

# Recent Amendments to the Wildlife Act 2013

## *Institutional Changes, Offences and Penalties*

Fact Sheet

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### Overview

**The Statute Law (Miscellaneous Amendments) Act No. 18 of 2018, passed on 31<sup>st</sup> December 2018 and effective 4<sup>th</sup> January 2019 substantially amends the Wildlife Conservation and Management Act 2013, focusing on institutional changes and introduces new offences and penalties on wildlife crimes.**

The **Wildlife Act 2013** became effective January 2014 and its implementation is ongoing although at a slow rate. 19 Regulations and guidelines needed to facilitate implementation are yet to be gazetted. Overlaps and some important provisions in the Act are yet to be implemented.

The miscellaneous amendments, proposed by the Ministry of Tourism and Wildlife, prioritized and added issues contained in the previous Wildlife Conservation and Management (Amendment) Bill, No. 20 of 2017.

Introduction of new offences and penalties, clarity on some previously vague offences and heightening of fines and prison terms on some of the offences is largely considered progressive in the war against wildlife crimes.

Institutional changes presented by the Amendment substantially alters inclusivity in decision making; waters down communities and landowners representation at the KWS board of trustees, Wildlife Conservation Trust Fund and reduces the independence of County Wildlife Conservation and Compensation Committees (CWCCCs).

## 1.0 New Institutional Changes

### 1.1 Kenya Wildlife Service Sec 6 (1)

The amendment identifies KWS as a “uniformed and disciplined” service. While security and Law enforcement is one of KWS key functions, its mandate is wider to include wildlife conservation, research, extension services, policy advisory and management planning. In recent times there has been improved public perceptions of KWS as a service provider as opposed to a strictly law enforcement institution.

### 1.2 KWS Board of Trustees (sec 8(2))

To ensure inclusivity in the decision making at the board of KWS, the Wildlife Act 2013 provided three representatives for community and privately managed areas and one representative of national wildlife conservation non governmental organization (NGO). The amendment;

- **reduces community representatives** from three to one without requiring consultation and nomination by stakeholders responsible for privately and community managed areas.
- **replaces key stakeholders** with any 4 skilled persons on fundraising, law, finance, business or investments appointed by the Cabinet Secretary responsible for wildlife.
- The spirit of the Wildlife Act 2013 in its guiding principle is to devolve decision making and management of wildlife and **ensuring effective public participation**

**Including community representatives in all levels of decision making enhances collaboration and strengthens linkages between communities and KWS**

### 1.3 County Wildlife Conservation and Compensation Committee (CWCCCs) (sec 18 &19)

The Wildlife Act 2013 created CWCCCs as County level delegated structures responsible for broad compensation and conservation functions. The Amendment;

- Changes name to Community Wildlife Conservation Committee (CWCC) and replaces the competitively recruited and Cabinet Secretary appointed chairperson with the County Commissioner.
- Reduces committee members from 13 to 9 excluding County Government representative, land use planning officer, officer in charge of county police, and county environment officer

- Allows only 4 committee meetings each year and the approval of the cabinet secretary for additional meetings.
- Limits functions of the committee from 10 to 3 to include compensation, human wildlife conflict and harnessing participation in wildlife conservation.
- A committee headed by a County Commissioner and with more representation from government is not community.
- It is unclear if the amendment has addressed factors that limited effective functioning of the previous CWCCCs including adequate financial allocation to the compensation kitty and operations of the committee.

**Proper functioning of CWCC will require adequate financing of the compensation kitty and operations of the committee.**

### 1.4 Endowment fund (Sec 23)

The Amendment replaces the Endowment fund with the Wildlife Conservation Trust Fund as a public private partnership to support wildlife conservation initiatives in national parks, reserves and conservancies.

- The governing council of 9 comprises of 5 government representatives and 4 private sector experts. It excludes representation of local communities and landowners as a key stakeholder group.
- Among the functions of the Fund relevant to conservancies include support for management of conservancies, community based wildlife initiatives, and provision of conservation grants.
- Regulations and guidelines to facilitate setting up and management of the Fund shall be developed by the Ministry in consultation with KWS.

**Communities and landowners representation in the Wildlife Conservation Trust Fund is central to the functioning of the Fund.**

### 1.5 Wildlife species excluded from compensation

- No compensation for death and injury caused by poisonous snakes, sharks, stonefish, whale, stingray and wild pig.
- No compensation for damage on crop, livestock and property caused by snake, zebra, wildebeest, wild dog and eland.



## 2.0 Offences and Penalties

The Wildlife Act 2013 enhanced penalties for wildlife crimes. Effective prosecution of some offences has been hampered by gaps, loopholes and vagueness provisions. The amendment introduced new offences, higher penalties and expounded some offences.

### 2.1 New offences:

- Poisoning of wildlife (sec 95A)- knowingly or recklessly poisoning wildlife, not less than KES 5 million or imprisonment of not less than 5 years or both.
- Aiding and abetting in the import or export of wildlife species or trophy without permit
  - i. Critically or endangered species (sec 99 (4)), fine of not less than KES 100 million or imprisonment of not less than 20 years or both;
  - ii. Other wildlife, fine of not less than KES 20 million or imprisonment term of not less than 10 years or both.
- Burning charcoal in a protected area (sec 102 (1)(da)), applies to protected areas, which includes national parks, national reserves and conservancies, fine of not less than KES 200,000 or imprisonment of not less than 2 years or both; and
- Undertaking extractive activity in a protected area (Sec 102(1)(g)-This offence only applied to marine protected areas, under the Wildlife Act 2013. The amendment extends the offence to other protected areas including conservancies, with fine of not less than KES 200,000 or imprisonment of not less than 2 years or both.
- An offence by a body corporate or its officers, for



**High offences support the fight against illegal international trade and deter poaching.**

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which no penalty is specifically provided, attracts a fine not exceeding KES 10 million or imprisonment of not exceeding 5 years or both.

### 2.2 Clarified offences relating to endangered and threatened wildlife species (sec 92):

- i. Killing, injuring, torturing, molesting and attempt to kill or injure, imprisonment of not less than 3 years;
- ii. Dealing in wildlife trophy without permit or exemption penalty, imprisonment of not less than 5 years;
- iii. Dealing in live wildlife species without permit or exemption, imprisonment of not less than 5 years;

The above three offences have no option of fine. This seeks to address the often-easy option of fine payment by offenders that have financial capacities.

- iv. Possession without permit or exemption of live wildlife species or trophy, a fine of not less than KES 3 million or imprisonment of not less than 3 years or both; and
- v. Manufacturing an item from trophy without permit or exemption, fine of not less than KES 10 million or up to life imprisonment.

### 2.3 Offences with highest penalties

- Import, export without permit of wildlife species and manufacturing of items from wildlife trophy without permit (Sec 99(3 &4))-
  - i. Critically endangered or endangered species, fine not

less than KES 100 million or to imprisonment of not less than 20 years or both;

- ii. Other wildlife species, fine of not less than KES 20 million or imprisonment of not less than 10 years or both

- Aiding and abetting import and export of wildlife species and trophy without permit (Sec 99(4)), attracts the same penalty as the actual import and export as above described.

### 2.4 Other offences with elevated penalties

- Hunting for bush meat trade (sec 98)- considered greatest threat to wildlife especially for small mammals.
  - i. Dealing (sell, supply, purchase, distribute, transport and possess) in carcass or meat of any wildlife species without permit or exemption, 3 years imprisonment with no option of fine payment.
  - ii. Purchase of any meat or eggs of any wildlife species is provided as a separate and specific offence from dealing. The penalty is a fine of up to KES 1 million or a term of 12 months, or both.

### The two offences under hunting for bush meat trade, however, present two issues:

- o While hunting is criminalized, a specific offence on act of hunting should be provided;
- o The offence on purchase of meat or eggs and that on dealing in carcass or meat of any species overlap.

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