



RAPID REFERENCE GUIDE FOR LAW ENFORCEMENT AGENCIES

on Model Charges for
Wildlife Crime Prosecutions



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Foreword

The illegal wildlife trade, including the trade in ivory and rhino horn, has received extensive media coverage in recent years due to the escalation in poaching and trafficking of wildlife parts and the threat this now poses to the very existence of many endangered species. The illegal wildlife trade is a multi-billion dollar annual trade and wildlife crime is now widely acknowledged as a serious crime, often involving the same criminals and trafficking routes as those used for drug smuggling and human trafficking.

Resolution 2013/40 'Crime Prevention and Criminal Justice Responses to Illicit Trafficking in Protected Species of Wild Fauna and Flora'¹ adopted by the Economic and Social Council of the United Nations on 25 July 2013 encourages member States:

"... to make illicit trafficking in protected species of wild fauna and flora involving organized criminal groups a serious crime, as defined in...the United Nations Convention Against Transnational Organized Crime...and strongly encourages Member States to strengthen, where necessary, their national legal and criminal regimes and law enforcement and judicial capacity, consistent with international legal obligations, to ensure that relevant criminal laws, including appropriate penalties and sanctions, are available to address illicit trafficking in protected species of wild fauna and flora".

The illegal wildlife trade is not 'simply' an environmental crime. In February 2014, the London Conference on Illegal Wildlife Trade² acknowledged *"illegal wildlife trade robs States and communities of their natural capital and cultural heritage, with serious economic and social consequences. It undermines the livelihoods of natural resource dependent communities. It damages the health of the ecosystems they depend on, undermining sustainable economic development"*.

The Declaration also noted the significant levels of corruption and money laundering involved in wildlife crime and the need to secure deterrent levels of sentencing and thus committed States to: *"Strengthen the legal framework and facilitate law enforcement to combat the illegal wildlife trade and assist prosecution and the imposition of penalties that are an effective deterrent"*. This envisaged the use of the complete array of existing legislation and law enforcement tools used in combating other forms of organised crime. i.e. the enforcement of laws on money laundering, tax offences and asset recovery, corruption as well as illicit trafficking in other contraband such as narcotic drugs and firearms. In order to achieve this, there is need for a multidisciplinary enforcement approach as the basis for effective investigations and prosecutions which will result in court sentences that can act as a real deterrent.

Malawi has unfortunately not been exempt from the illegal wildlife trade. Malawi's elephant population has decreased by around 50% in the past fifteen years and our small rhino population is at risk of local extinction due to poaching. Malawi is both a source and a transit country for illegal wildlife products. Malawi's geographical position, weak legislation and weak enforcement capacity has resulted in traders in neighbouring countries exploiting Malawi to illegally export ivory, rhino horn, pangolin scales, turtle shells and timber by mail and plane, or by road, to the ports on Africa's southern and eastern coasts, on to Asia.

Despite these challenges, Malawi is now taking a leading role in combating wildlife crime and over the past two years has made significant progress. In 2014, the Inter-Agency Committee for Combating Wildlife Crime (IACCWC) was established, with the Department of National Parks and Wildlife as the Secretariat. The IACCWC brings together all law enforcement agencies and the Judiciary to share information and strategies on wildlife crime enforcement and is one of the first such inter-agency committees in the region.

In 2016, the Wildlife Crime Investigation Unit was established within DNPW. Prior to the Unit's establishment, custodial sentences for wildlife crimes were rare in Malawi, despite the provision for custodial sentences of up to 10 years. In partnership with Malawi Police Services, the Unit made more wildlife trafficking arrests in the last 7 months of 2016 than were made in the previous 7 years. Sentences in Malawi for ivory trafficking have increased from an average \$40 fine with zero years' custody (2008-15) to an average of 3 ½ years imprisonment in 2016.

¹ https://www.unodc.org/documents/commissions/CCPCJ/Crime_Resolutions/2010-2019/2013/ECOSOC/Resolution_2013-40.pdf

² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/281289/london-wildlife-conference-declaration-140213.pdf

Malawi has just amended its wildlife law, the National Parks and Wildlife (amendment) Act No 11 of 2017 is now one of the strongest laws in the region. This amended Act significantly increases the penalties for wildlife crime, removing the option of a fine for the most serious offences against endangered species and extending the maximum custodial penalty to 30 years, comparable with the highest wildlife crime tariffs in Africa. This is a landmark moment for combating wildlife crime in Malawi. The new penalty provisions provide for significantly longer sentences, which enables the Judiciary to impose sentences commensurate with the seriousness of wildlife crime offences.

I commend the development of this Handbook and strongly recommend its use by law enforcement agencies and the Judiciary. It is my hope that it will contribute to the continuing improvement of investigations, prosecutions and consistent and commensurate sentencing to reduce wildlife crime in Malawi and ensure the conservation of our natural heritage.

A handwritten signature in black ink, appearing to read 'AKC Nyirenda', enclosed within a large, loopy oval shape.

The Honourable Lord Justice AKC Nyirenda, SC

The Chief Justice of The Republic of Malawi

April 2017

Acknowledgements

This '**Rapid Reference Guide on Model Charges for Use in Wildlife Crime Prosecutions**' is a section of the 'Handbook on the Use of Legislation in Wildlife Crime Prosecutions' which was reviewed by a high level panel, chaired by His Lordship Dr Chifundo Kachale on 5th February 2016 at Madidi Lodge, Lilongwe. The panel unanimously supported the content of the Handbook and welcomed its distribution to investigators, prosecutors and the judiciary. The Department of National Parks and Wildlife, the author Wongani Mvula and RSPCA International would like to thank His Lordship Dr Chifundo Kachale and the esteemed members of the panel for their invaluable guidance and support in improving this document.

The high level review panel:

His Lordship Dr. Chifundo Kachale, Chairman of the Judicial Training Committee (Chair)

Mrs Violet Chipao, Assistant Registrar of the High Court

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Mr Wongani Mvula, Malawi Law Commission and Miss Donnamarie O'Connell, RSPCA International, presented the Handbook to the Panel.

The Handbook was authored by Mr Wongani Mvula of the Malawi Law Commission, following a concept developed by the Department of National Parks and Wildlife and RSPCA International and was funded by UKAid through the 'Illegal Wildlife Trade Challenge Fund'. It is intended as a reference guide for investigators, prosecutors and the judiciary to provide background on the illegal wildlife trade and detailed information on the offences across multiple Acts, which may be applied to wildlife crime.



Elephant tusks (raw ivory).

Preamble

‘Wildlife’ includes all wild species of animals and plants. If properly managed, wildlife can provide useful services and benefits to people and contribute to the economy of Malawi through for example increased tourism. The Government of Malawi regards wildlife as a valuable asset, which needs to be conserved to the maximum extent possible.³ The government further considers wildlife conservation and management as a legitimate form of land use, which can be superior to other land - use schemes, if given an appropriate institutional framework.⁴

Chapter III of the Constitution of the Republic of Malawi, reflects the government’s commitment to wildlife conservation and management. Section 13 (d) of the Constitution particularly provides as follows:

“The State shall actively promote the welfare and development of the people of Malawi by progressively adopting and implementing policies and legislation aimed at achieving the following goals —

(d) The Environment

To manage the environment responsibly in order to —

- (i) prevent the degradation of the environment;*
- (ii) provide a healthy living and working environment for the people of Malawi;*
- (iii) accord full recognition to the rights of future generations by means of environmental protection; and*
- (iv) conserve and enhance the biological diversity in Malawi.”*

In Malawi, 21.6% of the land area constitutes protected areas, including national parks, wildlife reserves and forest reserves.⁵ These areas contain the highest concentration of wildlife resources.⁶ However, outside protected areas, there is a general degradation of wildlife resources, largely due to increasing human population pressure, poverty, and lack of or inadequate appreciation of benefits from wildlife resources, which often leads to habitat loss and over-exploitation. For the same reasons, wildlife resources within protected areas have come under increasing pressure. Further, cases of wildlife crime are on the rise as a result of increasing international wildlife trade. Organised criminal groups linked to international syndicates exploit endangered and rare species of flora and fauna for financial gain.

It is therefore important for the government to develop partnerships with all interested parties to effectively manage wildlife resources both inside and outside protected areas. It is further important that the government recognises that all components of ecosystems are interrelated and that despite the fact that many benefits of wildlife are apparent only in the long term they are, nonetheless, important.⁷ Pragmatically, wildlife cannot be wholly managed by the State. Consequently, there is a distinction between two categories of wildlife: wildlife whose management is controlled by the State; and wildlife whose management is not under State management. Species, individuals, areas or circumstances that are managed by the State are defined by the National Parks and Wildlife (Amendment) Act 2017⁸. Wildlife that is not managed by the State can be conserved, utilised or controlled by the public at its discretion. However, to ensure its proper monitoring, government requires any major physical development undertaking to be preceded by an environmental impact assessment.⁹

The Government of Malawi has developed a wildlife policy and enacted several pieces of legislation that seek to protect endangered and rare species of fauna and flora. The wildlife policy is an integral part of the government’s land-use plans.¹⁰ Further, the policy conforms with the National Environmental Policy as well as

3 Department of National Parks and Wildlife, Wildlife Policy, Policy Document, January 2000, p. 3.

4 As above.

5 As above.

6 As above.

7 Department of National Parks and Wildlife, Wildlife Policy (n 1).

8 As above.

9 Section 24 of the Environment Management Act.

10 Department of National Parks and Wildlife, Wildlife Policy (n 1).

policies of other relevant sectors such as Lands, Agriculture, Forestry, Fisheries, Water and Tourism.¹¹ It supersedes all previous policy statements for the conservation and management of wildlife, but does not, however, preclude the Responsible Minister from issuing supplementary policy statements to address any issue that may not be adequately covered by the policy. In addition, government intends to follow up on the policy document with appropriate legislative amendments and management plans for those issues which merit them.¹²

The two principle Acts which protect wildlife and govern wildlife crime in Malawi are the National Parks and Wildlife (Amendment) Act 2004 as amended by the National Parks and Wildlife (Amendment) Act 2017 and the Environment Management Act. Additional laws are also applicable to matters concerning wildlife crime and the protection of animals, although their application may be perceived as secondary in certain respects. These include the Penal Code; the Corrupt Practices Act; the Money Laundering Act, Proceeds of Serious Crime and Terrorist Financing Act; the Firearms Act; and the Customs and Excise Act.

The Government of Malawi acknowledges the necessity of international co-operation for effective protection of the environment in general and wildlife in particular.¹³ The government has therefore signed and ratified international treaties and conventions that are consistent with the wildlife conservation and management policy of Malawi. In that regard, the Government of Malawi has signed and ratified several international agreements, including the African Convention on the Conservation of Nature and Natural Resources; Convention on the Conservation of Migratory Species of Wild Animals; Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); Convention on Biological Diversity; and Southern African Development Community (SADC) Protocol on Wildlife Conservation and Law Enforcement. Recent agreements entered into by the Government of Malawi include the African Elephant Action Plan; and the London and Kasane agreements.

Despite the existence of a legal framework to combat wildlife crime, there is need for various stakeholders to collaborate in order to attain the desired objectives. In that regard, the judicial perspective on wildlife crime is important because it reveals approaches that courts would take in dealing with wildlife crime and in turn reflects whether wildlife crime is considered as a serious crime. Further, the prosecutorial and investigative perspectives are also important in order to maximize the penalties in wildlife crime prosecutions so that they should act as effective deterrents. In addition, there is need for harmonising and strengthening domestic approaches. Examination and analysis of how current legislation is being applied is also necessary to establish whether or not the legislation is being applied to the maximum extent provided for.

The need for provision of knowledge and tools to prosecutors and the judiciary cannot be overemphasised. In addition, the current level of wildlife crime being perpetrated in Malawi and the wider world is a fairly new phenomenon, thus there is not much case law in Malawi. That necessitates the need to raise the profile of the issue and ensure that law enforcement agencies and the judiciary have the correct information available to prosecute offences and sentence the offenders effectively in line with international norms.

In view of the foregoing, Commissioning Organisations have developed a '*Handbook for Law Enforcement Agencies on the Use of Legislation in Wildlife Crime Prosecutions*', later referred to as the "Handbook". This Handbook provides a practitioner's guide on the use of legislation in wildlife crime, with guidance on charges that can be brought against perpetrators of wildlife crime and sanctions under each law, as well as recommendations on their application. The Commissioning Organisations are the Department of National Parks and Wildlife, Malawi, Royal Society for the Prevention of Cruelty to Animals (RSPCA), and Stop Ivory. Funding of the project has been made available under the UK Government's 'Illegal Wildlife Trade Challenge Fund' (UK Aid).

11 As above.

12 As above.

13 As above.

1. Introduction

Wildlife crime comprises all crimes committed against wildlife species.¹⁴ It includes the illegal trade of trophies or specimens of endangered species of wildlife, crime involving native species, which are endangered, or of conservation concern and cruelty to, or persecution of wildlife species.¹⁵ Wildlife crime is on the increase as a result of expanding international wildlife trade. Organised criminal groups linked to international syndicates exploit endangered and rare species of fauna and flora in pursuance of international wildlife trade. The price of wholesale raw ivory is dropping, likely as a result of China's recent announcement to close its domestic ivory trade. According to Save the Elephants¹⁶, by November 2015 the wholesale price of raw ivory was \$1,100 per kg, from \$2,100 per kg in early 2014 and in February 2017 had fallen to \$730 per kg. However, this can still be a high profit/low risk crime in countries with weak law enforcement

There have been numerous cases of illegal trafficking in ivory exposed in Malawi in the past couple of years, together also with rhino horn and other wildlife products. See list of prosecuted cases at the end of this Guide.

Elephant and rhino poaching and the trafficking of both raw ivory and horn and worked products including carvings and trinkets is a major component of the illegal wildlife trade. Further, the trade is increasingly prevalent in Malawi. Malawi is regarded as both a source country (as an elephant and rhino range State) and a transit country because traffickers use Malawi to export illegal wildlife products from other countries out to ports and onto countries in Asia. Malawi has thus signed up to a number of agreements which singularly focus on combating wildlife crime. In some cases, the focus is particularly on protection of elephants and combating the illegal ivory trade.



Poached elephant feet. Any part of a protected species is covered as a 'specimen'.

14 Advocate Kunshang Lama (n 21) A.

15 As above.

16 Decline in the Legal Ivory Trade in China in Anticipation of a Ban. Lucy Vigne and Esmond Martin (2017) http://www.savetheelephants.org/wp-content/uploads/2017/03/2017_Decline-in-legal-ivory-trade-China.pdf and savetheelephants.org

The use of multiple charges in wildlife crime prosecutions

Where elements of an offence touch on various sectors that may be governed by a particular piece of legislation, it is important to consider charges under each piece of legislation. The approach would be helpful in a number of ways:

- prosecutors may weigh various charges against the suspect and decide on the type of evidence that would be required for each of the charges to secure a conviction;
- it would be easier for prosecutors to analyse various transactions and offences relating to the transactions to be considered by the court. For instance, instead of lumping various transactions under a single charge or several charges pursuant to the National Parks and Wildlife Act only, prosecutors could use other pieces of legislation if transactions leading to the commission of a wildlife crime involve corrupt practices, money laundering, or illegal use of firearms, among others; and
- where there is an effective system of inter-agency coordination in place, it would be easier for investigators, prosecutors and other stakeholders to map out a strategy for prosecuting cases that involve not only wildlife crime but also contraventions that are not purely wildlife crimes, for instance corrupt practices or money laundering.

The use of multiple pieces of legislation in the prosecution of cases involving wildlife crime cannot be overemphasised.

Challenges Pertaining to the Nature of Wildlife Crime

- **Corruption**

Commission of wildlife crime has become one of the fastest and easiest ways of creating wealth. Many people including law enforcement officials, government officials and politicians are involved in illegal wildlife trade for personal gain. Corruption is thus at the centre stage in the illegal wildlife trade. Corruption involves the exchange of huge sums of money. Many people thus opt to help perpetrators of wildlife crime rather than the police following a comparison of benefits of reporting to police or receiving huge sums of money.

- **Seriousness of Wildlife Crime**

The decision in *The Republic v. Maria Akimu*¹⁷ recognised wildlife trafficking as a serious offence. It is a case law precedent that would enable the judiciary and prosecutors, among other stakeholders, 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. In the judgment, Mwaungulu J. (as he then was) stated illustratively:

“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.”

It is recommended that stakeholders prosecuting cases involving wildlife crime should treat the cases with the seriousness that they deserve. The investigation, prosecution, conviction and sentencing therefore ought to reflect the seriousness of wildlife crime and the efforts being taken to eliminate it.

17 Revision Case No. 9 of 2003.

Acts included in this Guide:

- Penal Code
- National Parks and Wildlife (Amendment) Act 2017
- Firearms Act
- Customs and Excise Act
- Corrupt Practices Act
- Money Laundering, Proceeds of Serious Crime and Terrorist Financing Act

- Financial Crimes Act 2017
- Environment Management Act
- Criminal Procedure and Evidence Code



Ivory bangles

Case Study: The Republic v Maria Akimu, Revision Case No. 9 of 2003 (High Court)

One of the cases prosecuted under section 110 of the National Parks and Wildlife (Amendment) Act 2004 is *The Republic v. Maria Akimu*.¹⁸ Brief facts of the case were that officials of the National Parks and Wildlife Department, disguised as would-be purchasers of ivory and working on information, met the defendant at her house. They agreed to buy some pieces of ivory at the defendant's house; at the defendant's father's house; and another person's house. They eventually arrested the defendant and recovered the ivory. However, there was stiff resistance from the defendant's neighbours and relations; and one national parks and wildlife official was badly injured. After conviction, the First Grade Magistrate imposed a fine of K6,000.00 and in default imprisonment for one year. The defendant paid the fine. The Department of National Parks and Wildlife was concerned that the punishment, given the huge financial returns to poachers and traffickers of trophies, would not deter offenders and preserve wildlife, which is a national treasure.

On review of the case, the High Court decided that in arriving at the appropriate sentence, the court must regard the maximum prison sentence, which was five years in respect of the case. The High Court held that this was an appropriate case where a fine and imprisonment were appropriate. The appropriate prison sentence, given that the defendant was committing a crime for the first time, was imprisonment for one year. The case was an instance of the offence where a community order would serve very little to deter the offender to indulge in something which, from domestic and international concern about wildlife and the ecosystem, should be viewed seriously and differently. The court found that the defendant possessed and trafficked the trophies; and thus decided not to suspend the sentence. The defendant was ordered to pay the fine and serve the prison sentence of one-year imprisonment with hard labour.

18 Revision Case No. 9 of 2003 (High Court).

2. Evidence in wildlife crime cases

Aspects of Investigations

Investigators play a crucial role in the process of prosecution of wildlife crime. The quality of investigation carried out in a particular case can contribute to the relevance of the evidence required to prove the required elements of a case. Investigations can thus determine the outcome of a case, both in positive and negative terms. It is necessary for investigators to observe the tenets of human rights when investigating wildlife crime cases to avoid prejudicing their own case. This part thus briefly discusses aspects of human rights; crime scene investigation; and evidence in relation to wildlife crime cases.

Aspects of Human Rights

The Constitution makes provision for human rights, which must be adhered to by investigators in the course of criminal investigations in general, and wildlife crime, in particular. Section 15 (1) of the Constitution provides that the human rights and freedoms enshrined in Chapter IV of the Constitution shall be respected and upheld by the executive, legislature, judiciary and all organs of the Government and its agencies, which includes agencies that employ investigators.

In addition, section 19 of the Constitution provides for human dignity and personal freedoms. Section 19 (1) provides that “[T]he dignity of all persons shall be inviolable.” Section 19 (2) provides that in judicial proceedings or other proceedings before any organ of the State, and during the enforcement of a penalty, respect for human dignity shall be guaranteed. In addition, section 19 (3) provides that a person shall not be subject to torture of any kind or to cruel, inhuman or degrading treatment or punishment; while section 19 (4) provides that a person shall not be subject to corporal punishment in connection with any judicial proceedings or other proceedings before any organ of the State. Further, section 19 (6)(a) provides that subject to the Constitution, every person shall have the right to freedom and security of person, which shall include the right not to be detained without trial. Section 19 of the Constitution provides many requirements that must be observed by investigators. Thus investigators are not supposed to violate the dignity of suspects or any other person during investigations; subject suspects of wildlife crime to any kind of torture or cruel, inhuman or degrading treatment or punishment; or corporal punishment. Investigators should not, further, cause detention of suspects without trial.

Section 21 of the Constitution provides for privacy, as follows:

“Every person shall have the right to personal privacy, which shall include the right not to be subject to—

- (a) searches of his or her person, home or property;*
- (b) the seizure of private possessions; or*
- (c) interference with private communications, including mail and all forms of telecommunications.”*

Investigators should therefore ensure that during investigations, searches of suspects, their homes or property; and seizures of private possessions must be carried out pursuant to search warrants or as otherwise provided by law. In a related consideration, section 28 (2) of the Constitution provides that a person shall not be arbitrarily deprived of property. Thus where investigations relate to the property of a suspect, the suspect should not be arbitrarily deprived of the property. However, the property can be seized pursuant to court orders and search warrants, where practicable, for the purposes of recovery; or to be tendered in court as exhibits.

Section 42 of the Constitution provides for arrest, detention and fair trial. For the purposes of aspects of investigation, investigators need to pay attention, among other provisions, to section 42 (2)(a), (b), and (c) which provides as follows:

“(2) Every person arrested for, or accused of, the alleged commission of an offence shall, in addition to the rights which he or she has as a detained person, have the right—

- (a) promptly to be informed, in a language which he or she understands, that he or she has the right to remain silent and to be warned of the consequences of making any statement;*

- (b) *as soon as it is reasonably possible, but not later than 48 hours after the arrest, or if the period of 48 hours expires outside ordinary court hours or on a day which is not a court day, the first court day after such expiry, to be brought before an independent and impartial court of law and to be charged or to be informed of the reason for his or her further detention, failing which he or she shall be released;*
- (c) *not to be compelled to make a confession or admission which could be used in evidence against him or her”*

It is important for investigators to adhere to human rights and freedoms briefly considered above. Failure to adhere to human rights and freedoms could entitle suspects to challenge the lawfulness of their detention; searches of their person or property; and seizure of their property, among others. In effect, prosecution of the wildlife crime case may be prolonged as a result of objections that may be raised by the suspects with regard to their challenges. Further, the investigating, arresting and prosecuting authorities may be sued by the suspects to be compensated for any human rights violations. Payments of compensation are thus costly and needless because they are avoidable.

Crime Scene Investigations

Crime scene investigations greatly contribute to evidence that investigators use in the detection and prosecution of wildlife crime. Crime scene investigations relate to forensic science, which is the study of evidence discovered at a crime scene and used in court. Forensic science is any science used for the purposes of law, and therefore provides impartial scientific evidence for use in the court of law; and in a criminal investigation and trial. Forensic science is a multidisciplinary subject drawing principally from chemistry and biology but also from physics, geology, psychology, social science, etc.

Various forms of forensic evidence include blood, fingerprints, shoe prints, hair, vehicles, cigarette butts, semen, body fluids, DNA¹⁹, tyre prints, handwriting, typewriting, photographs, firearms and tool marks, insects (entomological factors) forensic art, animation, etc.

The importance of forensic evidence and crime scene investigations can be succinctly discerned from the words of Professor Edmond Locard (1877–1966):

“Wherever he steps, whatever he touches, whatever he leaves, even unconsciously, will serve as a silent witness against him. Not only his fingerprints or his footprints, but his hair, the fibres from his clothes, the glass he breaks, the tool mark he leaves, the paint he scratches, the blood or semen he deposits or collects. All of these and more, bear mute witness against him. This is evidence that does not forget. It is not confused by the excitement of the moment. It is not absent because human witnesses are. It is factual evidence. Physical evidence cannot be wrong, it cannot perjure itself, it cannot be wholly absent. Only human failure to find it, study and understand it, can diminish its value.”²⁰

From the instructive view of the French scientist, Professor Edmond Locard, investigators need, through crime scene investigations, to carefully find evidence, study and understand it. In that regard, investigators need to understand that “[t]here are different types of crime scene, which may influence the value of different types of forensic evidence.”²¹ For example, in the case of illegal shooting of a bird of prey, the crime scene may vary as follows:

- the body may be found at the location where it was shot;
- the bird may not have died immediately and flown to another locus and died; or

19 James E. Clapp, Dictionary of the Law (n 157) defines DNA as “deoxyribonucleic acid, the macromolecule that contains the genetic information for any individual of any species of plant or animal.”

20 See Forensic Working Group, ‘Wildlife Crime: A guide to the use of forensic and specialist techniques in the investigation of wildlife crime’ (2014) p. 7. Available at www.tracenetwork.org/wp-content/uploads/2012/08/Wildlife-Crime-use-of-forensics-FWG-April-2014.pdf Accessed on 10 February, 2016 at 07:39 hours.

21 Forensic Working Group, ‘Wildlife Crime: A guide to the use of forensic and specialist techniques in the investigation of wildlife crime’ (n 183).

- the bird may have been shot and killed then transported by a suspect to another location where later found.²²

In addition, investigators have to understand the use of forensic and other evidence either at a crime scene or in the vicinity. For instance, investigators may consider:

- whether there are soil samples, footwear or tyre impressions which may provide information about who has visited the scene;
- whether there are discarded items or perhaps items used to stake down or tie a bait which may provide potential sources of human DNA or fingerprints;
- the potential nature of use of the surrounding land or area; and whether that could indicate a motive for the laying of a poison bait, for instance; and
- whether there are other forms of predator control taking place in the area such as the legal or illegal use of traps or snares, since the user of these items may be linked with unlawful predator control methods including poisoning.²³

Further, investigators may take photographs and prepare sketch plans of the scene, which can be extremely useful in the enquiries.²⁴ The following is a simple illustration of evidence that crime scene investigations may reveal:

Birds of prey stuffed inside plastic tubes, most of them dead, were intercepted at Heathrow airport in the process of being smuggled from Thailand into the United Kingdom. A set of identical tubes were found stored near the home of the main suspect. The identical tubes were believed to have been used for a previous shipment of birds. The fingerprint impressions of the suspect were found on the identical tubes and helped to link him to the smuggling operation. The suspect later received a lengthy prison sentence for smuggling and illegal trade in birds and other wildlife.²⁵

General Consideration of Evidence

This part briefly provides a general understanding of evidence that may be useful to stakeholders in the prosecution of wildlife crime cases including investigators, prosecutors and judicial officers. Evidence is the “information and things pertaining to the events that are the subject of an investigation or a case; especially, the testimony or objects ... offered at a trial or hearing for the judge or jury to consider in deciding the issues in a case.”²⁶ Judicial evidence consists of the following:

- facts which are legally admissible; and
- the legal means of attempting to prove the facts.

The law of evidence thus deals with three basic matters:

- facts that may or may not be proved in a particular case;
- the sort of evidence that must be given on a particular fact which may not be proved; and
- persons who must produce evidence by which any fact is to be proved; and the manner of producing the evidence.

In criminal matters, which include wildlife crime, the facts in issue are the elements of the alleged offence.

22 As above.

23 See Forensic Working Group, 'Wildlife Crime: A guide to the use of forensic and specialist techniques in the investigation of wildlife crime' (n 183) 59.

24 As above.

25 Forensic Working Group, 'Wildlife Crime: A guide to the use of forensic and specialist techniques in the investigation of wildlife crime' (n 183) 8.

26 James E. Clapp, Dictionary of the Law (n 157).

Classification of Evidence

Evidence can be classified into three categories, namely oral evidence; documentary evidence; and real evidence. The classification is considered in detail below:

- **Oral Evidence**

Oral evidence is live evidence, and is given by a person in person. The witness must physically appear before the Court and under oath or affirmation. He or she must speak what he or she knows of the matter in issue and goes through the whole process of examination-in-chief, cross-examination and re-examination. Oral evidence is regarded as the best form of evidence because the court is able to assess the demeanor of the witness as he or she goes through the examination process.

- **Documentary Evidence**

Documentary evidence arises out of documents, for instance, letters, deeds, written statements, maps, photographs, etc.

- **Real Evidence**

Real evidence is, broadly, any demonstrative evidence produced in court for it to be examined for the court's own satisfaction on the matter under enquiry. Examples would include a weapon or bloody glove, poached ivory or rhino horn. It is worth noting that the court is concerned with the substance and not the content of the exhibit.

- **Direct Evidence**

Direct evidence is evidence that is perceived by the person giving it in court. Usually, direct evidence tends to prove facts in issue as opposed to evidence that only proves matters which are collateral to the facts in issue.

- **Indirect Evidence**

Indirect evidence is evidence presented in court by a person who did not perceive it himself or herself. Indirect evidence which is caught by the hearsay rule²⁷ is acceptable by the court and is called circumstantial evidence.

- **Primary Evidence**

Primary evidence mainly relates to documents and the term "primary" suggests original and not derived or subordinate evidence.

- **Secondary Evidence**

Secondary evidence suggests that better evidence exists somewhere. It could thus be photocopies of the original documents in place of the original. If the court is to accept secondary evidence, the prosecutor must ensure that a copy is certified as a true copy of the original.

- **Insufficient Evidence**

Insufficient evidence is weak and unreliable evidence that a reasonable tribunal ought not rely on.

- **Prima facie Evidence**

Prima facie²⁸ evidence is evidence which appears strong and reliable if uncontradicted.

- **Conclusive Evidence**

Conclusive evidence does not allow room for argument. Usually, it is in form of statutory provisions and is strictly applied to statutory provisions.

27 The underlying notion of the rule against hearsay is that a witness should speak of only facts which he or she has perceived with one of his or her five senses: see P.B. Carter, *Cases and Statutes on Evidence* (Sweet & Maxwell, 1981).

28 Prima facie is a Latin term which, literally, means "at first appearance": see James E. Clapp, *Dictionary of the Law*(n 157).

Sources of the Law of Evidence in Malawi

Sources of the law of evidence in Malawi include the Constitution of the Republic of Malawi; the Criminal Procedure and Evidence Code;²⁹ case law; and authoritative texts by jurists.

Relevance and Admissibility of Evidence

It is important to note that it is not everything that is given as evidence which is admissible as evidence. Facts given in evidence must be linked to the matter in issue, thus the rule of thumb is that “all irrelevant evidence is inadmissible but not all admitted evidence is relevant”. The part below considers relevance and admissibility in further detail.

- **Relevance**

Relevance is not so much guided by law but by common sense and the reasoning of the common person. Admissibility, however, is a question of law. Once relevance has been established, the next question is one of admissibility. It thus follows that to pass as evidence, a fact must be both relevant and admissible. Section 171 of the Criminal Procedure and Evidence Code provides for relevance of facts. In brief, to establish relevance, the facts produced in evidence must be related to the issue.

- **Admissibility**

Admissibility is governed by rules of law. The Criminal Procedure and Evidence Code deals with how the court will admit evidence. Section 172 of the Criminal Procedure and Evidence Code thus provides for admissibility of evidence.

As a general rule, to be admissible, evidence which is given must be of genuine facts. Consequently, opinion evidence is inadmissible. Admissibility relates to what must be received by a court of law. Section 171 of the Criminal Procedure and Evidence Code states that evidence cannot be given of any other facts except the facts in issue and the facts declared relevant. Facts in issue are the elements of the offence.

An opinion is an inference held from observed facts and opinion may be private or public. The position of the law is that opinion is irrelevant. A person is supposed to give evidence of facts perceived by him or her and not his or her inferences or interpretation.

The second reason for the exclusion of opinion evidence is usurpation. The person who gives opinion evidence usurps the decision making power of the courts. It is the court and not the witness that should be drawing conclusions.

However, it should be noted that there are exceptions to the conclusion of opinion evidence, for instance, where opinion is a fact in issue. Second, lay witnesses may be allowed to give opinion evidence in certain circumstances, for instance, giving identity. The witness can testify that in his or her opinion the person or thing which he or she saw at one point in time is the same as the person or thing which he or she has seen at another point in time. Further, in terms of age, witnesses may be allowed to give opinion evidence on the age of a person, document or thing based on appearance. In the third circumstance, a witness may testify on his or her health; or the health of another person. Finally, lay witnesses may testify on the sobriety or intoxication of another person.

Challenges Linked to Evidence

Despite the guidelines and importance of carefully considered evidence discussed above, investigators and prosecutors meet challenges linked to evidence in the prosecution of wildlife crime. Some of the challenges are as follows:

- difficulties in the identification of protected species;
- difficulties in detecting wildlife crime;
- difficulties in proving wildlife crime (for instance, in cases of endangering the environment);

29 Laws of Malawi, Cap. 8:01.

- difficulties in proving the organised aspect of the crime (for instance, cases of organised poaching; or trafficking of wildlife trophies);
- difficulties in proving the relationship between the charges under international instruments;
- unavailability of experts in instances of necessity to use the advice of experts;
- investigative tools (for instance, interception of telecommunications, etc.) are not used for wildlife crime;
- difficulties relating to collection and securing of cross-border evidence;
- difficulties in establishing the link between the material damage and the criminal offence (linked also to the absence of legislative criteria and legislative gaps); and
- difficulties to prove the intent of suspects.³⁰
-

Aggravating Circumstances of the Offence

- **Predetermined Crimes**

Courts take into account the fact that the offence was premeditated in contrast to an offence which was committed on impulse as an aggravating factor.

- **Nature of the Offence**

Offences vary in terms of seriousness. The seriousness of an offence may be inherent in the nature of the offence itself or in the nature of commission of the offence. **An example could be the cross-border extent and effect of the offence,³¹ as in international illegal wildlife trade.**

- **Frequency of the Offence**

Courts take into account the prevalence of a particular offence. Trends in the prevalence of particular offences change from time to time thus courts need to be alert. Prevalence of the offence necessitates the need to protect the public thus court need to make it clear in sentencing orders the kind of public which is the target for protection when citing prevalence of the offence as an aggravating circumstance.

- **Abuse of Authority**

Occurrences of abuse of authority are common among employees committing offence against their employers, for instance, theft. **In the context of wildlife crime, it could be employees who have access to weapons providing access to poachers to use the weapons for poaching, among others.**

Mitigation

The accused person, as a convicted person, has a right to make a plea in mitigation of the sentence. A plea in mitigation is a prayer made by the accused to the court for the court's consideration to reduce the severity of the punishment that it may pass. The prayer generally pertains to the good character, circumstances of the commission of the offence or personal commitments of the accused person. The accused has a right to call evidence in mitigation, if he or she wishes. If he or she does, the prosecution has a right to cross-examine the witnesses called and also to call evidence to rebut the evidence of the accused person in mitigation. Prosecutors thus need evidence-based facts to challenge the mitigation. After the court hears the plea in mitigation by the accused person, it passes sentence accordingly.

Mitigating Circumstances of the Offence

In general, circumstances which are in contrast with the points outlined under aggravating circumstances of the offence would constitute mitigating circumstances of the offence.

30 Eurojust, Strategic Project on Environmental Crime Report (n 107) 65-66.

31 See Rep. v. Mthali [1971–72] 6 ALR (Mal) 289.

Mitigating Circumstances of the Offender

- **Pleading Guilty**

Courts take into account the fact that an offender pleaded guilty where the penalty is not fixed by law. An offender who pleads guilty saves the court from wasting time and expenses and, further, accepts responsibility for his or her criminal conduct.

- **Age of the Offender**

Section 337 of the Criminal Procedure and Evidence Code provides for orders where punishment is not appropriate; absolute or conditional discharge; and probation, among others.

- **Previous Good Character**

Pursuant to section 340 (1) of the Criminal Procedure and Evidence Code, the court should first consider non-custodial sentence thus being a first offender is a mitigating factor. However, for offenders who have a record, if they took longer to re-offend, or lived an industrious life could be evidence of good character.

- **Time Spent in Custody**

The court takes into account the period that an offender has already spent in custody before being sentenced. However, the consideration is not automatic because the court could ignore this factor if the accused was in custody as a result of his or her own misconduct. For instance, where the accused person jumped bail.

- **Expression of Remorse**

Where an accused person expresses regret for the offence that he or she committed, the court may consider the factor in his or her favour. The expression of remorse is even greater where the accused person takes steps voluntarily to repair the damage, for instance, through restitution.³²

- **Attitude of the Accused Person**

The court always considers the attitude of the accused person; and his or her involvement in the offence. Some crimes have principal offenders while others may be accessories or accomplices to the crimes as discussed in Chapter 3 of the Handbook. In some cases, an accused person may not be aware that he or she is committing an offence, for instance, borrowing and driving a motor vehicle without knowing that it is carrying prohibited items. The court thus takes the attitude of the accused into account.

- **Other Circumstances**

Apart from the circumstances considered above, others may include necessity, for example, where an unlicensed driver drives to take a suspect to police; where the conviction will lead to loss of a steady job and benefits; the hardship that family members of the offender would go through; and special circumstances surrounding the health of the offender.³³

Aggravating Circumstances of the Offender

Circumstances which are generally in contrast with mitigating circumstances of the offender could be aggravating circumstances of the offender. However, courts differentiate habitual offenders and repeat offenders when dealing with offenders with previous records.

Specific Punishments Ordered by Courts

- **Death Sentence**

Section 323 of the Criminal Procedure and Evidence Code and section 26 of the Penal Code, respectively, provide for sentence of death. In essence, the provisions stipulate that the sentence should specify that the convict will suffer death in the manner authorised by law.

32 In *The Republic v. Maxwell Namata and Luke Kasamba*, Criminal Case 45 of 2013 (High Court, Lilongwe District Registry) (unreported), at page 8 of the transcript, the Court noted that restitution can be indicative of remorse for crimes committed by a person.

33 See *The Republic v. Maxwell Namata and Luke Kasamba*, Criminal Case 45 of 2013 (High Court, Lilongwe District Registry) (unreported).

- **Imprisonment (under section 27 of the Penal Code)**

It has been discussed above that the court has discretion to determine the length of imprisonment within the prescribed maximum or over the prescribed minimum. Under section 27 of the Penal Code, the court also has the discretion to order that the sentence to be with or without hard labour unless the statute expressly says otherwise. Where the court does not make the order, the imprisonment will be presumed to be with hard labour.

Further, the court has discretion to reduce life sentence and to add a fine over and above imprisonment. Where the accused is charged with several counts in one charge, the court has to make a separate finding and conviction on each count. Similarly, when sentencing a convict, section 35 of the Penal Code provides that the court should enter a sentence separately on each count. The sentences imposed will ordinarily run consecutively, that is, one after the other, unless the court orders that the sentences should run concurrently; together with the other.³⁴

- **Preventive Sentence**

A preventive sentence is a sentence of imprisonment passed on an offender, but it can exceed the maximum sentence for the offence with which the offender is charged. Preventive sentence is governed by section 11 of the Criminal Procedure and Evidence Code which provides for the power of certain courts to pass a sentence of imprisonment for the protection of the public.

A preventive sentence is designed to put away an offender for a longer period in order to protect the public from his or her offending behaviour. Powers to order a preventive sentence are restricted to the High Court, Resident Magistrate's Court and the court of a magistrate of the first grade. Section 11 of the Criminal Procedure and Evidence Code provides that the offender must be over twenty-one years old; convicted of an offence which attracts a sentence of five years or more; had been previously convicted on at least three occasions of an offence attracting a sentence of five years or more, since he or she was eighteen years old, and has been sentenced to a custodial sentence on at least two previous occasions. The court may pass a preventive sentence of not less than five years and not more than fourteen years. The sentence should only be passed on habitual offenders and to protect the public. Further, the accused must be given opportunity to be heard before the sentence is passed.

- **Fines (under section 29 of the Penal Code)**

A fine is a fiscal penalty imposed on an accused person. Section 29 of the Penal Code provides for fines. Section 29 (1) of the Penal Code provides as follows:

“Where a fine is imposed under any law, then in the absence of express provisions relating to such fine in such law the following provisions shall apply – ”

Section 29 (1) acknowledges the position under section 27 (3) of the Penal Code which provides as follows:

“A person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment.”

In that regard, where the charge does not prescribe a fine as the sentence, the court may pass a sentence of a fine if it considers it desirable.

The sentence to pay a fine, however, is subject to limits set out in the charging section, the jurisdiction of the court and section 29 of the Penal Code. Section 29 (1)(a) of the Penal Code provides that where there is no statutory limit to the extent of the fine, the fine that may be imposed is unlimited but should not be excessive. In addition, section 29 (1)(b) provides that where the offence charged provides for a fine or imprisonment, the extent of the fine or imprisonment is at the discretion of the court.

- **Forfeiture (under section 30 of the Penal Code)**

34 See section 17 of the Criminal Procedure and Evidence Code.

Section 30 of the Penal Code provides for forfeiture as a punishment which may be made in addition to, or in lieu of any other penalty in respect of specific offences under sections 90, 91, 92, 110, 111, 331A and 396 of the Penal Code. The punishment of forfeiture under section 30 has the following special features:

- it is applicable to specific offences;
- it can be ordered in lieu of any other penalty; and
- if the property cannot be forfeited or traced, the court may assess the value of the property and order forfeiture of property to the value of the sum which shall be enforced just like payment of a fine.

The essence of forfeiture as a form of punishment is to ensure that the offender does not gain from his or her criminal activities.

Further, the court has powers to order forfeiture of property, which is connected or used in the commission of an offence as the consideration of the Firearms Act³⁵ and the Customs and Excise Act,³⁶ among others, demonstrates under Chapter 3 of the Handbook.

The power to order forfeiture is discretionary thus the court has to provide an opportunity to be heard to the owners of the property which is subject to forfeiture.³⁷

- **Compensation (under section 32 of the Penal Code)**

Section 32 of the Penal Code provides for compensation. Section 32 (1) thus allows the court to adjudge an offender to make compensation to the person who has suffered personal injury or loss of property by the offence. The order may be made in addition to or in substitution of any other punishment. Further, the court should give the accused person opportunity to be heard where an order of payment of compensation is in contemplation.

- **Community Service Order**

Section 25 (9) of the Penal Code provides for community service order as one of the punishments that the court may give. In addition, section 339 (2) of the Criminal Procedure and Evidence Code provides for community service orders as follows:

“When a person is convicted of any offence, not being an offence the sentence for which is fixed by law, the court may, if it is of the opinion that the person would be adequately punished by a fine or imprisonment for a term not exceeding twelve months, fine the person or sentence the person to a term of imprisonment not exceeding twelve months but the court may, as the case may be, order the suspension of the payment of the fine or operation of the sentence of imprisonment on condition that the person performs community service for such number of hours as the court may specify in the order.”

When the offender is sentenced to perform community service, he or she performs unpaid work for the benefit of the community.

- **Other Orders**

The court has powers to make other orders as it considers fit under sections 337, 338 and 339 of the Criminal Procedure and Evidence Code. The orders apply where the offence does not have a sentence fixed by law, and the court having regard to the youth, old age, character, antecedents, home surroundings, health or mental condition of the accused or on the fact that the offender has not previously committed, it is inexpedient to inflict any punishment the court may make such other orders which include, without entering a conviction dismiss the charge and admonish or caution the offender, convict the offender and discharge him conditionally or unconditionally, make a probation order, or allow accused to enter into a bond to come and receive a sentence and meantime keep the peace, security to keep the peace and suspended sentence.

35 Laws of Malawi, Cap. 14:08.

36 Laws of Malawi, Cap. 42:01.

37 See section 22(b) of the Firearms Act (Cap. 14:08) and section 161 of the Customs and Excise Act (Cap. 42:01).

In all the circumstances, the court should explain to the offender the effect of the order it intends to pass and the offender must be willing to comply with the order and the conditions. It is a requirement that the conditions set must be precise and reasonable, for example, courts have accepted the condition that the accused person “shall not be convicted of an offence of a similar nature”, but have rejected the condition that the accused person “shall not be convicted of any offence” as not reasonable.

Further, section 341 of the Criminal Procedure and Evidence Code provides that in the event of breach of conditions, the court may summon the offender and hear him or her before activating the sentence or order if the court finds it necessary to do so.

- **Restitution**

Restitution is restoring of property or money’s worth to the person entitled following theft and recovery of the property or monetary proceeds of the property. Section 147 (a) of the Criminal Procedure and Evidence Code requires the court to make an order restituting the property or money’s worth to the right owners at the end of a trial. In addition, section 147 (b) empowers the court to order that property taken from an offender on apprehension be applied to fines, costs or compensation. A restitution order should thus be based on the clarity of the evidence in regard to the owner of the property. Where ownership of the property is not clear, the court should be slow to order restitution. Courts should thus always have due regard to section 142 of the Criminal Procedure and Evidence Code which provides for costs against the accused person or a private prosecutor. Section 142 (1) provides that “[I]t shall be lawful for a judge or a magistrate to order any person convicted before him of an offence to pay to the public as the case may be, such reasonable costs as to such judge or magistrate may seem fit, in addition to any other penalty imposed.”

The Charge

Section 83 of the Criminal Procedure and Evidence Code provides for modes of instituting proceedings. Section 83(1) provides as follows:

- “(1) Proceedings may be instituted—*
- (a) by the making of a complaint before a magistrate;*
 - (b) by bringing before a magistrate a person who has been arrested without warrant;*
 - (c) by a public prosecutor or a police officer signing and presenting a formal charge to a magistrate.”*

Under section 83(1), a charge can be drawn by the magistrate, a public prosecutor or a police officer. This part thus considers a charge in detail.

Definition of a Charge

A charge is a written or printed accusation of a crime made by the State against one or more persons. The charge sheet becomes a charge when it has been signed by the proper court officers in accordance with sections 83 and 84 of the Criminal Procedure and Evidence Code. Where the charge is not signed by the proper court officers, the proceedings are held to be a nullity.

A criminal trial is only instituted where there is a valid charge to which the accused person can plead. If the charge is invalid, all the proceedings are a nullity despite the accused person pleading guilty. However, not every defect in a charge would render the charge invalid.

Section 126 of the Criminal Procedure and Evidence Code provides that offences should be specified with necessary particulars, as follows:

“Every charge shall contain, and shall be sufficient if it contains—

- (a) a statement of the specified offence or offences with which the accused is charged; and*
- (b) particulars of such offence or offences.”*

The charge can thus be divided into four parts: the commencement, the statement of offence, the particulars of the offence and validation.

- The Commencement

The commencement cites the particulars of the court, venue, case number and particulars of the accused person. A sample appears below.

Sample Commencement

RESIDENT MAGISTRATE

In the Court at

Grade Subordinate

Case No. of 20

SUMMONS/CHARGE SHEET

ACCUSED

Name: Tribe:

Sex: Village:

Age: Chief and District:

To: above-named.

It has to be noted that the commencement provides information on the court which has jurisdiction over the accused person, offence and venue of the court.

- **Statement of Offence**

The description of a statement of offence falls under section 128(a)(i) and (ii) of the Criminal Procedure and Evidence Code which provides as follows:

- “(a) (i) a count of a charge shall commence with a statement of the offence charged, called the statement of offence;
- (ii) the statement of the offence be short and shall describe the offence in ordinary language, avoiding as far as possible the use of technical terms, and without necessarily stating all the essential elements of the offence, and if the offence charged is one created by written law, shall contain a reference to the section, regulation, by-law or rule of the written law creating the offence”

The statement of offence takes the following form:

FIRST COUNT

[If the charge contains only one count, the words “first count” should be omitted.]

STATEMENT OF OFFENCE

Obstructing an officer in the performance of his or her functions, contrary to section 15 of the National Parks and Wildlife Act.

Where the offence created has aggravated forms which are specifically provided for, the section creating the offence must be cited as read with the section providing for the enhanced punishment.

For example, theft of cattle will be “**theft of cattle, contrary to section 278 as read with section 281 of the Penal Code.**” For a section that creates more than one offence, the particular sub-section or paragraph that the offence is charged must be cited, so that it is sufficiently clear to the accused the offence or charge that he or she will be required to answer.

The section creating the offence, defining it and providing the punishment may be different. There is no general rule as to which section should be used when drafting the statement of offence, although in practice the section providing the punishment tends to be preferred rather than the definition section or the section creating the offence.³⁸

The offence of residing in a national park without authority can thus be presented as “**residing in a national park, contrary to section 32(1) as read with section 110(d) of the National Parks and Wildlife Act.**”

Alternatively, it can be presented as “**residing in a national park, contrary to section 110(d) of the National Parks and Wildlife Act.**” The drafter of charges, therefore, depends on precedent where it is possible.

- **Particulars of Offence**

Section 128(a)(iii) and (iv) of the Criminal Procedure and Evidence Code describes particulars of offence as follows:

- “(iii) after the statement of the offence, particulars of such offence shall be set out in ordinary language, giving reasonable information as to the commission of the offence and avoiding as far as possible the use of technical terms;

38 For instance, theft is under section 278 of the Penal Code which provides for general punishment for theft while section 271 of the Penal Code provides for the definition of theft.

(iv) where any rule of law or any Act limits the particulars of an offence which are required to be given in a charge, nothing in this paragraph shall require any more particulars to be given than those so required”

When the charge contains more than one count, sections 127 (2) and 128(a)(vi) of the Criminal Procedure and Evidence Code provide that the counts shall be numbered consecutively. The particulars of the offence should be stated immediately below the statement of offences, as follows:

PARTICULARS OF OFFENCE

“Robert Kalipinde from on or about the 7th day of January, 2016 to on or about 5th March, 2016 at Kasungu National Park, resided in Kasungu National Park without authority.”

The particulars of the offence allege the actus reus³⁹ and mens rea.⁴⁰ In addition, the particulars of the offence generally follow the format of: who is alleged to have committed the offence (it may be more than one person), when he, she or they committed the offence; where he, she or they committed the offence; what offence he, she or they committed (or what he, she or they did) and against whom the offence was committed.

When drafting particulars of the offence, it is important to avoid any information that is in excess or more than needed. The exact time or age of persons involved should thus not be specified unless they form an element of the offence.

• **Validation**

At the bottom, the charge sheet will have the particulars of the police station or office conducting the prosecution, the date, the signature of the prosecutor and the magistrate as follows:

.....
Police Station	Prosecutor
.....
Date	Magistrate

It is worth noting that the charge becomes a proper charge once it is dated and signed by the two officers.

Drafting of a charge sheet requires a lot of care and attention; and often requires a great amount of skill. Thus magistrates should not think of charges in terms of simple offences. Each offence presents a new challenge. **It is therefore important to always check the charge against the offence under which it is brought, to avoid unnecessary errors.**

Further, it is the duty of the court to emphasise the need for a proper charge before plea is taken. The general rule under section 128(f) of the Criminal Procedure and Evidence Code is that it shall be sufficient to describe any place, time, thing, matter, act or omission whatsoever to which it is necessary to refer in the charge, in ordinary language in a manner to indicate with reasonable clarity

39 Actus reus is a Latin term that literally means “guilty act”. It is “a voluntary act or omission to which criminal responsibility can attach. Without such an act there can be no crime, for a fundamental principle of Anglo-American law is that one cannot be punished for bad thoughts alone”: James E. Clapp, Dictionary of the Law(n 157).

40 Mens rea is a Latin term that literally means “guilty mind”. It is “the STATE OF MIND that makes the performance of a particular act a crime, or a crime of a particular degree; the element of fault that makes an otherwise innocent act or omission punishable. For example, a careful driver who hits a child who darts out from between parked cars may be guilty of no crime, whereas a driver who had time to avoid the child but carelessly failed to do so may be guilty of homicide”: James E. Clapp, Dictionary of the Law(n 157).

the place, time, thing, matter act or omission referred to. **It is thus important to pay attention to the whole of section 128 of the Criminal Procedure and Evidence Code, which prescribes the rules for framing charges.**

Duplicity

The general rule is that each count of a charge must charge one offence. Section 127 (2) of the Criminal Procedure and Evidence Code, in essence, provides that when more than one offence is charged in a charge, the description of each offence charged must be set out separately in each count. It is, therefore, wrong at law to charge more than one distinct offences in one count, whether cumulatives or alternatives.⁴¹ A count that has more than one offence charged is said to be bad for duplicity.

The rule against duplicity ensures that the accused person is clear about the offence that he or she is going to answer. It also ensures that the court is clear about the offence which it is required to return a verdict.

Duplicity may occur where one count alleges more than one offence against a person, or two distinct offences against two persons, or one charge having distinct offences against two distinct persons which are misjoined, or several offences of a similar nature were committed on different dates but are in one count.

Section 151 (1) of the Criminal Procedure and Evidence Code requires that every objection to any charge for any formal defect on the face thereof be taken immediately after the charge has been read over to the accused and not later. A charge for bad duplicity must thus be objected to at the reading stage and must be amended under section 151 (2), otherwise the trial will be a nullity unless it can be saved under the principles in sections 3 and 5 of the Criminal Procedure and Evidence Code, to the effect that the accused was not prejudiced or that there was no failure of justice.

Exceptions to the Rule against Duplicity

The rule against duplicity can be avoided if two distinct offences are charged in different counts that are pleaded “in the alternative”. In that case, the court makes a finding on the offence that is proved and will enter a verdict of not guilty on the offence that is not proved.

It should be noted that at the stage of taking plea, the prosecution is not obliged to present a “plea of guilty” on the alternative charge which normally is lesser. It is possible to request the court to enter a “plea of not guilty” and adduce evidence on the second charge.⁴²

Exhibits

An exhibit is “a document or object sought to be used as evidence at a trial.”⁴³ Both the prosecution and the defence may have articles, documents or statements which form part of their evidence and must be tendered in evidence as “exhibits”.

The articles, documents or statements must be tendered by the witness who ordinarily has custody of that thing or whose custody of the thing can be traced to the original custodian. The thing will be introduced by the prosecution or defence, and the witness will identify it and give evidence on the issues concerning the thing. If the witness is not the one who tenders that thing, the court marks the thing as “unidentified thing”. It is possible for the adverse party to introduce a thing during cross-examination of the other side’s witness. The identified things for the prosecution and the defence are numbered chronologically, for instance, as PID1 or DID1, for the prosecution or defence.

When the witness tenders the thing, it is marked as an exhibit. The exhibits are also numbered chronologically, for instance, as PEH1 or DEX1, for the prosecution or defence.

Where the exhibit was marked as an ID before, the court will record PID1 marked PEX1, as the case may be. However, if the exhibit was not marked before, the court records its identification and marks it. For example, firearm marked PEX1.

41 This refers to connecting the charges with “and” or “or”.

42 Director of Public Prosecutions v. Central Africa Co. Ltd. [1971–72] 6 ALR (Mal) 1.

43 James E. Clapp, Dictionary of the Law (n 157).

Raw ivory is carved into many different forms of trinkets, including name stamps, jewellery and statues.



3 Model Charges for Wildlife Crimes and Outline of Evidence Required

3.1 Model Charges for Wildlife Crimes and Outline of Evidence Required to Support Charges under the Penal Code

Some of the model charges for wildlife crimes and the evidence that a prosecutor requires to support charges under the Penal Code are presented as follows:

Section 99: Personating public officers

CHARGE	Personating a person employed in the public Service contrary to section 99(a) of the Penal Code.
PARTICULARS OF OFFENCE	(Name of the accused) on the (date) at (location) personated a person employed in the public service (describe the position or nature of employment of the person employed in public service) on ... (describe the occasion) when ... (describe functions which the person employed in the public service was supposed to perform or attend in a particular place by virtue of his or her employment).
PENALTY	Shall be liable to imprisonment for ten years

CHARGE	Falsely representing oneself as a person employed in the public service, contrary to section 99(b) of the Penal Code.
PARTICULARS OF OFFENCE	(Name of the accused) on the (date) at (location) falsely represented himself or herself to be a person employed in the public service (describe the position or nature of employment of the person employed in the public service) and assumed to ... (describe a specific act) or to attend in any place (describe a specific place) for the purpose of doing any act (specify the act), by virtue of such employment.
PENALTY	Shall be liable to imprisonment for ten years

Evidence:

Eyewitness evidence; or arresting officer. Exhibits of any other relevant material must be presented in court.

Section 124: Soliciting to break the law

CHARGE	Soliciting or inciting a person (or persons) (choose the applicable) to fail to comply with or to contravene any law in force in Malawi or in any part thereof, contrary to section 124 (1)(a) of the Penal Code.
PARTICULARS OF OFFENCE	(Name of the accused) on the (date) at (location) in writing or by words or by his or her behaviour or otherwise (specify conduct) solicited or incited (choose the applicable) (name of person) to fail to comply with or to contravene any law in force in Malawi or in any part thereof (specify the law).
PENALTY	Shall be liable to imprisonment for five years

CHARGE	Indicating or implying to any person that it would be incumbent or desirable to fail to comply with or to contravene any law in force in Malawi or in any part thereof, contrary to section 124 (1)(b) of the Penal Code.
PARTICULARS OF OFFENCE	(Name of the accused) on the (date) at (location) in writing or by words or by his or her behaviour or otherwise (specify conduct) indicated or implied (choose the applicable) to (name of person) that it would be incumbent or desirable to fail to comply with or to contravene (specify the law).
PENALTY	Shall be liable to imprisonment for five years

Evidence:

Eyewitness evidence; or arresting officer. Exhibits of any other relevant material must be presented in court.

Section 125: Soliciting public officers to fail to carry out their duties

CHARGE	Soliciting or inciting (choose the applicable) a person employed in the public service to fail to carry out any of his or her (choose the applicable) duties, contrary to section 125(a) of the Penal Code.
PARTICULARS OF OFFENCE	(Name of the accused) on the (date) at (location) in writing or by words or by his or her behaviour or otherwise (specify conduct) solicited or incited (choose the applicable)(describe the position or nature of employment of the person employed in public service) (being) a person employed in the public service to fail to carry out any of his or her duties as such.
PENALTY	Shall be liable to imprisonment for five years

CHARGE	Soliciting or inciting (choose the applicable) a Chief or any person in the service of a Chief to fail to carry out any of his or her (choose the applicable) duties as such, contrary to section 125(b) of the Penal Code.
PARTICULARS OF OFFENCE	(Name of the accused) on the (date) at (location) in writing or by words or by his or her behaviour or otherwise (specify conduct) solicited or incited (choose the applicable) (provide a name) (being) a Chief or a person in the service of a Chief to fail to carry out any of his or her duties as such.
PENALTY	Shall be liable to imprisonment for five years

Evidence:
Eyewitness evidence; or arresting officer. Exhibits of any other relevant material must be presented in court.

3.2. Model Charges for Wildlife Crimes and Outline of Evidence Required to Support Charges under the National Parks and Wildlife Act

Some model charges for wildlife crimes and the evidence that is required to support charges under the National Parks and Wildlife Act are presented as follows. Note some changes under the 2017 Act.

Section 15: Obstruction of officers

CHARGE	Obstructing an officer in the performance of his or her (choose the applicable) functions under the National Parks and Wildlife Act, contrary to section 15(a) of the Act.
PARTICULARS OF OFFENCE	(Name of the accused) on the (date) at (location) obstructed an officer (name or position of the officer) in the performance of functions (specify) under the National Parks and Wildlife Act
PENALTY	<p>a) in the case of a first offence, be liable to a fine of not less than K4,000 but not more than K10,000 and to imprisonment for a term of two years;</p> <p>b) in the case of a second or subsequent offence, to a fine of not less than K4,000 but not more than K8,000, and to imprisonment for a term of four years.</p> <p>Penalty changed under the Amendment ACT, Section 21. A fine of K2,000,000 and to imprisonment for a term of four years, as prescribed by Section 108 of the National Parks and Wildlife Act.</p>

CHARGE	Refusing to furnish to an officer on request, particulars or information to which the officer is entitled by or under the National Parks and Wildlife Act, contrary to section 15(b) of the Act.
PARTICULARS OF OFFENCE	(Name of the accused) on the (date) at (location) refused to furnish to an officer (name or position of the officer) particulars or information (choose the applicable; and specify the particulars or information) to which the officer is entitled by or under the National Parks and Wildlife Act.
PENALTY	<p>Prescribed by Section 108 of the PRINCIPLE ACT: (a) in the case of a first offence, be liable to a fine of not less than K4,000 but not more than K10,000 and to imprisonment for a term of two years; (b) in the case of a second or subsequent offence, to a fine of not less than K4,000 but not more than K8,000, and to imprisonment for a term of four years.</p> <p>Penalty changed under Amendment Act, Section 21: imprisonment for a term of four years, as prescribed by Section 108 of the National Parks and Wildlife Act.</p>

CHARGE	Wilfully or recklessly giving an officer false or misleading information which the officer is entitled to obtain under the National Parks and Wildlife Act, contrary to section 15(c) of the Act.
PARTICULARS OF OFFENCE	(Name of the accused) on the (date) at (location) wilfully or recklessly (choose the applicable) gave an officer (name of the officer) false or misleading (choose the applicable) information which the officer is entitled to obtain under the National Parks and Wildlife Act.
PENALTY	<p>Prescribed by Section 108 of the PRINCIPLE ACT: (a) in the case of a first offence, be liable to a fine of not less than K4,000 but not more than K10,000 and to imprisonment for a term of two years; (b) in the case of a second or subsequent offence, to a fine of not less than K4,000 but not more than K8,000, and to imprisonment for a term of four years.</p> <p>Penalty changed under Amendment Act, section 21: imprisonment for a term of four years, as prescribed by Section 108 of the National Parks and Wildlife Act.</p>

Evidence:

Eyewitness evidence; or arresting officer.

Section 16: Alteration, defacing or removal of official record

CHARGE	Altering, defacing or removing (choose the applicable) an official record maintained in pursuance of the National Parks and Wildlife Act or regulation or order made under the Act* (choose the applicable), contrary to section 16(a) of the Act. *The title of regulation or order should be written in full.
PARTICULARS OF OFFENCE	(Name of the accused) on the (date) at (location), without authority, altered, defaced or removed (choose the applicable) an official record maintained in pursuance of the National Parks and Wildlife Act or regulation or order made under the Act* (choose the applicable). *The title of regulation or order should be written in full.
PENALTY	<p>Prescribed by Section 108 of the PRINCIPLE ACT</p> <ul style="list-style-type: none"> a) in the case of a first offence, be liable to a fine of not less than K4,000 but not more than K10,000 and to imprisonment for a term of two years; b) in the case of a second or subsequent offence, to a fine of not less than K4,000 but not more than K8,000, and to imprisonment for a term of four years. <p>Penalty changed under the PRINCIPLE ACT, Section 21: A fine of K2,000,000 and to imprisonment for a term of four years, as prescribed by Section 108 of the National Parks and Wildlife Act</p>

CHARGE	Altering or defacing any prescribed document issued under the National Parks and Wildlife Act, contrary to section 16(b) of the Act.
PARTICULARS OF OFFENCE	(Name of the accused) on the (date) at (location), without authority, altered or defaced (choose the applicable) a prescribed document (specify the document) issued under the National Parks and Wildlife Act.
PENALTY	<p>Prescribed by Section 108 of the PRINCIPLE ACT:</p> <ul style="list-style-type: none"> (a) in the case of a first offence, be liable to a fine of not less than K4,000 but not more than K10,000 and to imprisonment for a term of two years; (b) in the case of a second or subsequent offence, to a fine of not less than K4,000 but not more than K8,000, and to imprisonment for a term of four years. <p>Penalty changed under the PRINCIPLE ACT, section 21: A fine of K2,000,000 and to imprisonment for a term of four years, as prescribed by Section 108 of the National Parks and Wildlife Act.</p>

Evidence:

Eyewitness evidence; or arresting officer. Where the altered, defaced or removed official record or prescribed document is available, exhibits must be presented in court.

Section 109: Offences relating to game species

CHARGE	<p>Taking, hunting, molesting or reducing into possession (choose the applicable) a game species, contrary to section 109(a) of the National Parks and Wildlife Act.</p> <p>Repealed by the Amendment Act, Section 22, Section 109(a) of the National Parks and Wildlife Act now provides for: taking, hunting, molesting or reducing into possession any game species;</p>
PARTICULARS OF OFFENCE	(Name of the accused) on the (date) at (location) took, hunted, molested or reduced into possession (choose the applicable) game species (specify the nature of the game species).
PENALTY	<p>If offence committed in a protected area- fine of not less than K4,000, but not more than K8,000 and to a term of imprisonment of four years. If offence committed in area not classed as a protected area, affine of not less than K4,000, but not more than K5,000 and to imprisonment of a term of two years.</p> <p>APWA amended penalty: a fine of K2,000,000 and to imprisonment for a term of four years</p>

CHARGE	<p>Possession of, selling, buying, transferring, or receiving in transfer (choose the applicable) a specimen of game species, contrary to section 109(b) of the National Parks and Wildlife Act.</p> <p>Repealed by the APWA, Section 22, Section 109(b) now provides for possession of, selling, buying, transferring, or receiving in transfer, or attempting to possess, sell, buy, transfer or receive in transfer any specimen of game species.</p>
PARTICULARS OF OFFENCE	<p>(Name of the accused) on the (date) at (location) had in his or her possession of, sold, bought, transferred or received in transfer (choose the applicable) game species (specify the nature of the game species).</p> <p>APWA amended this to include attempted to possess, sell, buy, transfer or receive in transfer any specimen of game species (specify the nature of the game species).</p>
PENALTY	<p>If offence committed in a protected area - fine of not less than K4,000, but not more than K8,000 and to a term of imprisonment of four years. If offence committed in area not classed as a protected area, affine of not less than K4,000, but not more than K5,000 and to imprisonment of a term of two years.</p> <p>APWA amended penalty: a fine of K2,000,000 and to imprisonment for a term of four years</p>

Evidence:

Eyewitness evidence; or arresting officer. Exhibits of the game species must be presented in court. The term "possession" is significant when presenting evidence to the court and proving the offence. It is necessary to prove knowledge of possession of an article, apart from the nature of the article. Knowledge can be implied even if the suspect is not in physical possession, where issues of the

degree of control over an item, among others, become important. For instance, if a suspect is caught in possession of a bag, he or she is deemed to be in possession of the contents of the bag. If an item is found in his or her car, he or she is deemed to be in possession of any item found in the car. Where there is more than one suspect in a car, evidence of the exact spot where the item was found in the car is vital. Was the item found:

- a. in the boot?
- b. on the passenger or driver's side foot-well?
- c. on the driver's door?
- d. in the glove compartment?

Fingerprint evidence may be necessary and continuity in handling exhibits is vital.

Section 110: Offences relating to protected species other than game species

CHARGE	<p>Taking, hunting, molesting, or reducing into possession (choose the applicable) a protected species other than game species, contrary to section 110(a) of the National Parks and Wildlife Act.</p> <p>Repealed and replaced by the Amendment Act, Section 23, Section 110(a) now states that taking, hunting, molesting, or reducing into possession any protected species other than game species</p>
PARTICULARS OF OFFENCE	(Name of the accused) on the (date) at (location) took, hunted, molested or reduced into possession (choose the applicable) a protected species (specify the nature of the protected species).
PENALTY	Shall be liable to a fine of K5,000,000 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 offence.
CHARGE	<p>Possession of, selling, buying, transferring or accepting in transfer (choose the applicable) a specimen of protected species other than game species, contrary to section 110(b) of the National Parks and Wildlife Act.</p> <p>Repealed and replaced by the Amendment Act, section 23: Section 110(b) now states that it is an offence to be in possession of, selling, buying, transferring or receiving in transfer or attempting to possess, sell, buy, transfer or receive in transfer any specimen of protected species other than game species,</p>
PARTICULARS OF OFFENCE	(Name of the accused) on the (date) at (location) had in his or her possession, sold, bought, transferred or accepted in transfer (choose the applicable) protected species (specify the nature of the protected species).
PENALTY	<p>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 offence.</p> <p>As replaced by Section 23 of the Amendment Act, Section 110(b) now states the penalty is a fine of K5,000,000 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 offence.</p>

CHARGE	<p>Contravention of a provision of the National Parks and Wildlife Act which provides for the conduct of a licensee under a professional hunter's licence (specify; and conclude with "contrary to section ...(specify the provision) as read with section 110(c) of the National Parks and Wildlife Act.")</p> <p>The Amendment Act repealed sections 110(c) and (d) and covers a similar offence under the new Section 110A(c) which states that it is an offence if a person is in (c) contravention of provision of this Act which provides for the conduct of a licensee under a professional hunter's licence;</p>
PARTICULARS OF OFFENCE	(Name of the accused) on the (date) at (location) did or omitted to do ... (specify conduct), contrary to Section ... (specify the provision).
PENALTY	<p>Under the Principle Act unamended, the penalty would have been 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 offence.</p> <p>Under the new Section 110A of the Amendment Act, the penalty is now shall be liable to a fine of K 15,000,000 and to imprisonment for a term of thirty years" and in any case the fine shall not be less than the value of the specimen involved in the commission of the offence."</p>

The following provides model charges for offences committed before 8th February 2017 (when the new Amendment Act came into force), under sections 32 and 33 of the Act, but section 35 can be drafted in a similar way.

CHARGE	<p>Entering or residing in a national park, wildlife reserve or nature sanctuary (choose the applicable) without authority, contrary to Section 32(1) as read with Section 108 of the National Parks and Wildlife Act.</p> <p>The Amendment Act, Section 3 deletes the following words: "national parks, wildlife reserves and nature sanctuaries" wherever they appear throughout the Act and substitutes them for the words "protected area", so the charge shall now read "any person entering or residing in a protected area without authority, commits an offence under section 32(1) of the PRINCIPLE ACT as read with the amended Section 108.</p>
PARTICULARS OF OFFENCE	(Name of the accused) on the (or from ...to ...) (date or dates) at (location) entered or resided in (name of) National Park, Game Reserve or Nature Sanctuary (choose the applicable) [replaced with "protected area" under the amended PRINCIPLE ACT] without authority.
PENALTY	<p>Prescribed by Section 108 of the PRINCIPLE ACT:</p> <p>a) in the case of a first offence, be liable to a fine of not less than K4,000 but not more than K10,000 and to imprisonment for a term of two years;</p> <p>b) in the case of a second or subsequent offence, to a fine of not less than K4,000 but not more than K8,000, and to imprisonment for a term of four years.</p> <p>Under the Amendment Act the penalty is now a fine of K2,000,000 and to imprisonment for a term of four years.</p>

CHARGE	Conveying into, or possessing or using within, (choose the applicable) a national park, wildlife reserve or nature sanctuary (choose the applicable) a weapon, trap, explosive or poison (choose the applicable), contrary to section 33(1) as read with section 108 of the National Parks and Wildlife Act.
PARTICULARS OF OFFENCE	(Name of the accused) on the (date) at (location) conveyed into, possessed, or used within (choose the applicable)(name of) National Park, Game Reserve or Nature Sanctuary (choose the applicable) (a) weapon(s), trap(s), explosive(s) or poison(s) (specify the type of each of the applicable category) without authority or under a valid hunting licence issued pursuant to Part VII".
PENALTY	<p>Prescribed by Section 108 of the PRINCIPLE ACT:</p> <p>(a) in the case of a first offence, be liable to a fine of not less than K4,000 but not more than K10,000 and to imprisonment for a term of two years;</p> <p>(b) in the case of a second or subsequent offence, to a fine of not less than K4,000 but not more than K8,000, and to imprisonment for a term of four years.</p> <p>The Amendment Act section 21 amended the penalty to a fine of K2,000,000 and to imprisonment for a term of four years.</p>

Section 35 prohibits doing the following acts in a national park, a wildlife reserve or nature sanctuary except as otherwise provided by **Section 39 or Section 40** of the Act:

- hunting, taking, killing, injuring, or disturbing any wild plant or animal, or any domestic animal or cultivated plant occurring lawfully therein;
- taking, destroying, damaging, or defacing any object of geomorphological, archaeological, historical, cultural, or scientific interest, or any structure lawfully placed or constructed therein;
- preparing land for cultivation, prospecting for minerals or mining or attempting any of these operations;
- driving, conveying, or introducing any wild animal into a national park, wildlife reserve or nature sanctuary; or
- driving, conveying or introducing any domestic animal into a national park, wildlife reserve or nature sanctuary or permitting any domestic animal, of which he or she is for the time being in charge, to stray into a national park, wildlife reserve or nature sanctuary.

Charges under **Section 35** of the Act should therefore state prohibited acts specified under paragraphs **(a), (b), (c), (d) and (e)** of the Act, as applicable, in a national park, game reserve or nature sanctuary as the case may be, and specify contravention of **Section 35(a),(b), (c), (d), or (e)** as applicable; and as read with **Section 110(d)** of the National Parks and Wildlife Act.

Particulars of the offence should provide the name of the accused, the date(s) when the alleged offence was committed, the prohibited acts that were committed as specified under paragraphs (a), (b), (c), (d) and (e); and the name (location) of the national park, game reserve or nature sanctuary as applicable.

Section 35 is amended by Section 7 of the Amendment Act and now reads:

"Except as otherwise provided by section 39 or by section 40, "or under a valid hunting licence issued pursuant to Part VII; any person who, in a national park or a wildlife reserve-

- (a) hunts, takes, kills, injures, or disturbs any wild plant or animal, or any domestic animal or cultivated plant occurring lawfully therein;
- (b) takes, destroys, damages, or defaces any object of geomorphological, archaeological, historical, cultural, or scientific interest, or any structure lawfully placed or constructed therein;
- (c) prepares land for cultivation, prospects for minerals or mines or attempts any of these

operations;

(d) drives, conveys, or introduces any wild animal into a national park or wildlife reserve;

(e) drives, conveys or introduces any domestic animal into a national park or wildlife reserve or who permits any domestic animal, of which he is for the time being in charge, to stray into a national park or wildlife reserve, shall be guilty of an offence”.

Evidence: Eyewitness evidence; or arresting officer. Exhibits of the protected species, weapons and other relevant material must be presented in court.

3.3 New sections under the National Parks and Wildlife (Amendment) Act 2017 which amends the PRINCIPLE ACT

CHARGE	On [date] the accused took, hunted, molested or reduced into his or her possession any endangered species, contrary to Section 110A(a) (c) the contravention of provision of this Act which provides for the conduct of a licensee under a professional hunter's licence; or (d) the contravention of sections 33, 35 (c) and 38 of this Act, No. 11 National Parks and Wildlife (Amendment) 7
PARTICULARS OF OFFENCE	(Name of the accused) on the (date) at (location) took, hunted, molested, reduced into possession (insert as appropriate) any endangered species; possessed sold, bought, transferred, received (insert as appropriate) or attempted to possess, sell, buy, transfer or receive in transfer any specimen of an endangered species.
PENALTY	Offences relating to listed species shall be liable to a fine of K15,000,000 and to imprisonment for a term of thirty years and in any case the fine shall not be less than the value of the specimen involved in the commission of the offence.

CHARGE	On [date] the accused [at place] took, hunted, molested or reduced into his or her possession (choose the applicable) any endangered species, possessed, sold, transferred or received in transfer or attempted to possess, sell, buy, transfer or receive in transfer any specimen of endangered species contrary to Section 110A(b)
PARTICULARS OF OFFENCE	(Name of the accused) on the (date) at (location) took, hunted, molested, reduced into possession (choose the applicable) any endangered species; sold, transferred or received in transfer or attempted to possess, sell, buy, transfer or receive in transfer any specimen of endangered species.
PENALTY	Offences relating to listed species shall be liable to a fine of K15,000,000 and to imprisonment for a term of thirty years" and in any case the fine shall not be less than the value of the specimen involved in the commission of the offence.

Note: Section 110A(d) as inserted by the Amendment Act covers the offences listed in sections 33, 35 (c) and 38 of the PRINCIPLE ACT.

Section 110B Offences relating to Listed Species

CHARGE	On [date] the accused [at place] took, hunted, molested or reduced into his or her possession (choose the applicable) any listed species (specify listed species), contrary to Section 110B(a) of the National Parks and Wildlife Act as inserted by the National Parks and Wildlife (Amendment) Act 2017 Act, Section 24.
PARTICULARS OF OFFENCE	(Name of the accused) on the (date) at (location) took, hunted, molested, reduced into possession (choose the applicable) any listed species (specify listed species).
PENALTY	Imprisonment for a term of thirty years.

CHARGE	On [date] the accused [at place] had in his or her possession or was, selling, buying, transferring or receiving in transfer (choose the applicable) or attempting to possess, sell, buy, transfer or receive (choose the applicable) in transfer any specimen of any listed species (specify listed species), contrary to Section 110B(b) of the National Parks and Wildlife Act as inserted by the National Parks and Wildlife (Amendment) Act 2017Act, Section 24.
PARTICULARS OF OFFENCE	(Name of the accused) on the (date) at (location) had in his or her possession or was, selling, buying, transferring or receiving in transfer (choose the applicable) or attempting to possess, sell, buy, transfer or receive (choose the applicable) in transfer any specimen of any listed species (specify listed species).
PENALTY	Imprisonment for a term of thirty years

CHARGE	On [date] the accused [at place] acted in breach of a hunting licence issued on contrary to Section 110B(c) of the National Parks and Wildlife Act as inserted by the National Parks and Wildlife (Amendment) Act 2017Act, Section 24.
PARTICULARS OF OFFENCE	(Name of the accused) on the (date) at (location) the accused was found to be in breach of a hunting licence as his conduct was (describe breach of the regulations)
PENALTY	Imprisonment for a term of thirty years

Section 111: Offences relating to import, export or re-export of specimen of protected species or listed species

<p>CHARGE</p>	<p>Importing, exporting or re-exporting (choose the applicable) (a) specimen(s) of protected species or listed species (choose the applicable), contrary to section 98(a) as read with section 111 of the National Parks and Wildlife Act.</p> <p>The PRINCIPLE ACT Section 25 amends this to now read:</p> <p>On [date] at [place] committed an offence under section 98, namely importing, exporting or re-exporting (choose the applicable) (a) specimen(s) of protected species or listed species (choose the applicable), contrary to section 98(a) as read with the amended Section 111 of the National Parks and Wildlife Act.</p> <p>of (same as above) and adds “or under regulations made pursuant to section 99 which is amended to say “game species” before “protected species”.”</p>
<p>PARTICULARS OF OFFENCE</p>	<p>(Name of the accused) on the (date) at (location) imported, exported or re-exported or attempted to import or export or re-export (choose the applicable) (a) specimen(s) of protected species, (the PRINCIPLE ACT added in “or game species” or listed species) (choose the applicable) other than through a customs post or port (choose the applicable).</p>
<p>PENALTY</p>	<p>Subject to Section 108 penalties.</p> <p>For offences committed after the 8 February 2017, the Amendment Act Section 22 applies, penalty of which states that if convicted, shall be liable to imprisonment for a term of thirty years</p>
<p>CHARGE</p>	<p>Importing, exporting or re-exporting (choose the applicable) (a) specimen(s) of protected species the PRINCIPLE ACT added in “or game species or listed species (choose the applicable), contrary to section 98(b) as read with section 111 of the National Parks and Wildlife Act.</p> <p>No other changes to 98(b) under the Amendment Act, save for the penalty.</p>
<p>PARTICULARS OF OFFENCE</p>	<p>(Name of the accused) on the (date) at (location) imported, exported or re-exported or attempted to import or export or re-export (choose the applicable) (a) specimen(s) of protected species the PRINCIPLE ACT added in “or game species or listed species” (choose the applicable) without producing to a customs officer a valid permit to import, to export or to re-export the specimen (choose the applicable).</p>
<p>PENALTY</p>	<p>The penalty is covered under Section 108 of the Principal Act, which states, Subject to the provisions of the Act, a person who is convicted of an offence under this Act for which no other penalty is provided shall -</p> <p>(a) in the case of a first offence, be liable to a fine of not less than K4,000 but not more than K10,000 and to imprisonment for a term of two years;</p> <p>(b) in the case of a second or subsequent offence, to a fine of not less than K4,000 but not more than K8,000, and to imprisonment for a term of four years.</p> <p>The PRINCIPLE ACT, as amended by section 21 of the Amendment Act amends the penalty: a fine of K2,000,000 and to imprisonment for a term of four years.</p>

Note: Under section 99 of the Act, the Minister may, after consulting the Minister responsible for Trade and Industry, make regulations imposing additional restrictions on imports, exports or re-exports of specimens of a protected species or listed species. For the purposes the regulations, the Minister may incorporate the requirements under any international, regional or bilateral agreement to which Malawi or the Government is a party. The prosecutor should thus draft the charge sheet under section 99 as the example under section 98 illustrates and include all applicable provisions.

The Amendment Act Section 19 inserts into section 99 of the PRINCIPLE ACT, (1) The Minister may, after consulting the Minister responsible for Trade and Industry, make regulations imposing additional restrictions on imports, exports or re-exports of specimens of a game species or protected species or listed species and for the purposes of such regulations the Minister may incorporate the requirements under any international, regional or bilateral agreement relevant to such species to which Malawi or the Government is a party.

Sub section (2) is unamended and states: Any person who contravenes regulations made under subsection (1) shall be guilty of an offence.

3.4 Model Charges for Wildlife Crimes and Outline of Evidence Required to Support Charges under the Firearms Act

Some of the model charges for wildlife crimes and the evidence that a prosecutor requires to support charges under the Firearms Act are presented as follows:

Section 12: Carrying and possession of firearms and ammunition

CHARGE	<p>(1) Carrying or having in one's possession or under one's control a firearm or ammunition otherwise than in accordance with the conditions of a firearm permit or an annual licence, contrary to section 12(1) of the Firearms Act.*</p> <p>* The proviso to section 12(1) exempts persons listed in paragraphs (a) to (i) from the section.</p> <p>If a person performs any act as if he or she were exempted under section 12(1), the relevant charge would be drafted by combining section 12(1) and the relevant paragraph (i.e. (a) to (i)). Further, section 12(2) provides that a person who contravenes any of the provisions of section 12(1) shall be liable to a fine of £100 and imprisonment for six months.</p>
PARTICULARS OF OFFENCE	<p>(Name of the accused) on the (date) at (location) otherwise than in accordance with the conditions of a firearm permit or an annual licence (choose the applicable) carried or had in his or her possession or under his or her control (choose the applicable) a firearm or ammunition (choose the applicable; and specify the type of firearm or ammunition).</p>

Evidence

Eyewitness evidence (interviews/statements); ballistic experts or analysts employed in the government; exhibits (firearm or ammunition, expert opinions or certificates, photographs, etc.); arresting officer; investigating officer.

Further, the prosecutor should have proof that the weapon is a firearm or ammunition within the definition in the Act; that the suspect had possession of a firearm or ammunition; and that there was non-compliance with conditions of a firearm permit or an annual licence.

Note:

Part II of the Schedule to the Fines (Conversion) Act ⁴⁴ provides that the multiplier number for fines expressed in pounds is 1,000. Thus if legislation stipulates that a fine for an offence is £100, for instance as in section 12 (2) of the Firearms Act, the Malawi Kwacha equivalent would be a fine of K100, 000 (that is, £100 multiplied by 1,000).

Section 16: Prohibited weapons

CHARGE	Carrying or having in one's possession a prohibited weapon, contrary to section 16(2) of the Firearms Act.
PARTICULARS OF OFFENCE	(Name of the accused) on the (date) at (location) carried or had in his or her possession a prohibited weapon (describe the prohibited weapon).

Evidence

Eyewitness evidence (interviews/statements); ballistic experts or analysts employed in the government; exhibits (prohibited weapon, expert opinions or certificates, photographs, etc.); arresting officer; investigating officer.

Further, the prosecutor should have proof that the weapon is a prohibited weapon within the definition in the Act; and that the suspect had possession of the prohibited weapon.

Note:

The penalty for the offence is imprisonment for fourteen years.

3.5 Model Charges for Wildlife Crimes and Outline of Evidence Required to Support Charges under the Customs and Excise Act

Some of the model charges for wildlife crimes and the evidence that a prosecutor requires to support charges under the Customs and Excise Act are presented in a tabulated format as follows:

Section 132: Offences in respect of persons

CHARGE	Failing or neglecting to give an answer (choose the applicable) or making any untrue, incorrect, false or incomplete answer or representation (choose the applicable) upon being required by or in accordance with the customs laws to answer any question or supply any information, contrary to section 132(a) of the Customs and Excise Act.
PARTICULARS OF OFFENCE	(Name of the accused) on the (date) at (location) failed or neglected to give; or made an untrue, incorrect, false or incomplete answer or representation (choose the applicable) upon being required by or in accordance with the customs laws (specify the law) to answer (a) question(s) or supply information (choose the applicable).
PENALTY	Section 143 states that any person guilty of an offence against this Act for which no penalty is otherwise specifically provided shall be liable to a fine of K10,000 or to three times the value of the goods in respect of which the offence was committed, whichever is the greater, and to imprisonment for three years.

44 Laws of Malawi, Cap. 8:06.

CHARGE	Failing or neglecting to comply with a provision or condition (specify)required by or in accordance with the customs laws, contrary to section 132(b) of the Customs and Excise Act.
PARTICULARS OF OFFENCE	(Name of the accused) on the (date) at (location) failed or neglected to comply with (choose the applicable) ... (state a provision or condition) required by or in accordance with the customs laws.
PENALTY	Section 143 states that any person guilty of an offence against this Act for which no penalty is otherwise specifically provided shall be liable to a fine of K10,000 or to three times the value of the goods in respect of which the offence was committed, whichever is the greater, and to imprisonment for three years.

CHARGE	Assaulting, abusing, resisting, obstructing, hindering or interfering (choose the applicable) with an officer or police officer, or a person aiding or assisting an officer or police officer (choose the applicable), in the exercise of his or her powers or the performance of his or her duties under the customs laws, contrary to section 132(c) of the Customs and Excise Act.
PARTICULARS OF OFFENCE	(Name of the accused) on the (date) at (location) assaulted, abused, resisted, obstructed, hindered or interfered with (choose the applicable) (an) officer(s) or police officer(s),or (any) person(s) aiding or assisting (an) officer(s) or police officer(s) (choose the applicable) in the exercise of his, her or their powers or the performance of his, her or their duties under the customs laws.
PENALTY	Section 143 states that any person guilty of an offence against this Act for which no penalty is otherwise specifically provided shall be liable to a fine of K10,000 or to three times the value of the goods in respect of which the offence was committed, whichever is the greater, and to imprisonment for three years.

CHARGE	Rescuing a person apprehended for an offence against the provisions of the customs laws or who prevents apprehension (choose the applicable), contrary to section 132(d) of the Customs and Excise Act.
PARTICULARS OF OFFENCE	(Name of the accused) on the (date) at (location) rescued (name or names of the person or persons) apprehended for (an) offence(s) against the provisions of the customs laws (specify the offence or offences and the law) or prevented the apprehension of (name or names of the person or persons) (choose the applicable) for (an) offence(s) against the provisions of the customs laws (specify the offence or offences).
PENALTY	Section 143 states that any person guilty of an offence against this Act for which no penalty is otherwise specifically provided shall be liable to a fine of K10,000 or to three times the value of the goods in respect of which the offence was committed, whichever is the greater, and to imprisonment for three years.

CHARGE	Counterfeiting or without authority using a seal, signature, initials or other mark of, or used by (choose the applicable), an officer for a purpose relating to the customs laws, contrary to section 132(e) of the Customs and Excise Act.
PARTICULARS OF OFFENCE	(Name of the accused) on the (date) at (location), counterfeited or without authority used a seal, signature, initials or other mark of, or used by, an officer for purposes relating to the customs laws (choose the applicable and specify the acts done by the accused).
PENALTY	Section 143 states that any person guilty of an offence against this Act for which no penalty is otherwise specifically provided shall be liable to a fine of K10,000 or to three times the value of the goods in respect of which the offence was committed, whichever is the greater, and to imprisonment for three years.

CHARGE	Removing, breaking, damaging, defacing, destroying, cutting away, casting adrift, maliciously shooting at, or in any way interfering or tampering with any lock, seal, sign, mark, fence, barrier, rope, chain, anchor, buoy, conveyance or other thing (choose the applicable) used by the Department of Customs and Excise for any purpose (specify the purpose) under the customs laws, contrary to section 16(7) of the Customs and Excise Act.
PARTICULARS OF OFFENCE	(Name of the accused) on the (date) at (location), removed, broke, damaged, defaced, destroyed, cut away, cast adrift, maliciously shot at, or in any way interfered or tampered with any lock, seal, sign, mark, fence, barrier, rope, chain, anchor, buoy, conveyance or other thing used by the Department of Customs and Excise for any purpose under the customs laws (choose the applicable and specify the acts done by the suspect).
PENALTY	Section 143 states that any person guilty of an offence against this Act for which no penalty is otherwise specifically provided shall be liable to a fine of K10,000 or to three times the value of the goods in respect of which the offence was committed, whichever is the greater, and to imprisonment for three years.

CHARGE	Failure to stop at a customs barrier established in accordance with section 16(7) of the Customs and Excise Act, contrary to section 132(g) of the Act.
PARTICULARS OF OFFENCE	(Name of the accused) on the (date) at (location) failed to stop at a customs barrier established in accordance with section 16(7) of the Customs and Excise Act.
PENALTY	Section 143 states that any person guilty of an offence against this Act for which no penalty is otherwise specifically provided shall be liable to a fine of K10,000 or to three times the value of the goods in respect of which the offence was committed, whichever is the greater, and to imprisonment for three years.

CHARGE	Falsely holding oneself out to be an officer, contrary to section 132(h) of the Customs and Excise Act.
PARTICULARS OF OFFENCE	(Name of the accused) on the (date) at (location) falsely held himself or herself out to be an officer.
PENALTY	Section 143 states that any person guilty of an offence against this Act for which no penalty is otherwise specifically provided shall be liable to a fine of K10,000 or to three times the value of the goods in respect of which the offence was committed, whichever is the greater, and to imprisonment for three years.

CHARGE	Conspiring with another to commit an offence against the customs laws, contrary to section 132(j) of the Customs and Excise Act.
PARTICULARS OF OFFENCE	(Name of the accused) on the (date) at (location) conspired with (name of the other person or persons) to commit an offence against the customs laws (specify the offence or offences).
PENALTY	Section 143 states that any person guilty of an offence against this Act for which no penalty is otherwise specifically provided shall be liable to a fine of K10,000 or to three times the value of the goods in respect of which the offence was committed, whichever is the greater, and to imprisonment for three years.

Evidence

Eyewitness evidence; or arresting officer. Exhibits of any other relevant material must be presented in court.

Section 134: Offences in respect of goods

CHARGE	Importing, exporting, carrying coastwise or in transit, loading, unloading, removing, possessing or conveying goods (choose the applicable) contrary to the provisions of the customs laws, and section 134(a) of the Customs and Excise Act.
PARTICULARS OF OFFENCE	(Name of the accused) on the (date) at (location), imported, exported, carried coastwise or in transit, loaded, unloaded, removed, had in his or her possession or conveyed goods (choose the applicable) contrary to the provisions of the customs laws.
PENALTY	Section 143 states that any person guilty of an offence against this Act for which no penalty is otherwise specifically provided shall be liable to a fine of K10,000 or to three times the value of the goods in respect of which the offence was committed, whichever is the greater, and to imprisonment for three years.

CHARGE	Importing or exporting goods in pursuance of a document or computer records and other electronic data in which a false declaration has been made, contrary to section 134(b) of the Customs and Excise Act.
PARTICULARS OF OFFENCE	(Name of the accused) on the (date) at (location), imported or exported goods (specify the goods) in pursuance of any document or computer records and other electronic data (choose the applicable) in which a false declaration was made.
PENALTY	Section 143 states that any person guilty of an offence against this Act for which no penalty is otherwise specifically provided shall be liable to a fine of K10,000 or to three times the value of the goods in respect of which the offence was committed, whichever is the greater, and to imprisonment for three years.

CHARGE	Buying, receiving, harbouring, offering for sale or dealing in, or having in one's possession (choose the applicable) goods subject to customs control, other than in accordance with the customs laws, contrary to section 134(c) of the Customs and Excise Act.
PARTICULARS OF OFFENCE	(Name of the accused) on the (date) at (location), bought, received, harboured, offered for sale or dealt in, or had in his or her possession goods subject to customs control (specify the goods; and choose the applicable).
PENALTY	Section 143 states that any person guilty of an offence against this Act for which no penalty is otherwise specifically provided shall be liable to a fine of K10,000 or to three times the value of the goods in respect of which the offence was committed, whichever is the greater, and to imprisonment for three years.

CHARGE	Concealing, moving, altering, damaging, destroying, removing, disposing of or in any way interfering or tampering with (choose the applicable) goods subject to customs control, other than in accordance with the customs laws, contrary to section 134(d) of the Customs and Excise Act.
PARTICULARS OF OFFENCE	(Name of the accused) on the (date) at (location), concealed, moved, altered, damaged, destroyed, removed, disposed of or in any way interfered or tampered with goods subject to customs control (specify the goods; and choose the applicable).
PENALTY	Section 143 states that any person guilty of an offence against this Act for which no penalty is otherwise specifically provided shall be liable to a fine of K10,000 or to three times the value of the goods in respect of which the offence was committed, whichever is the greater, and to imprisonment for three years.

CHARGE	Offering for sale or dealing in or possessing (choose the applicable) goods under the pretence that they are smuggled goods, contrary to section 134(e) of the Customs and Excise Act.
PARTICULARS OF OFFENCE	(Name of the accused) on the (date) at (location) offered for sale or dealt in or had in his or her possession goods under the pretence that they were smuggled goods (specify the goods; and choose the applicable).
PENALTY	Section 143 states that any person guilty of an offence against this Act for which no penalty is otherwise specifically provided shall be liable to a fine of K10,000 or to three times the value of the goods in respect of which the offence was committed, whichever is the greater, and to imprisonment for three years.

Evidence

Eyewitness evidence; or arresting officer. Exhibits of any other relevant material must be presented in court.

3.6 Model Charges for Wildlife Crimes and Outline of Evidence Required to Support Charges under the Corrupt Practices Act

Some of the model charges for wildlife crimes and the evidence that a prosecutor requires to support charges under the Corrupt Practices Act are presented in a tabulated format as follows:

Section 13: Obstructing of officers of the Bureau

CHARGE	Assaulting, resisting, threatening or otherwise obstructing (choose the applicable) the Director General, the Deputy Director General or other officer of the Anti-Corruption Bureau in the execution of his or her duties, contrary to section 13(a) of the Corrupt Practices Act.
PARTICULARS OF OFFENCE	(Name of the accused) on or about the (date) at (location) assaulted, resisted, in any way threatened or otherwise obstructed (choose the applicable) the Director General, the Deputy Director General or other officer of the Anti-Corruption Bureau (choose the applicable) in the execution of his or her duties.
PENALTY	Liable to a fine of K70,000 and to imprisonment for seven years.

CHARGE	Unlawfully hindering or delaying the Director General, Deputy Director General or other officer of the Anti-Corruption Bureau in effecting entry into or upon any premises, boat, aircraft or vehicle (choose the applicable), contrary to section 13(b) of the Corrupt Practices Act.
PARTICULARS OF OFFENCE	(Name of the accused) on the (date) at (location) unlawfully hindered or delayed the Director General, the Deputy Director General or other officer of the Anti-Corruption Bureau (choose the applicable) in effecting entry into or upon any premises, boat, aircraft or vehicle (choose the applicable).
PENALTY	Liable to a fine of K70,000 and to imprisonment for seven years.

Evidence

Eyewitness evidence (interviews/statements); exhibits; arresting officer.

Section 14 - False reports of information to the Bureau

CHARGE	Giving or causing to be given to the Anti-Corruption Bureau testimony or information or a report (choose the applicable) which is false in any material particular in relation to any matter under investigation by the Bureau, contrary to section 14(1)(a) of the Corrupt Practices Act.
PARTICULARS OF OFFENCE	(Name of the accused) on or about the (date), at (location), when required to answer a question put to him or her by an officer exercising his or her duties under the Corrupt Practices Act, gave testimony or information or a report (choose the applicable) which is false knowing that testimony or information or report to be false, namely (give particulars of the false testimony or information or report).
PENALTY	A fine of K100,000 and to imprisonment for ten years.

CHARGE	Making or causing to be made to the Anti-Corruption Bureau a false report of the commission of an offence under the Corrupt Practices Act, contrary to section 14(1)(b) of the Act.
PARTICULARS OF OFFENCE	(Name of the accused) on or about the (date), at (location), made or caused to be made (choose the applicable) to the Anti-Corruption Bureau a false report of the commission of an offence under the Corrupt Practices Act, namely (give particulars of the false report).
CHARGE	Misleading the Director General, Deputy Director General or other officer of the Anti-Corruption Bureau (choose the applicable) by giving or causing to be given to them or to the Bureau false information or by making or causing to be made to them or to the Bureau any false statements or accusations, contrary to section 14(1)(c) of the Corrupt Practices Act.
PARTICULARS OF OFFENCE	(Name of the accused) on or about the (date), at (location), misled the Director General, Deputy Director General or other officer of the Anti-Corruption Bureau (choose the applicable) by giving or causing to be given to them or to the Bureau false information or by making or causing to be made to them or to the Bureau false statements or accusations (choose the applicable), namely (give particulars of the false statements or accusations).
PENALTY	A fine of K100,000 and to imprisonment for ten years.

Evidence

Eyewitness evidence (interviews/statements); exhibits; arresting officer; investigating officer. Section 14 (2) provides that it shall be a defence to a charge for an offence against section 14 (1) that that the accused did not know, or did not have reasonable ground to believe, that the matter in question was

false. The prosecutor must thus be mindful of the defence when instituting proceedings under section 14 (1).

Section 32: Possession of unexplained property

CHARGE	Being a public officer, maintaining a standard of living above that which is commensurate with one's present or past official emoluments or other known sources of income, contrary to section 32(2)(a) of the Corrupt Practices Act.
PARTICULARS OF OFFENCE	(Name of the accused) on or about the (dates), at (location), without giving a reasonable explanation, had under his or her control or in his or her possession pecuniary resources or property (specify) reasonably suspected of having been corruptly acquired maintained a standard of living above that which is commensurate with his or her present or past official emoluments or other known sources of income.
PENALTY	As per section 4 of the Act, shall be liable, upon conviction, to a fine of K50,000.00 and to imprisonment for five years.

CHARGE	Being a public officer, having or having had under one's control or in one's possession pecuniary resources or property reasonably suspected of having been corruptly acquired, contrary to section 32(2)(b) of the Corrupt Practices Act.
PARTICULARS OF OFFENCE	(Name of the accused) on or about the (dates), at (location), without giving a reasonable explanation, was in control or possession of pecuniary resources or property (specify) disproportionate to his or her present or past official emoluments or other known sources of income.
PENALTY	As per section 4 of the Act, shall be liable, upon conviction, to a fine of K50,000.00 and to imprisonment for five years.

CHARGE	As a public officer, being in receipt directly or indirectly of the benefit of any services which one may reasonably be suspected of having received corruptly or in circumstances which amount to an offence under the Corrupt Practices Act, contrary to section 32(2)(c) of the Act.
PARTICULARS OF OFFENCE	(Name of the accused) on or about the (dates), at (location), without giving a reasonable explanation, was in receipt directly or indirectly of the benefit of services which he or she may reasonably be suspected of having received corruptly or in circumstances which amount to an offence under the Corrupt Practices Act.
PENALTY	As per section 4 of the Act, shall be liable, upon conviction, to a fine of K50,000.00 and to imprisonment for five years.

Evidence

Documentary evidence, i.e. employment letter, business registration documents, bank statements, electronic evidence; expert advice; witness statements; photographic evidence; statements of the accused; and investigating officer.

Further, the prosecutor must prove that the accused is a public officer; identify the property or pecuniary resources; demonstrate that the property was reasonably corruptly acquired; demonstrate that the accused knew or had reasonable excuse to believe that it had been corruptly acquired; the accused was involved in either retaining, receiving, holding, concealing, entering into transactions or causing transactions to be entered into or using the property.

3.7 Model Charges for Wildlife Crimes and Outline of Evidence Required to Support Charges under the Money Laundering, Proceeds of Serious Crime and Terrorist Financing Act and Financial Crimes Act

Some of the model charges for wildlife crimes and the evidence that a prosecutor requires to support charges under the Money Laundering, Proceeds of Serious Crime and Terrorist Financing Act are presented as follows:

Section 35: Money laundering offences under old Money Laundering and Terrorist Financing Act 2006 and new Act Financial Crimes Act 2017

CHARGE	Money Laundering, contrary to section 35(1) of the Money Laundering and Terrorist Financing Act 2006 New offence of money laundering contained in Section 42 of the Financial Crimes Act.
PARTICULARS OF OFFENCE	(Name of the accused: natural person or corporation) on or about the (date), at (location) knowing or having reasonable grounds to believe that any property Financial Crimes Act Section 42, inserts "including his own property" in whole or in part directly or indirectly represents the Financial Act 2017 revises this to say "proceeds of a predicate offence proceeds of crime of (name of person) converted or transferred (choose the applicable) property knowing or having reason to believe that property is the proceeds of crime, with the aim of concealing or disguising the illicit origin of that property, or of aiding (name of person) the Financial Crimes Act adds in here "including himself" in the commission of the offence to evade the legal consequences thereof.
PENALTY	(a) in the case of a natural person, to imprisonment for ten years and, to a fine of K2.000.000, and (b) in the case of a corporation, a fine of K10,00,000 and loss of business authority. Financial Crimes Act 2017, Section 42(3)(a) in the case of a natural person, to imprisonment for life. (b) in the case of a legal person, a fine of K500,000,000 and revocation of a business licence.

CHARGE	Money laundering, contrary to section 35 (1)(b) of the Money Laundering, Proceeds of Serious Crime and Terrorist Financing Act. New offence under the Financial Crimes Act 2017, Section 42(1)(b)
PARTICULARS OF OFFENCE	(Name of the accused: natural person or corporation) on or about the (date), at (location) knowing or having reasonable grounds to believe that any property (specify the property) in whole or in part directly or indirectly represents proceeds of crime of (name of person) concealed or disguised the true nature, origin, location, disposition, movement or ownership of that property (choose the applicable) knowing or having reason to believe that the property is the proceeds of crime.
PENALTY	<p>(a) in the case of a natural person, to imprisonment for ten years and, to a fine of K2.000.000, and</p> <p>(b) in the case of a corporation, a fine of K10,00,000 and loss of business authority.</p> <p>Financial Crimes Act 2017, Section 42(3)(a) in the case of a natural person, to imprisonment for life.</p> <p>(b) in the case of a legal person, a fine of K500,000,000 and revocation of a business licence.</p>

CHARGE	Money laundering, contrary to section 35(2) of the Money Laundering Act New Section under the Financial Crimes Act 2017, Section 42 (1) (b).
PARTICULARS OF OFFENCE	[a person] who, knowingly or who had reasonable grounds to believe that any property, including his or her own property, in whole or in part, directly or indirectly, represents proceeds of a predicate offence,— (a) converted, transferred property with the aim of concealing or disguising the illicit origin of that property, or of aided any person, including him or herself, involved in the commission of the offence to evade the legal consequences thereof.
PENALTY	<p>(a) in the case of a natural person, to imprisonment for ten years and to a fine of K2,000,000; and</p> <p>(b) in the case of a corporation, a fine of K10,000,000 and loss of business authority.</p> <p>Financial Crimes Act 2017 penalty: Section 42(3) a person who commits an offence under this section shall, on conviction, be liable— (a) in the case of a natural person, to imprisonment for life. (b) in the case of a legal person, a fine of K500,000,000 and revocation of a business licence.</p>

CHARGE	Money laundering, contrary to section 35(3) of the Money Laundering and Terrorist Financing Act New offence under Financial Crimes Act Section 42 (1) (d).
PARTICULARS OF OFFENCE	(Name of the accused: natural person or corporation) on or about the (date), at (location) conceals or disguises the true nature, origin, location, disposition, movement or ownership of the property; new Offence under Section 42(b) of the Financial Crimes Act 2017, same wording.
PENALTY	Financial Crimes Act new penalty: Section 42(3) a person who commits an offence under this section shall, on conviction, be liable— (a) in the case of a natural person, to imprisonment for life. (b) in the case of a legal person, a fine of K500,000,000 and revocation of a business licence.

CHARGE	Money laundering, contrary to section 42 (1) © of the Financial Crimes Act.
PARTICULARS OF OFFENCE	(Name of the accused: natural person or corporation) on or about the (date), at (location) knowing or having reasonable grounds to believe that any property in whole or in part directly or indirectly represents proceeds of crime of (name of person) converted or transferred (choose the applicable) property knowing or having reason to believe that property is the proceeds of crime, with the aim of concealing or disguising the illicit origin of that property, or of aiding (name of person) involved in the commission of the offence to evade the legal consequences thereof.
PENALTY	(a) in the case of a natural person, to imprisonment for ten years and to a fine of K2,000,000; and (b) in the case of a corporation, a fine of K10,000,000 and loss of business authority Financial Crimes Act new penalty Section 42(3) a person who commits an offence under this section shall, on conviction, be liable— (a) in the case of a natural person, to imprisonment for life. (b) in the case of a legal person, a fine of K500,000,000 and revocation of a business licence.

General Penalties under the Financial Crimes Act, Section 45: any person convicted of a financial crime for which a penalty has not been prescribed under this act shall be liable, on conviction:
(a) in the case of an individual to imprisonment of ten years and a fine of 20,000,000; or
(b) in the case of a legal person, to a fine of K100, 000,000 and revocation of a business licence.

Section 96: Failure to comply with a production order

CHARGE	Contravening a production order, contrary to section 96(a) of the Money Laundering, Proceeds of Serious Crime and Terrorist Financing Act.
PARTICULARS OF OFFENCE	(Name of the accused) on or about the (date), at (location), being a person required by a production order to produce a document to the competent authority, contravened the order without reasonable cause (specify the contravention).
PENALTY	On conviction shall be liable, in the case of a natural person to imprisonment for two years and a fine of K100, 000 or, in the case of a body corporate, a fine of K500, 000.

CHARGE	Failure to comply with a production order, contrary to section 96(b) of the Money Laundering, Proceeds of Serious Crime and Terrorist Financing Act.
PARTICULARS OF OFFENCE	(Name of the accused) on or about the (date), at (location), being a person required by a production order to produce a document to the competent authority, in purported compliance with the order, produced or made available a document known to him or her to be false or misleading (choose the applicable) in a material particular (specify the false or misleading material particular) and did not so indicate to the competent authority and provide to the competent authority any correct information of which (name of the accused) is in possession.
PENALTY	On conviction shall be liable, in the case of a natural person to imprisonment for two years and a fine of K100, 000 or, in the case of a body corporate, a fine of K500, 000.

Evidence

Documentary evidence, i.e. business registration documents, bank statements, electronic evidence; expert advice; witness statements; photographic evidence; statements of the accused; and investigating officer.

Note:

Section 96 is applicable to a natural person as well as a body corporate.

General Penalties under the Financial Crimes Act, Section 45: any person convicted of a financial crime for which a penalty has not been prescribed under this act shall be liable, on conviction:

- (a) in the case of an individual to imprisonment of ten years and a fine of 20,000,000; or
- (b) in the case of a legal person, to a fine of K100, 000,000 and revocation of a business licence.

Section 101: Monitoring orders

CHARGE	Knowingly contravening a monitoring order, contrary to section 101(5)(a) of the Money Laundering, Proceeds of Serious Crime and Terrorist Financing Act. New Section Under the Financial Crimes Act 2017: Section 63 on the procedure of applying for orders, but breach of a monitoring order is still an offence as above in Section 101(5)(a)
PARTICULARS OF OFFENCE	(Name of financial institution) on or about the (date), at (location), being a financial institution which has been given notice of a monitoring order, knowingly contravened the order (specify the contravention), contrary to section 101(5)(a) of the Money Laundering, Proceeds of Serious Crime and Terrorist Financing Act.
PENALTY	The institution commits an offence and shall be liable on conviction, in the case of a natural person, to imprisonment for two years and a fine of K100, 000 and, in the case of a body corporate, to a fine of K500, 000.

CHARGE	Knowingly providing false or misleading information in purported compliance with a monitoring order, contrary to section 101(5)(b) of the Money Laundering, Proceeds of Serious Crime and Terrorist Financing Act.
PARTICULARS OF OFFENCE	(Name of financial institution) on or about the (date), at (location), being a financial institution which has been given notice of a monitoring order, knowingly provided false or misleading (choose the applicable) information in purported compliance with the order (specify the conduct in the purported compliance with the order).
PENALTY	The institution commits an offence and shall be liable on conviction, in the case of a natural person, to imprisonment for two years and a fine of K100, 000 and, in the case of a body corporate, to a fine of K500, 000.

Evidence

Documentary evidence, i.e. business registration documents, bank statements, electronic evidence; expert advice; witness statements; photographic evidence; statements of the accused; and investigating officer.

3.8 Model Charges for Wildlife Crimes and Outline of Evidence Required to Support Charges under the Environment Management Act 1996

Some of the model charges for wildlife crimes and the evidence that a prosecutor requires to support charges under the Environment Management Act are presented as follows. **Note a new Environment Management Act was passed in 2017 but was not yet gazetted at the time of writing this Handbook. Investigators and prosecutors should therefore refer to the new Act to note any amendments. The new Act will be included in the 2018 revision of this Handbook.**

Section 62: Hindering, obstructing, etc., of inspectors

CHARGE	Hindering or obstructing an inspector in the execution of his or her duties under the Environment Management Act, contrary to section 62(a) of the Act.
PARTICULARS OF OFFENCE	(Name of the accused) on or about the (date), at (location), hindered or obstructed (choose the applicable and specify the conduct of the accused) an inspector in the execution of his or her duties under the Environment Management Act.
PENALTY	Upon conviction, to a fine of not less than K5,000 and not exceeding K200,000 and to imprisonment for two years.

CHARGE	Failure to comply with a lawful order or requirement made by an inspector in accordance with the Environment Management Act, contrary to section 62(b) of the Act.
PARTICULARS OF OFFENCE	(Name of the accused) on or about the (date), at (location), failed to comply with a lawful order or requirement (choose the applicable and specify the conduct of the accused) made by an inspector in accordance with the Environment Management Act.
PENALTY	Upon conviction, to a fine of not less than K5,000 and not exceeding K200,000 and to imprisonment for two years.

CHARGE	Preventing the Director of Environmental Affairs or an inspector or any person duly authorized by the Director or inspector (choose the applicable) from gaining entry upon or into any premises which he or she is empowered under the Environment Management Act to enter, contrary to section 62(c) of the Act.
PARTICULARS OF OFFENCE	(Name of the accused) on or about the (date), at (location), prevented the Director of Environmental Affairs or an inspector or any person duly authorised by the Director or inspector (choose the applicable) from gaining entry upon or into any premises (specify the premises) which he or she is empowered under the Environment Management Act to enter.
PENALTY	Upon conviction, to a fine of not less than K5,000 and not exceeding K200,000 and to imprisonment for two years.

CHARGE	Impersonating the Director of Environmental Affairs or an inspector or any person duly authorized by the Director or inspector (choose the applicable), contrary to section 62(d) of the Environment Management Act.
PARTICULARS OF OFFENCE	(Name of the accused) on or about the (date), at (location), impersonated the Director of Environmental Affairs or an inspector or any person duly authorised by the Director or inspector (specify).
PENALTY	Upon conviction, to a fine of not less than K5,000 and not exceeding K200,000 and to imprisonment for two years.

CHARGE	Preventing an inspector from having access to a record or document required by the inspector for purposes of the Environment Management Act, contrary to section 62(e) of the Act.
PARTICULARS OF OFFENCE	(Name of the accused) on or about the (date), at (location), prevented an inspector from having access to a record or document (specify) required by the inspector for purposes of the Environment Management Act.
PENALTY	Upon conviction, to a fine of not less than K5,000 and not exceeding K200,000 and to imprisonment for two years.

CHARGE	Misleading or giving false information to the Director of Environmental Affairs or an inspector or any person duly authorized by the Director or inspector (choose the applicable) under the Environment Management Act, contrary to section 62(f) of the Act.
PARTICULARS OF OFFENCE	(Name of the accused) on or about the (date), at (location), misled or gave false information to the Director of Environmental Affairs or an inspector or any person duly authorised by the Director or inspector under the Environment Management Act (specify).

CHARGE	Failure to comply with measures directed by the Minister, the Director of Environmental Affairs or an inspector (choose the applicable) for the protection and management of the environment and the conservation and sustainable utilization of natural resources, contrary to section 62(g) of the Environment Management Act.
PARTICULARS OF OFFENCE	(Name of the accused) on or about the (date), at (location), failed to comply with measures (describe the failure) directed by the Minister, the Director of Environmental Affairs or an inspector (specify) for the protection and management of the environment and the conservation and sustainable utilisation of natural resources.

PENALTY

Upon conviction, to a fine of not less than K5,000 and not exceeding K200,000 and to imprisonment for two years.

Evidence

Documentary evidence; witness statements; photographic evidence; statements of the accused; and investigating officer.

Pangolins (also found in Malawi) are traded for their scales, which are ground into powder for medicines in Asia and also their meat.



4. Prosecuted cases with associated charges, and penalties

It should be noted that since the drafting of this Guide, the new National Parks and Wildlife (Amendment) Act 2017 is now in force. The case presented here were prosecuted under the old Act. Therefore case law under the 2017 Act is yet to be developed. Cases under the previous Act are therefore referred to here for reference, but it should be noted that penalties under the 2017 Act are considerably higher, so sentences listed here may not be in accordance with the new provisions. This Guide is a working document and will be updated with new case law in due course.

The IWT states that it appears that the vast majority of prosecutions of cases involving wildlife crime have taken place in subordinate courts and prosecuted by lower ranked officers of the Malawi Police Service thus the fines received were extraordinarily small and not in any way reflective of the seriousness of the crimes committed.⁴⁵

However, the IWT Review also noted that there were some exceptions, as detailed below. If the recommendations suggested in this Handbook were considered and implemented, the effect could assist all stakeholders in the prosecution of wildlife crime to discharge their respective roles more effectively and perhaps to the satisfaction of the general public. Some of the cases listed in the IWT Review shall therefore be listed under this section as a guide to stakeholders, particularly prosecutors and judicial officers, on how to approach cases involving wildlife crime by following best practices and avoiding the mistakes noted in the cases.

Since mid 2016, the sentences for wildlife crime in Malawi have increased significantly, in large part due to the focused work of the Wildlife Crime Investigation Unit under the Department of National Parks and Wildlife together with private litigation support through the Lilongwe Wildlife Trust. Between 2008-15, the average sentence for ivory trafficking was a \$40 fine and no custodial sentences, however since mid 2016 multiple custodial sentences for ivory trafficking have been handed down with an average of 3 ½ years imprisonment.

Note that all these cases were prosecuted under the old National Parks and Wildlife Act; new case law will be added to this Handbook in due course to reflect the penalties delivered under the new Act of 2017. However, these cases serve as examples of the higher levels of sentencing being delivered by the courts in 2016, and cautionary notes on weaker sentences.

Cases prior to 2016:

Maximum fines:

- **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 kgs of ivory disguised as wooden boards and given the maximum sentence available under the Wildlife Act⁴⁶ of MK1,000,000 and was given a deportation order to leave Malawi immediately.

- **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 kgs of ivory and was given the maximum sentence available under the Wildlife Act of MK1,000,000.

45 Jonathan Vaughan, Professor Erica Lyman and Dr. Ivana Jurisic, 'Illegal Wildlife Trade Review, Malawi' (n 18) 117.

46 Perhaps 'Wildlife Act' was meant to refer to the National Parks and Wildlife Act.

Prosecuted cases with ‘Insufficient Deterrence through Inadequate Prosecution and Weak Sentencing’

- In July 2011, Mr. Mwiza Chakaka Nyirenda was found guilty of illegally entering Nyika National Park, conveying a firearm and killing a game species. He was fined MK35,000 (ca. \$75) and paid the fine. In February, 2014, Mr. Nyirenda was arrested again by the Department of National Parks and Wildlife (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 had not yet been prosecuted for the offences committed in February, 2014.⁴⁷
- Mr. Henry K. Ng’ambi was convicted and fined MK80,000 in October, 2011 for killing a protected species in Nyika National Park with an unlicensed firearm. He paid the fine. In February, 2012, Mr. Ng’ambi was back in court for committing the same offences which he was found guilty of less than six months from the initial conviction. He was prosecuted before the same magistrate and was given exactly the same punishment upon being found guilty. As in the first instance, Mr. Ng’ambi paid the fine, was free to leave and, in theory, continues his poaching activities.⁴⁸
- 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 MK55,000 (ca. \$120), in April, 2013 he received a twelve month suspended sentence. In February, 2014, while still on suspended sentence, Mr. Mhone received a fine of just MK60,000 (ca. \$130). Finally, in April, 2014, while still on suspended sentence, Mr. Mhone received his lowest fine in the sum of just MK40,000 (ca. \$90). In all instances, Mr. Mhone paid the fines and never served a custodial sentence, despite twice being found guilty of game offences while serving a suspended sentence!⁴⁹ Further, Mr. Mhone was only charged under the National Parks and Wildlife Act (the PRINCIPLE ACT) and did not face any additional charges under any other Act of Parliament, including the Firearms Act, against which Mr. Mhone had very probably committed several offences.⁵⁰

Examples of cases prosecuted in 2016⁵¹:

The Republic Vs. Christopher Masina & Two Others

Criminal Case No. 427 of 2016

Court: Lilongwe Chief Resident Magistrate

Christopher Masina and two others were arrested in August, 2016 for possession of 15 Kg of ivory. They were charged with illegal possession of a government trophy contrary to Section 86(1) of the National Parks and Wildlife Act. The three were convicted and sentenced to 40 months in prison with hard labour on 26th September, 2016.

The Republic Vs. Mandala Chirwa

Criminal Case No. 275 of 2016

Court: Chief Resident Magistrate, Lilongwe

Mandala Chirwa was arrested at Mchinji in August, 2016 for possession of 24 Kg of raw ivory which he was offering for sale. He was charged with two counts: Possession of government trophy (24 Kg ivory), and dealing in government trophy. He was convicted and sentenced to 66 months (5.5 years) in prison with hard labour on 6th October, 2016.

The Republic Vs. Christopher Mwera & Mathews Nkhoma

Court Case No. 504 of 2016

Court: Chief Resident Magistrate Court, Lilongwe

Christopher Mwera & Mathews Nkhoma were arrested on 20th August, 2016 for possession of 29 Kg of raw ivory. They were charged with possession and dealing in a government trophy (ivory). Christopher Mwera

47 Jonathan Vaughan, Professor Erica Lyman and Dr. Ivana Jurisic, ‘Illegal Wildlife Trade Review, Malawi’ (n 18) 119.

48 As above.

49 As above.

50 As above.

51 This information was kindly provided by Lilongwe Wildlife Trust

was convicted and sentenced to 3 years and 4 months in prison with hard labour on 26th September, 2016. Mathews Nkhoma was acquitted on both counts.

The Republic Vs. Leman Wiscort

Court Case No. 547 of 2016

Court: Lilongwe Chief Resident Magistrate

Leman Wiscort was arrested on 2nd September for possession of 7.4 Kg ivory. He was charged with possession government trophy contrary to section 86(1) of the National Parks and Wildlife Act. He was convicted and sentenced to 3 years in prison with hard labour on 26th September, 2016.

The Republic Vs. Cedrick Moyo & Maxon Nhlane

Court Case No. 579 of 2016

Court: Lilongwe Chief Resident Magistrate

Cedrick Moyo & Maxon Nhlane were arrested on 8th September, 2016 for possession of 24.6 Kg of raw ivory. They were charged with illegal possession of a government trophy (ivory) contrary to Section 86(1) of the National Parks and Wildlife Act. They were both convicted and sentenced to 30 months (2 years & 6 months) in prison with hard labour.

The Republic Vs. Vwi Haiya

Court Case No. 91 of 2016

Court: Chief Resident Magistrate, Zomba

Vwi Haiya was arrested in September 2016, on suspicion of dealing in a rhino horn sourced from a black rhino that was poached in Liwonde National Park in February, 2016. He was charged with dealing in a government trophy (rhino horn) contrary to Sect. 91(1) read with Sect. 108 of the National Parks and Wildlife Act. He was on sentenced to 8 years imprisonment with hard labour on 22nd November, 2016.

Eunice Gunde & Dymon Banda

Court Case No. 357 of 2016

Court: Chief Resident Magistrate, Lilongwe

Eunice and Dymon Banda were arrested on 25th September, 2016 for possession of 4.5 Kg of raw ivory. They were charged with illegal possession of a government trophy (ivory) contrary to Section 86(1) of the National Parks and Wildlife Act. They were both convicted on 21st October, 2016 and fined K250, 000 each / in default 12 months in prison.

The Republic Vs. Jeremiah Banda

Court Case No. 542 of 2016

Court: Chief Resident Magistrate, Lilongwe

Jeremiah Banda was arrested on 10th October, 2016 for possession of 2.5 Kg of raw ivory. He was charged with illegal possession of a government trophy (ivory) contrary to section 86(1) of the National Parks and Wildlife Act. He was convicted, fined and sentenced to perform 6 months community service.

Manjarazi Mhango & Two Others

Court Case No. 636 of 2016

Court: Chief Resident Magistrate, Mzuzu

Manjarazi Mhango, Tryson Gondwe and Justin Nkhata were arrested in October 2016 for possession of a .375 rifle, rifle ammunition, and hunting elephants in the Vwaza protected area. They were charged with illegal possession of a prohibited weapon and ammunition, conveying a weapon, entry and hunting in the protected area. They were convicted and sentenced to 3 years in prison with hard labour on 31st October, 2016.

The Republic Vs. Benjamin Paul & Bernard Phiri

Court Case No. 54 of 2016

Court: Chief Resident Magistrate, Lilongwe

Benjamin Paul and Bernard Phiri were arrested in Mchinji on 17th November, 2016 for possession and dealing in elephant bones, shaped like elephant ivory. They were charged with illegal possession of a government trophy (ivory) contrary to Section 86(1) of the National Parks and Wildlife Act, and dealing in a protected species specimen, contrary to Sect. 91 read with Sect. 108 of the Act. First accused Benjamin Paul was convicted on both counts and sentenced to 4.5 years in prison with hard labour. Bernard Phiri was acquitted on both counts.

The Republic Vs. Gromiko Zgambo

Court Case No. 1015 of 2016

Court: Chief Resident Magistrate, Lilongwe

Gromiko Zgambo was arrested by in Kasungu on 12th November, 2016 for possession of 19 Kg of raw ivory. He was charged with illegal possession of a government trophy (ivory) contrary to section 86(1) of the National Parks and Wildlife Act. He was convicted and sentenced to 3 years in prison with hard labour.

The Republic Vs. Arnold Kuntindi & Sopheret Zakeyu

Case No. 827 of 2016

Court: Chief Resident Magistrate, Lilongwe

Arnold Kuntindi and Sopheret Zakeyu were arrested in Lilongwe on 13th November, 2016 for possession of ivory weighing 1.6 Kg, contrary to Sect. 86(1) of the National Parks & Wildlife Act. They were both convicted and sentenced to 1 year in prison with hard labour.

The Republic Vs. Rector Banda & Mike Masoambeta

Court Case No. 962 of 2016

Court: Chief Resident Magistrate, Lilongwe

Rector Banda and Mike Masoambeta, were arrested on 26th December, 2016 in Lilongwe for possession of 12.5 Kg raw ivory and 2 Kg hippo teeth. They were charged with illegal possession of protected species specimen, contrary to Sect. 86(1) of the National Parks and Wildlife Act. They were found guilty, convicted and sentenced to 3 years in prison with hard labour.

The Republic Vs. Austin Kathira

Court Case No. 940 of 2016

Court: Chief Resident Magistrate, Lilongwe

Austin Kathira was arrested at Mponela on 15th December, 2016 for possession of a pair of elephant tusks weighing 19 Kg. He was charged with illegal possession of protected species specimen, contrary to Sect. 86(1) read with Sect 108 of the National Parks & Wildlife Act. He was convicted and sentenced to 4 years in prison with hard labour.

The Republic Vs. Hassan Mapelera

Case No. 27 of 2017

Court: Chief Resident Magistrate, Lilongwe

On 11th January, 2016 Dedza Police, arrested Hassan Mapelera, at a road block for possession of five leopard skins. He was charged with possession of a government protected specimen contrary to Sect. 86(1) of the National Parks & Wildlife Act. He was convicted and sentenced to 4 years in prison with hard labour.

The Republic Vs. Gertrude Paulo & Langston Paulo

Case No. 828 of 2016

Court: Chief Resident Magistrate, Lilongwe

Gertrude & Langston Paulo were on 13th November 2017 arrested at Kamwendo Trading Centre in Mchinji for possession of raw ivory weighing 4 Kg. They were charged with illegal possession of a government protected specimen, contrary to Sect. 86(1) of the National Parks & Wildlife Act. They were both convicted and sentenced to 1 year 6 months in prison with hard labour.

The Republic Vs. Oswald Katontha & Two Others

Case No. ____ of 2016

Court: Chief Resident Magistrate, Lilongwe

Oswald Katontha, Patricia Banda and Shepperd Banda were arrested on 15th November in Lilongwe for illegal possession of raw ivory weighing 12 Kg, contrary to Sect. 81(1) of the National Parks & Wildlife Act. They were all convicted and fined K350, 000 each / in default 24 months in prison with hard labour.

The Republic Vs Beston Chabwera

Court Case No. 97 of 2016

Court: Chief Resident Magistrate Court, Zomba

Beston Chabwera (DNPW Officer) was arrested in early 2016 for transferring his official firearm and ammunition to poachers. He was convicted on 28th February 2017 and sentenced to 10 years in prison with hard labour having been found guilty of theft by public servant. He was also given 6 years in prison for transferring the firearm and ammunition without licence or permission. Both sentences will run concurrently.

The Republic Vs. Precious Tembo

Case No. ____ of 2016

Court: Chief Resident Magistrate, Lilongwe

Precious Tembo, aged. 30yrs, was arrested on 2nd December, 2016 at Matchansi in Chililinde, Lilongwe for illegal possession of one piece of raw ivory weighing 2.7 Kg and 2 hippo teeth, contrary to Sect. 86(1) of the National Parks & Wildlife Act. He was convicted and sentenced to 24 months in prison with hard labour.

The Republic Vs. Bright Chinkonde & Gerald Banda

Case No. 9 of 2017

Court: Chief Resident Magistrate, Lilongwe

Police Sergeant (and prosecutor) Bright Chinkonde, and his civilian associate, Gerald Banda, were arrested in Kasungu on 1st January 2017 for illegal possession of 10 pieces of raw ivory weighing 23 Kg, contrary to Sect. 86(1) of the National Parks & Wildlife Act. They were both charged with two counts: illegal possession of a protected species specimen and dealing in the same. On 24th February, 2017, they were convicted and sentenced to 5 years in prison for illegal possession, and 3 years in prison for dealing, and both sentences are to run concurrently.

The Republic Vs. Adam Zimba & Michael Nyondo

Case No. 35 of 2017

Court: Chief Resident Magistrate, Lilongwe

On 17th December, Adam Zimba and Michael Nyondo were arrested in Lilongwe for possession of 39.9 Kg raw ivory, contrary to Sect. 86(1) of the National Parks & Wildlife Act. Only first accused, Adam Zimba was, on 27th February, convicted and sentenced to 4 years in prison with hard labour. Second accused, Michael Nyondo was acquitted.

The Republic Vs. Warren Mbizi

Case No. 881 of 2016

Court: Chief Resident Magistrate, Lilongwe

Warren Mbizi, (DNPW HQ Officer) was arrested on the 22nd of November 2016 for illegally killing two hippos without authorization. The offence was committed while he was on annual leave. On 15th February 2017 he was convicted and sentenced to 15 months in prison with hard labour for abuse of public office. The main charge of "Killing hippos without authorization" was dismissed after the court established the two hippos were reportedly a threat to communities at Liwonde.

The Republic Vs. Obrein Tchalie

Case No. 37 of 2017

Court: Chief Resident Magistrate, Mzuzu

Obrein Tchalie, was arrested in Mzuzu on 15th January 2017 for illegal possession of 4 pieces of raw ivory weighing 16.5 Kg and 2 hippo teeth weighing 0.5 Kg, contrary to Sect. 86(1) of the National Parks & Wildlife Act. He was, on 17th February, 2017 convicted and sentenced to 4 years in prison for possession and dealing in these wildlife products.

The Republic Vs. Andrew Tambala

Case No. 101 of 2017

Court: Chief Resident Magistrate, Lilongwe

Andrew Tambala, from Kanjedza Village, Chief Chanza, Lilongwe District was arrested in Lilongwe on 3rd February, 2017 for possession of elephant bones. He was charged with illegal possession of protected species specimen and taken before court. He was convicted and sentenced to 6 months in prison with hard labour.

The Republic Vs. Abraham Kaonga & Adam Wadi

Case No. 195 of 2017

Court: Chief Resident Magistrate, Lilongwe

Abraham Kaonga, and Adam Wadi, were arrested in Lilongwe on 5th February, 2017 for possession of 8 pieces of raw ivory weighing 19.7 Kg. Both men were charged with illegal possession of protected species specimen contrary to Sect. 86(1) of the National Parks & Wildlife Act. Both were convicted and sentenced to 3 years in prison with hard labour.

The Republic Vs Blessings Nyondo

Case No. ___ of 2017

Court: Chief Resident Magistrate, Lilongwe

Blessings Nyondo, from Kema Village, Chief Mwaulambya, Chitipa District was arrested on 17th March, 2017 in Mzuzu for illegal possession of raw ivory weighing 1.17 Kg. He was charged with illegal possession of protected species specimen contrary to Sect. 86(1) of the National Parks & Wildlife Act. He was convicted and sentenced to 18 months in prison with hard labour.

The Republic Vs. Juma Shaibu & Thauzeni Sezi

Case No. 91 of 2017

Court: Chief Resident Magistrate, Mzuzu

Juma Shaibu, and Thauzeni Sezi, were arrested at Mzimba Town for possession of fake rhino horn and one piece of ivory weighing 1.3 Kg. They were charged with theft by trick in a fake rhino horn sale and possession of protected species specimen (ivory). The CRM who presided over the case at Mzimba Magistrate Court convicted and sentenced them to 1 year 6 months for the first count of illegal possession of ivory on 7th March, 2017. The men were then sentenced to a further 9 months for the second count of theft by trick (dealing in fake rhino horn) on 16th March 2017. Both sentences will run consecutively.

The Republic Vs. John Sakala & two Others

Court Case No. 546 of 2016

Court: Chief Resident Magistrate, Lilongwe

John Sakala (Zambian Army Captain), Sandu Kalimbo and Ronald Mawere were arrested in Mchinji in September, 2016 for possession of 4.5 Kg of raw ivory, 1 lion skin and 1 leopard skin. They were charged with illegal possession of government trophies contrary to section 86(1) of the National Parks and Wildlife Act. They were convicted and sentenced to 40 months (3 years & 4 months) in prison with hard labour on 26th September, 2016.

The State Vs. Reuben Kaunda & two Others

Court Case No. 356 of 2016

Court: Chief Resident Magistrate Court, Lilongwe

Police officers Reuben Kaunda, Nelson Mpinganjira, William Banda and Emmanuel Makhoza were arrested on 11th July 2016 for possession of 27.5 Kg raw ivory. They were charged with possession and dealing in government trophy (ivory) contrary to Section 86(1) of the National Parks and Wildlife Act. They were convicted and sentenced to 3 years in prison with hard labour in November 2016.

The Republic Vs. Hope Kapalamula & two Others

Case No. 928 of 2016

Court: Chief Resident Magistrate Court, Lilongwe

Hope Kapalamula Lali, Monica Mataka (Interpol Agent) and Rafik Ibrahim, were arrested in Lilongwe for possession of 8.4 Kg of ivory. They were charged with illegal possession of protected government specimen, contrary to Sect. 86(1) of the National Parks & Wildlife Act. The suspects were convicted and sentenced to 3 years in prison with hard labour. The convicts have appealed against the sentence in the High Court in Lilongwe. Date of hearing is yet to be announced.

The Republic Vs. Yereimiya Kachepatsonga

Case No. 948 of 2016

Court: Chief Resident Magistrate, Lilongwe

Yereimiya Kachepatsonga was arrested on 15th December 2016 in Lilongwe for possession of elephant bones shaped like elephant tusks. The suspect was charged with illegal possession of government protected species specimen, contrary to Sect. 86(1) of the National Parks & Wildlife Act. He was convicted and sentenced to 3 years in prison with hard labour.

The Republic Vs. Godfrey Kaludzi

Case No. 961 of 2016

Court: Chief Resident Magistrate, Lilongwe

Godfrey Kaludzi, who pleaded guilty to the charge of illegal possession of 126 Kg of ivory off cuts, contrary to Sect. 86(1) of the National Parks & Wildlife Act has been convicted and sentenced to 4 years in prison with hard labour.