.16 Recommendation 6(r): Recruit, protect and reward community based informants and appoint honorary community wildlife officers*

A community based law enforcement network has proven successful in many other African countries and has also worked in Malawi around specific protected areas in the past. DNPW should make efforts to identify and recruit honest and reliable wildlife ambassadors from the local communities who can provide information on poacher activities and have legal rights to apprehend poachers and other wildlife criminals when needed by DNPW. The identity of these persons must be protected at all times and they must receive worthwhile financial reward for their assistance. DNPW should work with local and international NGOs to develop these programmes and submit proposals that will help establish these community law enforcement networks.

## **10. Relevant Projects and Programmes**

There are a number of previous, current and pending projects that will be of some assistance to DNPW and the IACCWC when looking to implement the many recommendations made in this report (see Section 12, below for a summary). A list of the relevant projects and programmes brought to the Reviewers' attention during this review are provided below. DNPW and the various listed implementing organisations / development partners should be contacted for further information on each project. Please note that this list may not be exhaustive and that the authors of this report and/or DNPW should be contacted if it is felt that a project not listed here would be of use in helping stakeholders combat IWT in Malawi.

### **10.1 Previous Projects / Programmes**

- USAID Analysis of Conservation of Tropical Forests and Biological Diversity<sup>49</sup>
- UNDP/UNEP Economic Valuation of Sustainable Natural Resource Use in Malawi<sup>50</sup>
- USAID COMPASS II Biodiversity Projects<sup>51</sup>
- Kulera Biodiversity Project<sup>52</sup>
- Mount Muljane MOBILISE Project<sup>53</sup>
- USAID Malawi Environmental Threats and Opportunity Assessment<sup>54</sup>
- IFAW Training for wildlife investigators (Malawi / Zambia)
- Various – Protected Area Management Plans and Species Action Plans

### **10.2 Current Projects / Programmes**

- National Elephant Action Plan – DNPW with Wildlife Conservation Society, Stop Ivory, RSPCA International, Lilongwe Wildlife Trust (LWT)
- Illegal Wildlife Trade Challenge Fund, Malawi (Law Enforcement Training, Guidelines for Prosecutors and Magistrates, Wildlife Law Handbook, Community Awareness) – DNPW and RSPCA International
- Stop Wildlife Crime Campaign – DNPW and LWT – [www.malawiwildlife.org](http://www.malawiwildlife.org)
- Operation Safe Haven – DNPW, Malawi Defence Force and IFAW
- Wildlife Emergency Response Unit – DNPW, Department of Animal Health and Livestock Development and LWT
- Scoping Study "Report on Wildlife Investigations in Malawi" – GIZ and LWT

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<sup>49</sup> USAID/Malawi. 2007. FAA 118-119 Analysis: Conservation of Tropical Forests and Biological Diversity. Prepared by: USAID/Malawi in collaboration with the Regional Environmental Advisor, Regional Center for Southern Africa. Lilongwe, Malawi November 25, 2005; Revised January 25, 2007

<sup>50</sup> Government of Malawi (2011) ECONOMIC VALUATION OF SUSTAINABLE NATURAL RESOURCE USE IN MALAWI

<sup>51</sup> USAID/Malawi. 2009b. Final Project Report: Community Partnerships for Sustainable Resource Management (COMPASS II). Covering Period: April 1, 2004 – May 31, 2009.

<sup>52</sup> TLC: Total Land Care Malawi. 2009. Technical Proposal: Kulera Biodiversity Project. Submitted in response to USAID/Malawi – Annual Program Statement (APS) Solicitation Number 674-09-002. Cross-Sector Community Based Natural Resource Management And Biodiversity Protection In Malawi. March 2009.

<sup>53</sup> MMCT: Mulanje Mountain Conservation Trust. 2009. Mountain Biodiversity Increases Livelihood Security (Mt. Mulanje MOBILISE Project). Project proposal for consideration CODIT Contract # EPP-I-00-06-00010-00; Task Order # AID-612-TO-13-00003 USAID/Malawi – Biodiversity Projects Evaluation Page | 55 under the USAID/Malawi – Annual Program Statement (APS) Solicitation Number 674- 09-002. Cross Sector Approach to Community Based Natural Resource Management and Biodiversity Protection in Malawi. April 2009.

<sup>54</sup> USAID. 2012. Malawi Environmental Threats and Opportunities Assessment (ETOA). January, 2012. Prepared by International Resources Group.

- Polifund – crosscutting political fund (GIZ – BMZ)
- Training Programmes for Wildlife Rangers in Malawi – ALERT / TOTTS
- A Wildlife Investigation Training Programme for Law Enforcement Agencies – United States Fisheries and Wildlife Service and International Law Enforcement Academy
- Review and Upgrade of MRA Customs Risk Management System – US Customs
- Bats as Bio-indicators in Malawi – DNPW and African Bat Conservation / University of Bristol (UoB)
- Status of Carnivores in Malawi – DNPW and Carnivore Research Malawi/ UoB
- Liwonde Rhino Research Project – Central African Wilderness
- Shire River Basin Management Programme – Department of Forestry, DNPW, World Bank and UNDP GEF
- Effective Management of Nkhotakota Wildlife Reserve – DNPW, World Bank, WESM
- Nyika Transfrontier Conservation Area – DNPW, World Bank, KFW, Peace Parks Foundation, Nyika-Vwaza Trust
- Improved Forest Management for Sustainable Livelihoods Programme, including Forest Law – DoF and EU.
- Malawi REDD+ Readiness Programme – USAID and DoF
- Important Bird Areas in Malawi – BirdLife International and WESM
- Operation Worthy II: Protection of African Elephants and Rhino – INTERPOL, MPS and DNPW

### 10.3 Pending Projects / Programmes

- Government of Malawi: Private Public Partnership of Liwonde National Park and Nkhotakota Wildlife Reserve
- USFWS/Polifund: Wildlife Sniffer Dogs – DNPW, MPS, Working Dogs for Conservation, LWT
- USAID ROUTES: Catalyzing transformation of the wildlife trafficking – transport sector nexus – TRAFFIC, WWF, Private Sector and LWT
- USFWS: Securing the African elephant in Malawi – population status and corridor assessment to inform the NEAP – DNPW, LWT and UoB.

### 10.4 Recommendations: Projects and Programmes

#### 10.4.1 Recommendation 7(a): Create useful links and strategies between all relevant national and international projects and programmes

There are some ongoing processes under the BMZ/GIZ Polifund project, and several of the other projects and programmes listed above e.g. IWT/CF project, which are taking place in Malawi and/or other (e.g. SADC) countries for which any new projects and programmes developed in Malawi after this review should take consideration of and create useful links and synergies with. For example, Malawi customs authority has already participated in an IWT intelligence-training, which was conducted by World Customs Organisation (WCO) and supported by the Polifund.

#### 10.4.2 Recommendation 7(b): Development of IWT Action Plan for Malawi (**Priority Recommendation**)

This review has developed a large number of recommendations across sectors and identified a wide range of issues and technical needs for Malawi, if the country is to work towards combating IWT. Several relevant previous, current and pending projects and programmes have also been identified, in addition to many different wildlife stakeholders. It is therefore strongly recommended that DNPW and the IACCWC seek resources to host a two day workshop, whereby representatives from all stakeholders and potential implementation organisations, development partners and funders (including those listed in Section 11, below) can use the findings and recommendations made in this review to develop a concise and clear “*Action Plan to Combat*

*IWT in Malawi*", complete with objectives, activities and outlined proposal ideas and packages which can be quickly readied for submission to funders. This recommendation is considered a priority and should be undertaken as soon as possible.

## **11.0 Potential Funding Opportunities**

### **11.1 African Elephant Action Plan and African Elephant Fund**

In 2007, at the 14<sup>th</sup> meeting of the Conference of the Parties to CITES (CoP14), the Parties adopted Decisions 14.75 to 14.79, which directed the African elephant range States to develop an African Elephant Action Plan (AEAP). An African Elephant Fund was also to be established, which would provide the necessary resources for implementation of the AEAP. Following three years of careful negotiations, the final AEAP was presented at the 15<sup>th</sup> meeting of the Conference of the Parties to CITES (CoP15). This document was adopted by all 38 African elephant range States by consensus. Adoption of the AEAP was a significant achievement, given historical divisions between some States on issues of elephant management and conservation.

The AEAP contains eight overarching Objectives, which are prioritised in order of importance. These Objectives are as follows:

**Objective 1:** Reduced Illegal Killing of Elephants and Illegal Trade in Elephant Products

**Objective 2:** Maintained Elephant Habitats and Restored Connectivity

**Objective 3:** Reduced Human-Elephant Conflict

**Objective 4:** Increased Awareness on Elephant Conservation and Management of Key Stakeholders that include Policy Makers, Local Communities among other interest Groups

**Objective 5:** Strengthened Range States Knowledge on African Elephant Management

**Objective 6:** Strengthened Cooperation and Understanding among Range States

**Objective 7:** Improved Local Communities' Cooperation and Collaboration on African Elephant Conservation

**Objective 8:** African Elephant Action Plan is Effectively Implemented

During the 14th regular session of the African Ministerial Conference on the Environment (AMCEN) which took place on 7-14 September 2012 in Arusha, the honorable African ministers of the environment decided in *Decision 14/8: Management of biodiversity in Africa* that the AEAP should be endorsed and promoted in full. The text of their decision is as follows:

***“We, African ministers of the environment, ... DECIDE To endorse and promote the African Elephant Action Plan and the African Elephant Fund for ensuring effective conservation and long term survival of elephants across Africa;”***  
***([http://www.unep.org/roa/amcen/Amcen\\_Events/13th\\_Session/Docs/14th%20Session/CompilationDec/K1282897Advance.pdf](http://www.unep.org/roa/amcen/Amcen_Events/13th_Session/Docs/14th%20Session/CompilationDec/K1282897Advance.pdf))***

At the 16<sup>th</sup> meeting of the Conference of the Parties to CITES (CoP16), the Parties adopted, again by consensus, a new Resolution concerning the African Elephant Action Plan and African Elephant Fund. This means that the AEAP and AEF are now long-term goals of CITES.

The AEF represents an opportunity for Malawi to raise funds for elephant enforcement initiatives. Malawi has so far applied to the AEF for two projects totalling \$62,333.

## **11.2 Other Potential Source of Funding and Support**

There are several sources of funding currently available for implementing many of the recommendations made in this report and helping to combat IWT and other wildlife crimes. Some of these sources are listed below:

- Illegal Wildlife Trade Challenge Fund – DEFRA/DFID
- Polifund – GIZ/BMZ
- GIZ regional projects (e.g. SADC Transfrontier Conservation Areas)
- African Elephant Conservation Fund – USFWS
- ROUTES – USAID
- Biodiversity 4 life – EU
- UNDP GEF / World Bank
- Save the Elephants – Crisis Fund
- Various grant making trusts
- US, UK, Norwegian and German Embassies in Malawi

There are also several funding opportunities that are expected to be announced in the coming months, including, but not exhaustive of:

- USAID Regional Programme on IWT
- EU Programme on IWT in Africa
- UNDP GEF Small Grant Programme, Malawi
- UNODC

In addition, there are several international organisations that are willing and able to offer technical assistance and training to authorities working to combat IWT, including, but not exhaustive of:

- USFWS
- ILEA
- UNODC
- ICAR
- US Customs

## **12.0 Summary List of IWT Review Recommendations**

### **12.1 Recommendations (1): IACCWC**

- 1(a): *Expand and finalise the IACCWC Terms of Reference (ToR) and develop an IACCWC Rules of Procedure (RoP).*
- 1(b): *Establish a secure and quick method for distributing "Wildlife Crime Alert" messages between IACCWC members.*
- 1(c): *Develop an Agreement regarding engagement with non-Committee members*
- 1(d): *Secure resources and regular meetings for IACCWC*
- 1(e): *Finalise the Memorandums of Understanding between IACCWC members*
- 1(f): *Develop a Parliamentary Outreach Strategy*

### **12.2 Recommendations (2): Wildlife Crime Data and Analysis**

- 2(a): *Develop and manage a centralised wildlife crime database*
- 2(b): *Ensure proper and accurate identification of wildlife criminals*
- 2(c): *Collect and share wildlife crime data and submit such data in timely manner to the IACCWC and other relevant bodies and databases e.g. ETIS and MIKE*
- 2(d): *Disseminate information and data on IWT in Malawi to the general public*
- 2(e): *Ensure that MIKE data from Kasungu is submitted to CITES*
- 2(f): *Develop Performance Indicators for Recording Wildlife Statistics*
- 2(g): *Use of Ranger Based Monitoring Systems*

### **12.3 Recommendations (3.1): International Legislation and Extradition**

- 3.1(a): *Secure training for relevant stakeholders on application and use of International Treaties and Conventions*
- 3.1(b): *Revise Extradition Act 1972 (as amended) to include "relevant" serious wildlife crimes*

### **12.3 Recommendations (3.2): Domestic Wildlife Legislation - NPWA**

- 3.2(a): *Clear Designate Cites Management and Scientific Authorities*
- 3.2(b): *Clarify the role of the Wildlife Advisory Board*
- 3.2(c): *Incorporate Powers for Management and Scientific Authorities*
- 3.2(d): *Establish a mechanism to facilitate coordination between the Management and Scientific Authorities and other Enforcement Officials*
- 3.2(e): *Minimize Fraudulent Permits*



3.2(f): *Amend the definition of “Wildlife”, as detailed below (Priority Revision)*

In order to address interpretative challenges and to ensure that the scope of the NPWA includes all CITES-listed species, the definition of “wildlife” should be amended to delete reference to only species native to Malawi.

Part I, Section 2, “wildlife”:

“wildlife” means any wild plant or animal, whether or not of a species native to Malawi and includes animals which migrate through Malawi, and biotic communities composed of those species.

3.2(g): *Clarify the definition of “listed species”, as detailed below (Priority Revision)*

For the sake of clarity and to ensure that CITES-listed species are covered whether or not the Director additionally lists species via regulation, the definition of “listed species” could be amended as follows:

Part I, Section 2, “listed species”:

“listed species” means plant or animal listed under any international, regional or bilateral agreement to which Malawi or the Government is a party, ~~and~~ or under regulations made pursuant to section 99.

3.2(h): *Amend the definitional scope of “protected species”*

3.2(i): *Remove the category “game species”*

3.2(j): *Ensure the same protections for “protected species” and “listed species”, as detailed below (Priority Revision)*

Ensuring that protected species and listed species get the same protections could be achieved in a number of ways. (1) The definition of “protected species” could be amended to incorporate the definition of “listed species.” This would require amending the legislation in a number of places to clarify that listed species are not distinct from protected species. (2) The list of protected species could include all CITES-listed species found in or migrating through Malawi. This can be achieved by regularly updating the list of protected species to include all CITES-listed species found in Malawi. (3) The NPWA could be amended such that the hunting provisions also apply to “listed species.” This is perhaps the simplest fix and requires adding “or listed species” after “protected species” in the following Sections: 45, 47, 53, 54, 54A, 61, and 72(d). For example:

Part VI, Section 45:

Wild plants and animals other than protected species or listed species shall not be subject to the restrictions on hunting and taking under Part VII, but shall be subject to all other provisions of this Act and the provisions of any other written law.

Part VII, Section 47:

(1) Except as otherwise provided by this Act, any person who hunts or takes any protected species or listed species, except in accordance with the conditions of a licence and where so require under this Act, a permit issued and pursuant to this part shall be guilty of an offence.

3.2(k): *Ensure clarification of “endangered species”, as detailed below (Priority Revision)*

Since no “endangered species” are identified under the NPWA, this category of species could be eliminated. In some cases, maybe certain species warrant stricter penalties and these could be “endangered species”; however, maintaining yet another list and adopting such a list via regulation or decree of the Minister is yet another administrative burden. Additionally, another category of species further complicates implementation and enforcement of the NPWA.

3.2(l): *Ensure procurement of Ownership Certificates for all CITES listed species*

3.2(m): *Include clear rules for transit and trans-shipment of specimens*

3.2(n): *Ensure clarification of CITES permit pre-conditions, as detailed below (Priority Revision)*

It must be clear that certain preconditions must be met before a permit is issued for import, export, and re-export (as well as introduction from the sea). This can be accomplished in one of three ways: (1) the Minister could adopt regulations pursuant to section 99, (2) the NPWA could be amended to include a list of permit preconditions, or (3) the NPWA could be amended as follows in order to make clear that the CITES permit conditions apply:

Part XI, Section 97:

. . . in the case of a listed species to produce evidence of compliance wit [sic] the requirements of any international, regional or bilateral agreement relevant to such species and to which Malawi or the Government is a Party, ~~regulation made pursuant to section 99,~~ or the requirements of this Act or of any other regulations made under this Act.

Note: The latter option is a simpler fix, but for enforcement and implementation purposes, Option 2 is probably the best choice.

3.2(o): *Include of new clause to make the possession of fraudulent or fraudulently obtained certificates of ownership an offence*

3.2(p): *Include a restriction on hunting “endangered species”*

3.2(q): *Include of a new clause to make it an offence to buy, sell, trade or possess “listed species” that have been illegally imported*

3.2(r): *Ensure clarification of strict liability offences*

3.2(s): *Improve the penalties provisions, as detailed below (Priority Revision)*

Improving the penalties provisions could be pursued through a number of adjustments to the existing language. **However, it is paramount that only penalties (fine rates, length custodial sentences etc.) should be chosen by the Government that truly provide a deterrent effect and not only take into account the Conversions Act, but also the “Serious” nature of wildlife crime and the examples of penalties adopted by other countries within the region.**

In addition, language could be added in each section allowing the judge to choose and the prosecutor to argue for, penalties that take into account a number of factors and that reflect the totality of any given circumstances. This would afford discretion that could account for on-the-ground circumstances, including whether criminal networks were involved in the commission of the crime. For example, a range of fines could be given then language could be included that gave the judge discretion to choose a fine within that range depending on a number of circumstances, such as 1) the biological status of the species involved, 2) the value of the specimen, as determined by government and non-governmental experts, 3) the mental state of the offender, 4) any aggravating circumstances, 5) the involvement of criminal networks, and 6) whether the offence is a repeat offence or whether the offender is a repeat offender. This would be relevant to the following sections of the NPWA:

Part XIII, Section 108:

- (c) In the case of a first offence, be liable to a fine of not less than K XX but not more than K XX and to imprisonment for a term of XX years;
- (d) In the case of a second or subsequent offence, to a fine of not less than K XX but not more than K XX, and to imprisonment for a term of XX years.

Part XIII, Section 109(b):

- (c) in the case of an offence omitted in a protected area, be liable fine of not less than K XX but not more than K XX and to imprisonment for a term of XX years;
- (d) in the case of an offence committed in an area other than a protected are, be liable to a fine of not ~~less~~ more than K XX but not ~~more~~ less than K XX and to imprisonment for a term of XX years.

Part XIII, Section 110(d):

shall be liable to a fine of at least K XX and to imprisonment for a term of ten years, and in any case the fine shall not be less than the value of the specimen involved in the commission of the offence.

Also there is a need to remind prosecutors and magistrates of the legal precedent set by the High Court Case of The Republic of Malawi vs Maria Akimu (Criminal Case Number 372 of 2003) dated 29<sup>th</sup> December 2003 that fines AND custodial sentences (not suspended and with hard labour) can be given in the event of a serious wildlife crime, even in the instance of a first time offender.

3.2(t): *Revisit penalty section when NPWA fully amended*

#### **12.4 Recommendations (3.3): Other Domestic Legislation**

3.3(a): *Produce a Legislation Summary Handbook and Training Programme for wildlife crime investigators, prosecutors and judiciary regarding all the domestic legislation in Malawi that can be used to combat wildlife crime*

#### **12.5 Recommendations (4.1): International Law Enforcement – CITES**

4.1(a) *Re-assign the CITES Scientific Authority into a different institution outside DNPW*

4.1(b): *Enhance the Capacity of the CITES Management and Scientific Authorities*

4.1(c): *Ensure that DNPW participate in more CITES Meetings*

4.1(d): *Review Enhanced engagement in CITES Task Forces etc. and engage with those relevant to DNPW combating IWT e.g. CITES Rhinoceros Enforcement Task Force*

4.1(e): *Undertake a review of possible Proposals to CoP for species under newly threatened from IWT in Malawi e.g. Zambezi Flapshell Turtle*

4.1(f) *Review and update ETIS Database with support from CITES to ensure it is accurate*

4.1(g): *Remove the CITES Reservation that Malawi has in place for listing Loxodonta Africana*

#### **12.6 Recommendations (4.2): Regional Law Enforcement**

4.2(a) *Consider ratification of LATF*

4.2(b): *Ensure active participation and engagement of DNPW in WENSA*

4.2(c): *Improved enforcement cooperation between neighbouring countries*

4.2(c): *Improved enforcement cooperation between neighbouring countries*

#### **12.7 Recommendations (4.3): National Law Enforcement – DNPW**

4.3(a): *Review DNPW's Annual Budget*

4.3(a): *Review and increase DNPW's Annual Budget*

4.3(b): *Review DNPW Recruitment and Disciplinary Procedures to combat corruption and misconduct and finalise DNPW's Codes of Conduct and Administrative Orders*

4.3(c): *Identify opportunities for provision of extensive equipment & training to DNPW*

4.3(d): *Review and completion of MoUs between DNPW and all IACCWC members*

#### **12.8 Recommendations (4.3): National Law Enforcement – MPS**

4.3(e): *Develop a standard charge sheet for wildlife crimes and share with IACCWC*

4.3(f): *MPS Prosecutors to use powers to extend investigations and development of prosecution guidelines*

4.3(g): *Review forensic requirements and develop proposal for provision of forensic techniques*

- 4.3(h) *Development and Support of Informant Networks, including a set of Guidelines for Management of Informants*
- 4.3(i): *Expand Remit of sniffer dogs to Include wildlife products*
- 4.3(j): *Review undertaken on need and legal basis of controlled deliveries*
- 4.3(k): *Incorporation of a training module on wildlife crime into MPS basic training*
- 4.3(l): *Ensure that the MPS firearms database cross-cuts and is shared with DNPW*

#### **12.9 Recommendations (4.3): National Law Enforcement – ACB**

- 4.3(m): *Develop an Anti-Corruption Work Plan /Committee within DNPW*
- 4.3(n): *Finalise the MoU between ACB and DNPW*
- 4.3(o): *Establish a whistle-blowing mechanism and provide resources for follow-up enforcement efforts*
- 4.3(p): *Mandatory anti-corruption course for IACCWC and all public officials directly responsible for enforcement and prosecution of wildlife crimes*

#### **12.10 Recommendations (4.3): National Law Enforcement – INTERPOL**

- 4.3(q): *Secure additional expert training and support for the Malawi INTERPOL NCB*
- 4.3(r): *Ensure the proactive use of existing tools e.g. Eco-Messages in collaboration with other relevant institutions*

#### **12.11 Recommendations (4.3): National Law Enforcement – FIU**

- 4.3(s): *Development of MoUs with DNPW and MPS*
- 4.3(t): *Develop a specific sensitisation programme for prosecutors on the Money Laundering Act*
- 4.3(u): *Develop and implement compliance officer training and information sharing with banks*
- 4.3(v): *Pro-actively engage with ICAR and explore what support can be obtained from the Financial Intelligence Units of the large international banks*

#### **12.12 Recommendations (4.3): National Law Enforcement – Customs (MRA)**

- 4.3(x): *Develop a Memorandum of Understanding between MRA and DNPW*
- 4.3(y): *Sensitize MRA Staff to IWT issues and risk*
- 4.3(z): *Initiate a wildlife crime training programme, with resources (Manuals etc), across MRA*
- 4.3(a.a): *Incorporate wildlife products onto Form 47*
- 4.3(a.b) *Ensure that MRA has access to ENVIRONET at each regional office*
- 4.3(a.c) *Designate Commercial and Non-Commercial Border Posts and restrict use at non-Commercial Border Posts*

4.3(a.d) *Ensure effective utilization of MRA mobile scanners and joint MRA/DNPW/DoF road blocks to help detected wildlife crime*

4.3(a.e) *Incorporate wildlife crime into MRA Risk Profiles and upgrade of current MRA Customs Risk Management system*

#### **12.13 Recommendations (4.3): National Law Enforcement – DoI**

4.3(a.f): *Incorporate wildlife trafficking into the Immigration Act*

4.3(a.g): *Provide false document identification training to all IACCWC members*

4.3(a.h): *Enhancement of Deportation Documents to assist with proper identification of wildlife criminals*

#### **12.14 Recommendations (4.3): International Airports**

4.3(a.i): *Provision of computer equipment for Police at KIA and CIA*

4.3(a.j): *Ensure permanent DNPW representation at the airports*

4.3(a.k): *Train freight companies/agents on IWT issues, risks and IWT product identification*

4.3(a.l): *Implement a KIA (and CIA) Security Committee Workshop and develop security protocols to combat IWT at airports*

4.3(a.m): *Provision of training and materials on identification of wildlife products*

4.3(a.n): *Provision of new and appropriate scanning equipment at the airports*

4.3(a.o): *Conduct random checks of transit bags*

4.3(a.p): *Conduct spot checks on the smaller airports/air strips*

4.3(a.q): *Develop and distribute IWT awareness brochures for passengers on check in*

4.3(a.r): *Engage the airline companies within IWT law enforcement*

#### **12.15 Recommendations (4.3): Courier and Postal Services**

4.3(a.s): *Approach MACRA to establish sector-wide policy and intervention measures*

4.3(a.t): *Request private courier firms to commit to combating wildlife trafficking*

4.3(a.v): *Provision of scanners and specialist wildlife crime training for Malawi Postal Corporation (and other courier companies)*

4.3(a.w): *Improved Identification and due diligence for International Post, including copies of photo identification, business corporation certificates and more thorough checks of sender address details*

#### **12.16 Recommendations (4.3): Shipping Line and Freight Forwarding Companies**

4.3(a.x): *Engage the shipping line companies within IWT law enforcement*

#### **12.17 Recommendations (4.3): NGOs and Wildlife Tourism Concessionaires**

- 4.3 (a.y): *Enter into further long-term private, public partnerships with NGOs for the management of Malawi's protected areas*
- 4.3(a.z): *DNPW to enter into shorter-term management agreements with NGOs for specialist training and development programmes aimed to enhance management of protected areas*
- 4.3(b.a): *Improve communication between DNPW and NGOs*
- 4.3(b.b): *Establish an "Association of Wildlife NGOs of Malawi"*
- 4.3(b.c): *Provide technical support for NGOs in proposal development*

#### **12.18 Recommendations (4.3): Specialist Wildlife Crime Investigation Unit**

- 4.3(b.d): *Implement phased establishment of a specialist Wildlife Crime Investigation Unit (WCIU) within DNPW*
- 4.3(b.e): *Ensure that IACCWC define scope for WCIU engagement*
- 4.3(b.f): *Establish DNPW Rapid Response Units in protected areas*
- 4.3(b.g): *Promote and Strengthen the DNPW Wildlife Emergency Response Unit (WERU).*

#### **12.19 Recommendations (5): Judiciary and Prosecution Services**

- 5(a): *Implement an Alert system to all prosecution services to raise awareness of the serious and organised nature of wildlife crime*
- 5(b): *Develop and run a series of regional sensitisation workshops for magistrates and members of the prosecution services on wildlife crime and Malawi's existing legal tools that are available to combat it*
- 5(c): *Engage the Director of Public Prosecutions on all serious cases of wildlife crime*
- 5(d): *Develop materials and guidelines for judiciary and prosecution services on wildlife crime*
- 5(e): *Develop an online course training concerning the NPWA and other legislation relevant to wildlife crime*
- 5(f): *Establish a specialist wildlife prosecution committee*
- 5(g): *Review of outstanding wildlife crime court cases and remove backlog*

#### **12.20 Recommendations (6): Drivers and Prevention**

- 6(a): *Integration of Wildlife Conservation into Rural Development Plans and Coordination with Humanitarian Organisations and Rural Development Partners*
- 6(b): *Undertake a review of the viability of enterprise based, income generation and community conservation schemes for wildlife gain*
- 6(c): *Support more ecotourism initiatives that promote greater employment opportunities and value chain development for local communities*



- 6(d): *Ensure that community conservation and income generation schemes directly address both the key humanitarian issues and most significant wildlife threats*
- 6(e): *Ensure that any community support scheme has measurable impacts at the household level*
- 6(f): *Review of Community Benefit Schemes and expand a scheme to all protected areas in Malawi*
- 6(g): *Review of the Natural Resource Committee Community Association System, Structure and Sustainability*
- 6(h): *Increase capacity and improve governance of Natural Resource Committee Community Associations*
- 6(i): *Undertake Audit of all Natural Resource Committee Community Associations' and DNPW benefit sharing accounts*
- 6(j): *Implement more environmental education programmes, including Adult Literacy, and activities related to human wildlife conflict, wildlife crime and alternative livelihoods*
- 6(k): *Undertake more wildlife conservation research to inform management plans and policies and produce a DNPW wildlife research strategy*
- 6(l): *Complete Management Plans for all protected areas in Malawi and develop Conservation Action Plans for all endangered species*
- 6(m): *Implement proactive high specialist level law enforcement for the protection of Malawi's Black Rhino populations*
- 6(o): *Review problem animal control policies and improve knowledge and mitigation of Human Elephant Conflict*
- 6(p): *Ensure that DNPW employees adhere to Codes of Conduct*
- 6(q): *Implement wildlife crime and land tenure sensitization campaigns around communities*
- 6(r): *Recruit, protect and reward community based informants and community honorary wildlife officers*

#### **12.21 Recommendations (7): Malawi IWT Action Plan**

7(a): *Create useful links and strategies between all relevant national and international projects and programmes*

7(b): *Development of IWT Action Plan for Malawi (**Priority Recommendation**)*

This review has developed a large number of recommendations across sectors and identified a wide range of issues and technical needs for Malawi if the country is to work towards combating IWT. Several relevant previous, current and pending projects and programmes have also been identified, in addition to many different wildlife stakeholders. It is therefore strongly recommended that DNPW and the IACCWC seek resources to host a two day workshop whereby representatives from all stakeholders and potential implementation organisations, development partners and funders (including those listed in Section 11) can use the findings and recommendations made in this review to develop a concise and clear “*Action Plan to Combat*

*IWT in Malawi*", complete with objectives, activities and outlined proposal ideas and packages which can be quickly readied for submission to funders. This recommendation is considered a priority and should be undertaken as soon as possible.

### **13.0 Acknowledgments**

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## **14.0 List of Annexes**

Annex A: Terms of Reference for the IWT Review

Annex B: Log Frame for the IWT Review

Annex C: Full ETIS Dataset

Annex D: Cases of wildlife crime related to elephants and rhino

Annex E: Kasungu National Park Raw Data Set

Annex F: Legal Annex 1

Annex G: Legal Annex 2

Annex H: DNA Analysis of Malawi/TZ seizure

Annex I: Working Dogs for Conservation Proposal

Annex J: Wildlife Investigations Study Report

Annex K: Community Questionnaires

Annex L: Questionnaire Results Data Set and Analysis

Annex M: Liwonde National Park Annual Report 2012-2013

Annex N: High Court Case R v. Maria Akimu