

# A BASELINE SURVEY OF WILDLIFE CRIME COURT CASES IN ZIMBABWE'S KAZA REGION

JANUARY 2015 - DECEMBER 2018



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## ABOUT THE ORGANISATIONS

**SPACE FOR GIANTS (SFG)** is an international conservation organisation headquartered in Kenya that is dedicated to protecting Africa's elephants by securing forever the landscapes and habitats that they depend on. Among the ways we do this is to strengthen national judiciaries, wildlife law enforcement and prosecutorial agencies to ensure more appropriate and successful prosecutions of wildlife crimes, to deter those who would poach animals, or encroach on their protected spaces. We work closely with communities and governments to secure popular support for our work. Space for Giants produced and co-funded this document. See [www.spaceforgiants.org](http://www.spaceforgiants.org) for more information.

**SPEAK OUT FOR ANIMALS (SOFA)** is a non-governmental organization focused on protecting wildlife through the legal system. The vision is to influence the human mindset on making decisions that are in the benefit of animals for the benefit of present and future generations. SOFA is a 501 (c) 3 organization registered in the USA and its headquarters are in Zimbabwe. SOFA's main areas of work include; 1) training 2) case monitoring 3) lobbying and advocacy 4) legal education. See [www.speakoutforanimals.org](http://www.speakoutforanimals.org) for more information.

## FUNDER

**The European Union**, under contract FED/2017/394-428, provided funding to Space for Giants for a project to combat the Illegal Wildlife Trade in the Kavango-Zambezi Transfrontier Conservation Area. The project aims to strengthen wildlife law enforcement and cross-border collaboration in the Kavango-Zambezi Transfrontier Conservation Area (KAZA TFCA).

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# CONTENTS

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Abbreviations	4
Terminology	5
Foreword	6
Preface	7
Summary of Key Findings	8
Summary of Key Recommendations	9
1. Study Area	10
2. Methodology	11
3. Results	12
3.1 Overview of Cases in KAZA	12
3.2 Spatial Distribution of Cases	12 - 13
3.3 Overview of Species	14
3.4 Overview of the Accused	15
3.5 Charges and Pleas	16
3.6 Duration of Cases	17
3.7 Case Outcome and Sentencing Patterns	18
4. Discussion	20
4.1 On Legislation	20
4.2 On Accused Persons	22
4.3 On Prosecution	22
4.4 On Trial	22
4.5 On Sentencing	23
5. Conclusion	26
Appendix- Database of elephant and specially protected species cases 2015 - 2018	26

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# ABBREVIATIONS

<b>CITES</b>	Convention on International Trade in Endangered Species
<b>CJP</b>	Criminal Justice Pathway
<b>CR</b>	Criminal Registry
<b>EC</b>	European Commission
<b>ETIS</b>	Elephant Trade Information System
<b>EU</b>	European Union
<b>IWT</b>	Illegal Wildlife Trade
<b>JSC</b>	Judicial Service Commission
<b>KAZA TFCA</b>	Kavango-Zambezi Transfrontier Conservation Area
<b>MIKE</b>	Monitoring the Illegal Killing of Elephants
<b>NGO</b>	Non-Governmental Organization
<b>NPA</b>	National Prosecution Authority
<b>PWA</b>	Parks and Wildlife Act of 1975
<b>SADC</b>	Southern African Development Community
<b>SI</b>	Statutory Instrument
<b>SOFA</b>	Speak Out For Animals
<b>SPS</b>	Specially Protected Species
<b>ZPWMA</b>	Zimbabwe Parks and Wildlife Management Authority
<b>ZRP</b>	Zimbabwe Republic Police

# TERMINOLOGY

<b>Accused Person</b>	A person who has been charged with a criminal offence
<b>Aggravating Features</b>	Typically features of a case that make either the level of culpability of a suspect, or the level of harm caused by the offence, more serious for the purposes of sentencing
<b>Case Outcomes</b>	Conviction or acquittal following a charge
<b>Charge(s)</b>	A formal accusation by a national authority that someone has committed a crime
<b>Court Case</b>	For the purposes of this analysis, a court case is one whereby the accused person or persons are charged with the same offence in relation to the same set of facts and have offered a plea
<b>Criminal Justice Pathway</b>	The term ‘criminal justice pathway’ denotes the process followed within the criminal justice system from the point of arrest through to first appearance, trial, sentence and appeal
<b>Elephant Case</b>	Any case involving elephant ivory
<b>General Wildlife</b>	Any wildlife related case excluding ivory and specially protected species
<b>Offender</b>	A person who has been convicted of a criminal offence
<b>Ongoing Cases</b>	Cases that have not reached their conclusion
<b>Plea</b>	When an accused person is asked to enter a ‘plea’ this means he either accepts guilt by pleading ‘guilty’; does not accept guilt by pleading ‘not guilty’ or offers no plea at all
<b>Specially Protected Species</b>	These are species defined under the Schedules of the Parks and Wildlife Act, Zimbabwe
<b>SPS Case</b>	Any case that involves a specially protected species. For the purpose of this report it this includes pythons, pangolins and rhinos

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## FOREWORD

We at the National Prosecution Authority welcome this illuminating report and thank the European Commission, Space for Giants and Speak out for Animals for this endeavour. Having examined the data and the findings, we wholeheartedly endorse the recommendations herein and trust that all of the authorities involved in fighting the scourge of wildlife crime, will take these findings and build upon the successes and challenges identified herein.



# PREFACE

The Kavango-Zambezi Transfrontier Conservation Area (KAZA TFCA), straddling the boundaries of the five southern African countries of Angola, Botswana, Namibia, Zambia and Zimbabwe, is one of Africa's largest remaining wildernesses covering approximately 520,000 km<sup>2</sup>. The KAZA TFCA is home to some of the most significant remaining populations of terrestrial mega-fauna on earth, including over 200,000 elephants, more than half of those that still exist in Africa. This makes the KAZA TFCA one of the most critical conservation areas on the continent.

Despite the incredible gains made in establishing this transboundary conservation area, with its vision to deliver conservation alongside sustainable development<sup>1</sup>, the region is facing an increasing threat from organized wildlife crime, in particular, poaching<sup>2</sup> and unsustainable bush meat harvesting. These issues are compounded by the vast area of the KAZA TFCA, its overlapping jurisdictions and at times a lack of synergy on cross-border law enforcement strategies. As a result, wildlife crime and especially crimes related to elephant ivory, remain a serious threat to the success of the KAZA TFCA.

Space for Giants has conducted this survey in partnership with Speak out for Animals with financial support from the European Union. This report will complement similar efforts in each of the KAZA countries, aiming to present a detailed baseline understanding of how wildlife crimes, with a particular focus on species that are high value targets for transnational organised wildlife crime syndicates (e.g. elephants, rhinos, pangolins), committed in the KAZA region are handled by courts in each member country. A recent report by the Elephant Trade Information System (ETIS) prepared for CITES Conference of the Parties 18, listed Zimbabwe as a Category C country: Parties affected by the illegal trade in ivory. The report also stated that for the period 2015 to 2017, Zimbabwe and Angola were the source of 38% of the trade by the number of seizure cases and by the weight of the ivory products involved<sup>3</sup>. Understanding how, if at all, Zimbabwe's KAZA region contributes to this statistic is important. Understanding the trends taking place in the courts is a good place to start.

In highlighting the successes and ongoing challenges in the prosecution of wildlife crimes, this report also aims to inform stakeholders involved in the criminal trial process on the continuing challenges, possible solutions and how they fit within regional strategies to combat wildlife crime<sup>4</sup>. Finally this study may enable the prosecution authority and the judiciary to further understand the seriousness of wildlife offences and the need for appropriate sentencing as well as help guide ongoing investment in strategic interventions to make the Criminal Justice Pathway an efficient and accountable deterrent in combating wildlife crime in this region and beyond.

<sup>1</sup> Kavango Zambezi Transfrontier Conservation Area Master Integrated Development Plan 2015 - 2020.

<sup>2</sup> Schlossberg et al. 2019 Evidence of a Growing Elephant Poaching Problem in Botswana DOI: <https://doi.org/10.1016/j.cub.2019.05.061>

<sup>3</sup> ETIS Report for Conference of the Parties 18 Doc. 69.3 (Rev. 1)

<sup>4</sup> Southern African Development Community Law Enforcement and Anti-Poaching (SADC LEAP) Strategy 2016 - 2021

# SUMMARY OF KEY FINDINGS

## Prosecutions

1. A total of 345 wildlife cases were registered for 2015-2018
2. A total of 35 elephant cases were registered (10% of the total) involving a minimum of 195 kgs of ivory
3. A total of 27 cases involving SPS were registered (8% of the total). Pangolin cases = 21, Python = 5, Rhino = 1. The rhino case was registered in Victoria Falls and involved seven Chinese nationals and 20.89kgs of horn that had been cut into 49 pieces.
4. Overall bushmeat cases constituted the majority of wildlife crime cases. The main species concerned kudu, impala and buffalo.
5. The majority of wildlife crime cases were registered in Binga Court. Most elephant and SPS cases were registered in Hwange Court.

## Legislation

6. All cases involving elephant were charged under a Statutory Instrument 362 of 1990.
7. All SPS cases were charged under statute, namely the Parks and Wildlife Act 1975.

## Accused Persons

8. The Zimbabwe Republic Police conducted 58% of arrests, the Zimbabwe Parks and Wildlife Management Authority conducted 31%.
9. 77% of accused persons were Zimbabwean nationals followed by Zambian nationals (22%) and Chinese nationals (1%).
10. Over 60% of wildlife crime cases involved only a single accused.

## Trial

11. Approximately 70% of wildlife cases were concluded within one week from the date of first arraignment in court.
12. Conviction rates for elephant cases was 83%; for cases involving SPS conviction rates were 76%.
13. Accused persons pled guilty in 39% of elephant cases and 31% of SPS cases compared to over 75% of general wildlife cases.
14. Case conclusion rates for general wildlife cases were 100% but dropped to the low nineties for elephant and SPS cases.

## Sentencing

15. Upon conviction, 96% of elephant cases resulted in a custodial sentence with over 80% receiving an imprisonment term equal or greater to the minimum nine year mandatory sentence. For SPS cases 81% of cases resulted in a custodial sentence with over 80% receiving the mandatory minimum nine year sentence or greater.
16. For SPS cases specifically involving pythons there was an inconsistency in sentencing with sentences ranging from an imprisonment term of 60 days or a fine of \$100 to a 12 year imprisonment term.

<sup>5</sup>CR 720/15 registered in Victoria Falls which involved 128.6kg of elephant meat was charged under s59 of PWA

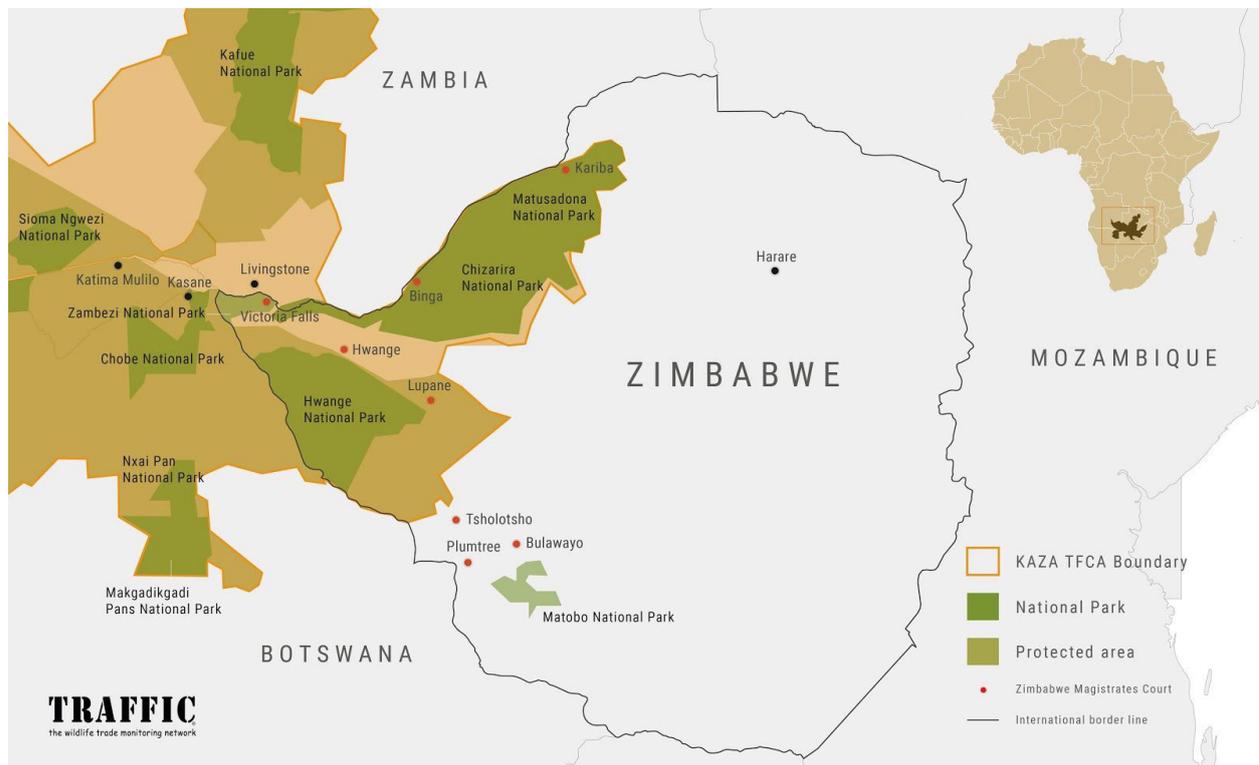
## SUMMARY OF KEY RECOMMENDATIONS

1. The Parks and Wildlife Act needs urgent review and reform particularly in relation to the range of offences available under that Act as well as the sentencing provisions for ivory cases. The use of a statutory provision under the Parks and Wildlife Act to sentence offenders convicted of regulatory offences charged under Statutory Instrument 362 of 1990 (S.I.) - used for the prosecution of nearly all elephant offences - is questionable. It is the authors' opinion that the nine year minimum term currently being applied for ivory cases is unlawful.
2. Capacity building focused on prosecutorial training particularly on prosecution led investigations should be prioritised for the NPA in partnership with the Police (ZRP) and ZPWMA. Developing capacity for prosecution guided investigations on cross-border criminality is a must - this in turn entails support on understanding the various mutual legal assistance requirements for Zimbabwe and her neighbours in particular.
3. With the majority of accused persons being of Zimbabwean nationality, there is a need for more community and public engagement within Zimbabwe's borders regarding wildlife crime, the penalties involved and sensitization as to the value of wildlife to Zimbabwe in achieving her potential in conservation, tourism and economic growth.
4. Zimbabwean authorities need to engage further with Zambian counterparts to tackle illegal fishing in KAZA. With a fifth of all wildlife cases involving illegal fishing, this could indicate a risk to Zimbabwe's marine resources that should not be ignored. The penalties for illegal fishing were light in comparison to other wildlife crimes i.e. 10 to 15 days imprisonment and/or a fine of between \$30 and \$50 for the majority of offences in 2018. It is unclear whether this penalty currently serves as an adequate deterrent.
5. It is recommended that the judiciary and prosecution services be sensitized on Schedule 6 of the Parks and Wildlife Act regarding specially protected species given the disparity in sentencing between different species such as pangolins and pythons when high minimum terms in fact apply to both. Furthermore, with a minimum prison sentence of nine years for offences concerning specially protected species, there is a need for judicially issued sentencing guidelines that would set bandwidths for sentence according to the presence or absence of identified aggravating features in order to achieve some consistency in sentencing and proportionality. Identifying what might constitute 'special circumstances' justifying the avoidance of the minimum term would also be helpful in achieving consistency of approach.

# 1. STUDY AREA

Zimbabwe's KAZA region covers an area of approximately 72,000 km<sup>2</sup> (approximately 14% of the KAZA TFCA) stretching from Victoria Falls in the West up to Kariba in the North and Hwange National Park in the South-East (Figure 1). Zimbabwe's largest national park, Hwange National Park, home to approximately 45,000 elephants<sup>6</sup>, is fully encapsulated within the KAZA region. There are five main magistrates' courts that fall within the KAZA region's jurisdiction, namely: Victoria Falls, Hwange, Lupane, Binga and Kariba. However, the study area included three additional magistrate's courts namely; Bulawayo, Plumtree and Tsholotsho Magistrate's Courts due to their close proximity to the KAZA region. Tsholotsho in particular is considered part of the KAZA region according to ZPWMA structures, hence its inclusion.

In addition, section 50 of the Constitution of Zimbabwe stipulates that "a person arrested or detained must be brought before a court of law as soon as possible, but not later than forty-eight hours after the arrest or detention". These additional three courts are used by law enforcement to comply with their Constitutional obligations and utilize transport resources efficiently. Finally, Bulawayo is the second largest city in Zimbabwe, with an international airport. Whilst some offences were committed within the KAZA region, arrests were conducted in Bulawayo, and therefore tried at Bulawayo Magistrate's court.



**Figure 1:** A map showing the location of the eight magistrate's courts used in this baseline study in the KAZA region of Zimbabwe

<sup>6</sup>Frederick and P. Bouché (2016). African Elephant Status Report 2016: an update from the African Elephant Database. Occasional Paper Series of the IUCN Species Survival Commission, No. 60 IUCN / SSC Africa Elephant Specialist Group. IUCN, Gland, Switzerland.

## 2. METHODOLOGY

The primary author of the report previously designed and carried out several baseline court surveys in Kenya, Botswana and Uganda, and as such this project was able to use a standardised methodology, applied previously. A comprehensive data collection instrument comprising the bullet points below was used to collect data from court files. SOFA deployed court monitors to systematically capture data in two phases - the first phase focused on cases from 2015 - 2017 and was completed in March 2019. This was followed by a second phase of capture in April 2019 to obtain completed 2018 records. With permission from the JSC, SOFA's monitors were able to freely peruse court files and record their findings. The data extracted from the court files (where possible) included the following:

- Case file number
- Name of the accused
- Nationality of the accused
- Gender of the accused
- Offence(s) charged
- Bail or bond
- Particulars of the case
- Arresting authority
- Court location
- Date of arraignment in court
- Date of plea
- Nature of plea
- Prosecuting authority
- Whether represented
- Number of adjournments
- Nature of species
- Species CITES Appendix listing
- Exhibits seized and weight
- Street value
- Mention dates and number of adjournments
- Outcome of case
- Sentence
- Appeal proceedings
- Results

Where this information could not be retrieved, for example due to illegible writing or failure by scribes to note down key information within the court file, the reasons were recorded. The data were captured in a Microsoft Excel spreadsheet and analysed. For ease of understanding, the report has separated cases concerning elephants from specially protected species and all other types of wildlife crime. As mentioned above, all elephant cases should be treated as ivory cases. Only a single case, namely CR 720/15 registered in Victoria Falls Court, involved an elephant product that was not ivory (meat). Given that the sentence differs dramatically from possession of ivory, this case has been removed from cases classified as “elephant” and instead been added to “General Wildlife” and treated as a “Bushmeat case” for part of the analysis and its inclusion or omission in figures specified clearly.

## 3. RESULTS

### 3.1 OVERVIEW OF CASES IN ZIMBABWE'S KAZA REGION

In total 345 cases were registered between January 2015 and December 2018 in the eight Magistrate courts within Zimbabwe's KAZA region (Table 1). Of these cases just over 10% involved elephants, 8% involved Specially Protected Species (SPS) with General Wildlife (including forestry) constituting the remaining 82% of cases. The majority of cases were registered in 2018 (33% of the total - Figure 2). A slight decreasing trend in the number of elephant cases registered per year was observed from 2015 to 2018, while the opposite was true for cases concerning SPS, with a sharp increase in 2018 (Figure 3).

Table 1: Status of wildlife crime cases registered within Zimbabwe's KAZA region 2015 - 2018

Species	Registered	Concluded Cases			Ongoing	Unknown	Conviction Rate	Case Conclusion Rate
		Conviction	Acquittal	Withdrawal				
General Wildlife	283	252	19	2	0	10	92.3	100.0
Elephant	35	23	4	1	2	5	82.1	93.3
SPS	27	16	4	1	2	4	76.2	91.3
All	345	291	27	4	4	19	90.4	98.8

\*CR 720/15 (elephant meat case) included under "General Wildlife Cases"

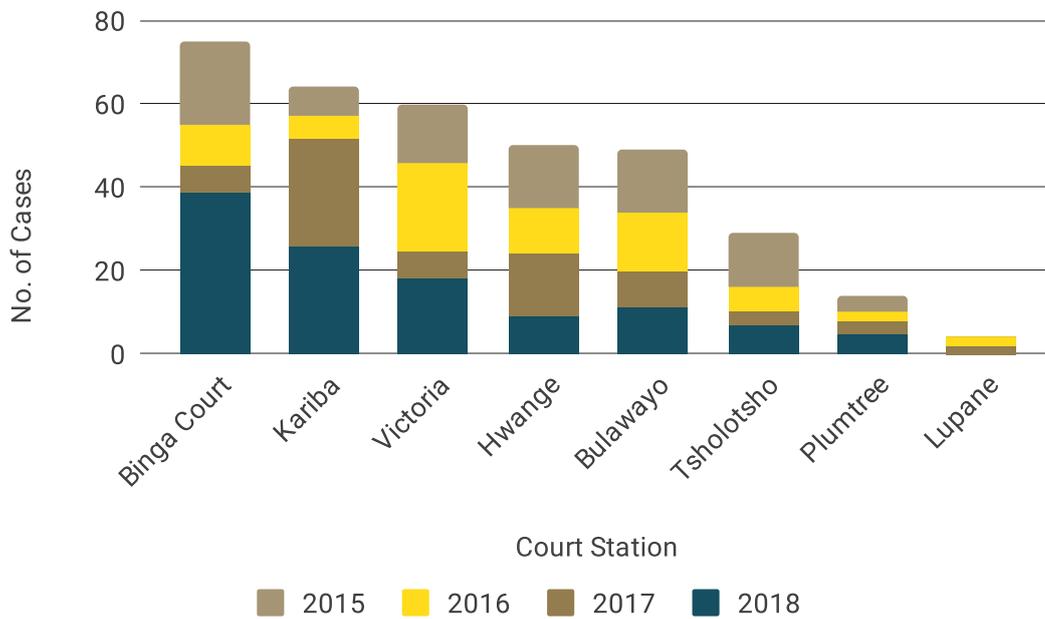
For general wildlife cases the conviction rate stands at 92.3%, while for elephant cases and SPS cases it stands at 82.1% and 76.2% respectively. Similarly, general wildlife cases showed the highest case completion rate at 100% with elephant cases and SPS cases in the mid eighties.

The majority of arrests were made by the ZRP (58%) with ZPWMA conducting 31% of the arrests and the remainder made by a combination of conservancy rangers and other authorities e.g. the Forestry Commission.

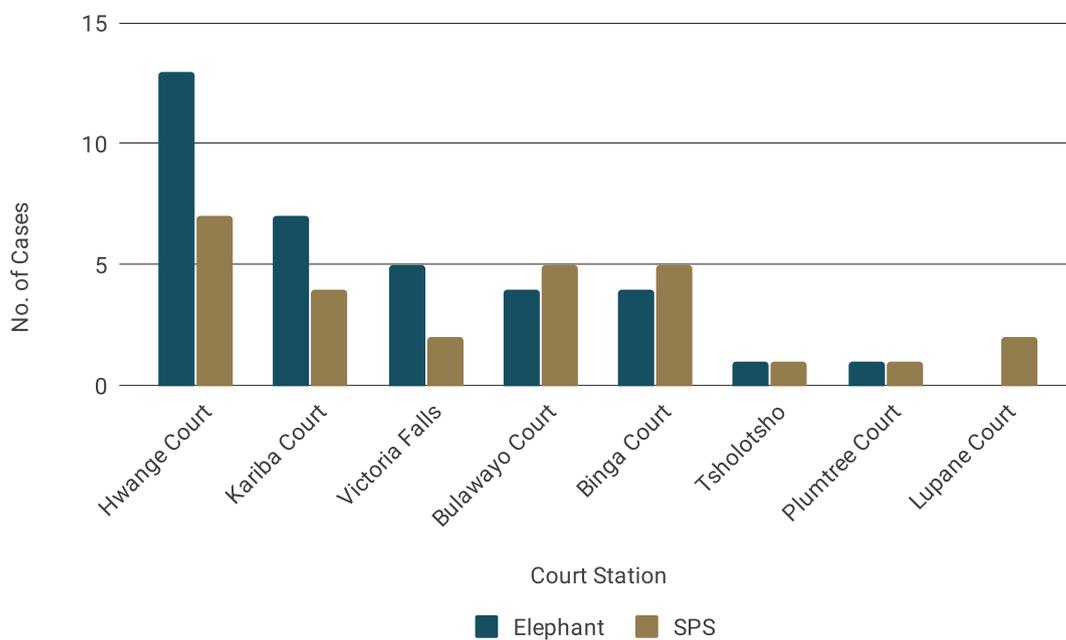
### 3.2 SPATIAL DISTRIBUTION OF CASES

The data indicate all eight court stations registered cases in each year of the study with the exception of Lupane, which accounted for a mere 1% of all cases (Figure 2). The majority of cases were registered in Binga (22% of the total) with a 500% increase in the number of cases registered in 2018 compared to 2017. The majority of these cases registered in 2018 involved fishing related offences.

Looking specifically at elephant and SPS cases, most were recorded in Hwange Court (37% of elephant cases, 26% of SPS cases). Combined, the court stations of Hwange, Kariba and Victoria Falls accounted for 71% of all elephant cases in this region. No elephant cases were registered in Lupane Court between 2015 and 2018 despite its location next to Hwange National Park.



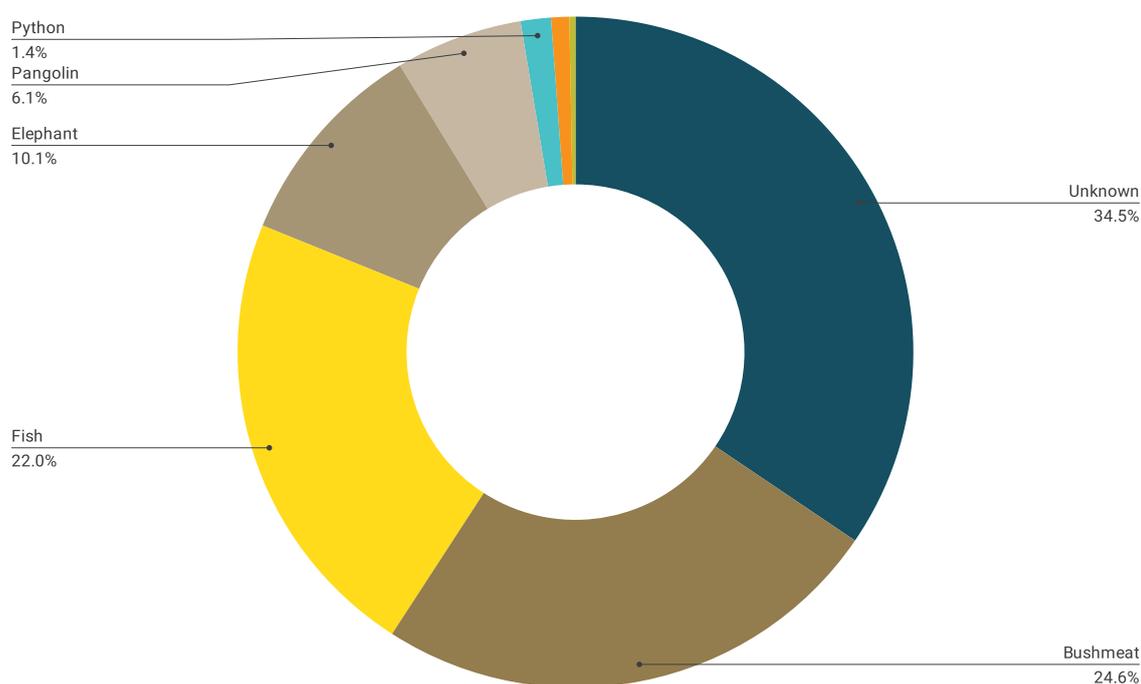
**Figure 2:** No. of registered cases per court station within Zimbabwe's KAZA region per year 2015 - 2018.



**Figure 3:** Number of elephant and SPS cases per court station within Zimbabwe's KAZA region 2015 - 2018. \*CR 720/15 (elephant meat case) was registered in Victoria Falls. Not included in this Figure.

### 3.3 OVERVIEW OF SPECIES

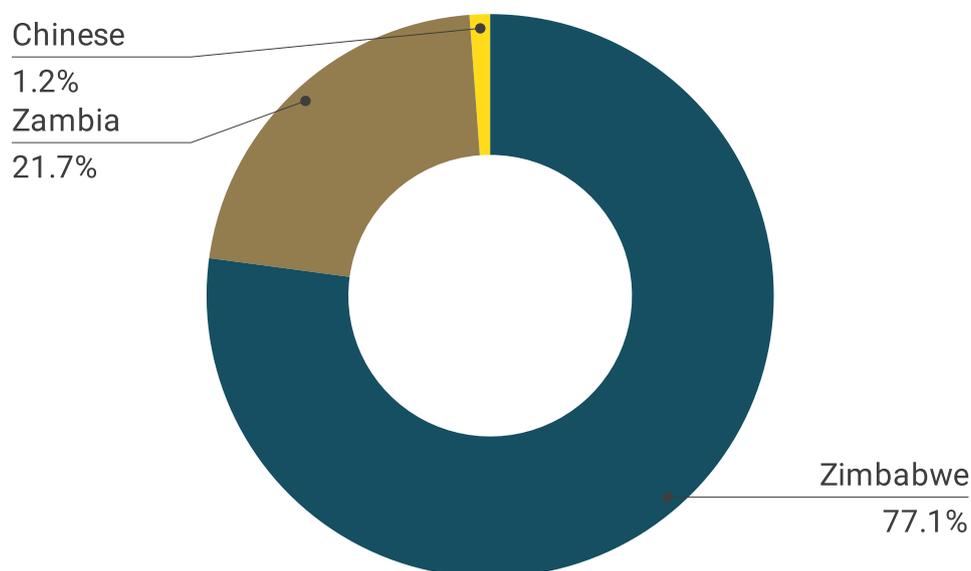
While data concerning the type of species involved was missing for a large proportion of cases (35%), bushmeat cases constituted approximately 25% of cases with kudus, impalas and buffalos being the most common species involved (Figure 4). Illegal fishing was the second most common offence followed by cases involving elephants. While some notable cases included large quantities of bushmeat and fish e.g. CR 452/16 (Victoria Falls), 70.5kg buffalo meat; CR 391-2/18 (Binga) 34.5kg common duiker meat; and CR 319-20/18 (Binga) 126kg fish; overall the data was too inconsistent to calculate the total quantities extracted or to draw any meaningful conclusions on the impact of these amounts on Zimbabwe's KAZA region.



**Figure 4:** Types of wildlife/wildlife products involved in wildlife crime cases registered within Zimbabwe's KAZA region 2015 - 2018. \*CR 720/15 (elephant meat case) included under bushmeat in this Figure.

### 3.4 OVERVIEW OF THE ACCUSED

In total, 599 accused persons were involved in the 345 wildlife crime cases registered (data was missing from one case where the number of accused persons was not stipulated in the files examined). The vast majority of accused persons were male (97%). Over 77% of accused persons were Zimbabwean nationals (Figure 5). Out of 130 Zambian accused persons, 129 were charged with the primary offence of fishing without a permit while only one Zambian was charged with a bushmeat related offence. No Zambian nationals were involved in elephant or SPS cases. The remainder of the accused persons (just over 1%) involved Chinese nationals, all of whom were involved in a single case concerning 20.89kg of rhino horn registered in Victoria Falls in 2018. The majority of cases involved a single accused person (general wildlife cases, 65%; elephant cases 60%, SPS cases 63%) indicating an absence of frequent large poaching gangs. Approximately 20% of cases involved three or more accused persons for all species groups.

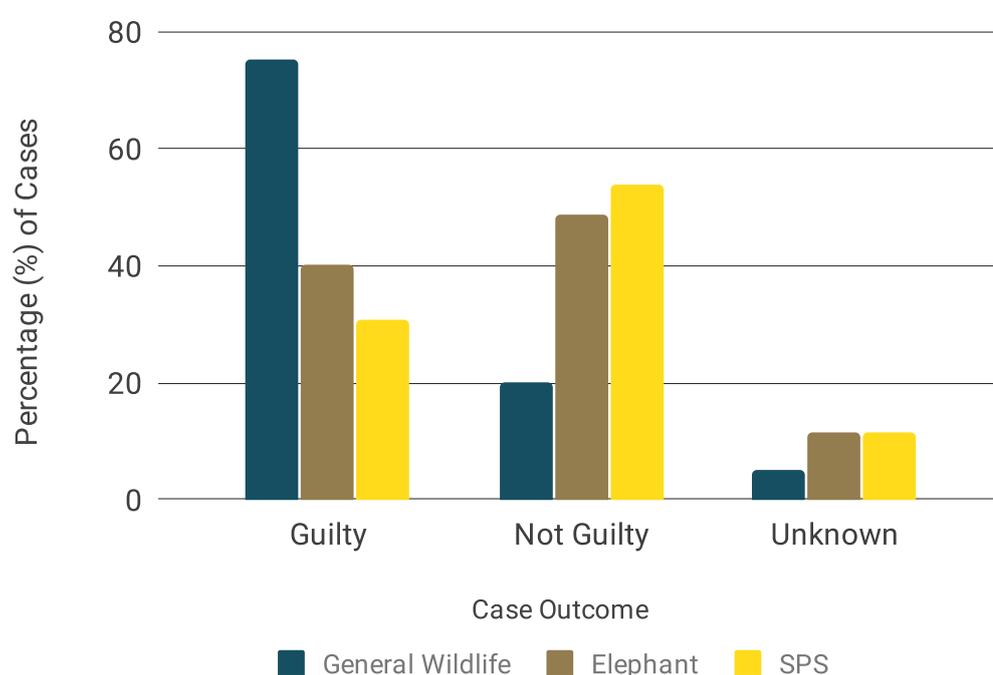


**Figure 5:** Nationality of accused persons in Zimbabwe's KAZA region 2015 - 2018.

### 3.5 CHARGES AND PLEAS

Elephants are not considered specially protected species under Zimbabwe’s legislation and so cases involving elephants are charged primarily under regulations issued via the Statutory Instrument 362 of 1990. Specially Protected Species in this survey were all charged under the Parks and Wildlife Act, as were all offences relating to other wildlife species.

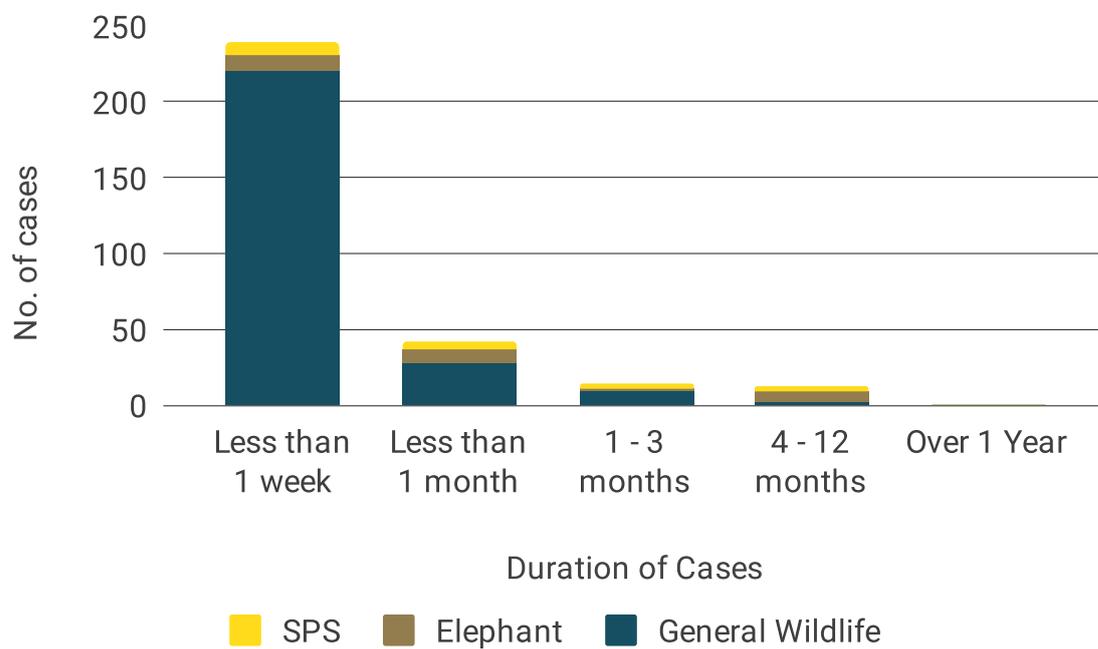
In cases involving general wildlife crime accused persons pled guilty in 75% of cases and not guilty in 20% of cases (Figure 6). In contrast, in elephant cases and SPS cases the accused persons pled not guilty in 49% and 58% of cases respectively. A small number of cases (23 in total) lacked the information on the plea entered.



**Figure 6:** Plea patterns in wildlife crime cases in Zimbabwe’s KAZA region 2015 - 2018  
\*CR 720/15 (elephant meat case) entered a not guilty plea. Included under ‘General Wildlife’.

### 3.6 DURATION OF CASES

The majority of all wildlife crime cases (including elephant and SPS cases) were concluded in less than one week from the date of first arraignment in court (Figure 7). This pattern is in line with the high number of guilty pleas overall. While in both elephant and SPS cases there were a higher rate of not-guilty pleas, many cases were still concluded within one week though some took up to 12 months to complete. Nevertheless, few of the records examined had information detailing the reasons for the amount and type of adjournments that did take place. Accordingly, it is not possible to make any recommendations on what is often a serious issue in the running of criminal trials.



**Figure 7:** Duration of wildlife crime cases within Zimbabwe’s KAZA region 2015 - 2018  
 \*CR 720/15 (elephant meat case) took 62 days. Included under General Wildlife.

### 3.7 CASE OUTCOME AND SENTENCING PATTERNS

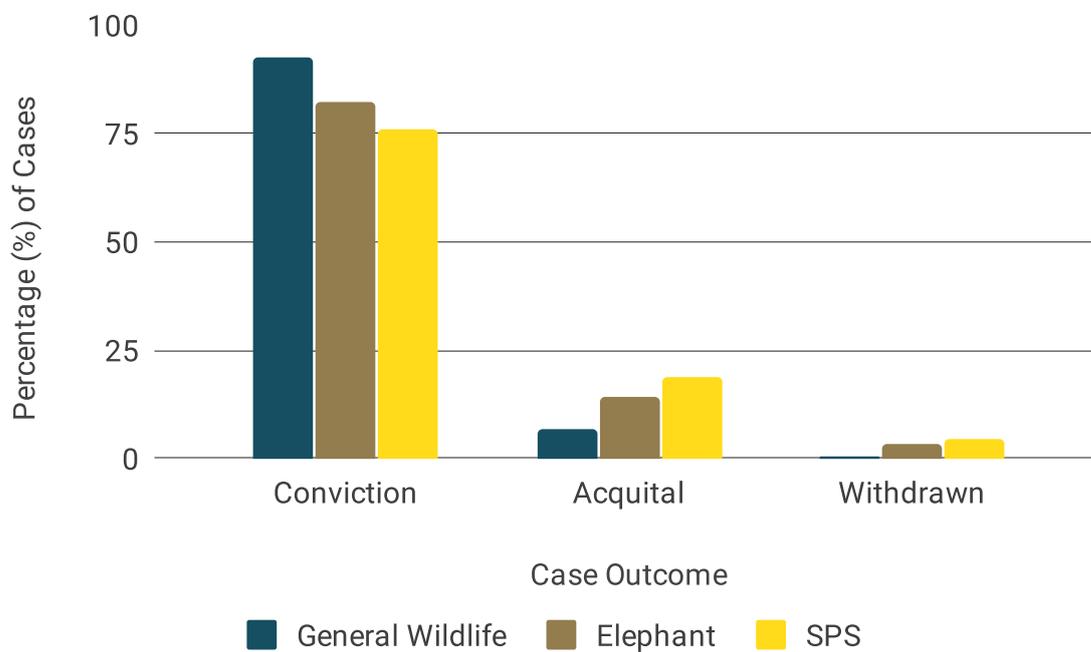
#### A. CONVICTION RATES

Overall (including all types of cases) 90.4% of all wildlife cases resulted in a conviction (Table 1). Looking individually at the respective groups in this study the conviction rate for general wildlife cases stands at 92.3% followed by elephant cases (82.1%) and SPS cases (76.2% - Figure 8). Nearly 20% of SPS cases resulted in an acquittal compared to 14% of elephant cases and 7% of general wildlife cases.

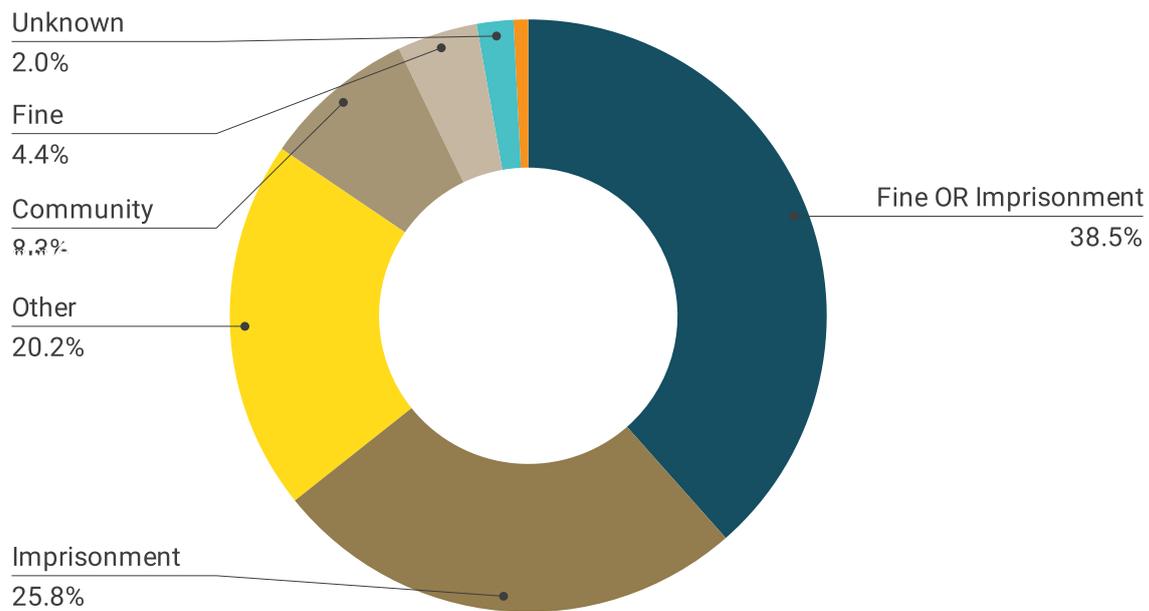
#### B. SENTENCING

For elephant cases which resulted in a conviction approximately 96% of cases resulted in imprisonment (without the option of a fine) compared to 81% for SPS cases. For general wildlife case the types of sentences applied upon conviction were much more varied with 26% of offenders receiving an outright imprisonment term and 39% receiving an imprisonment term only in default of payment of a fine (Figure 9). Nearly 10% of cases were dealt with through a community service order.

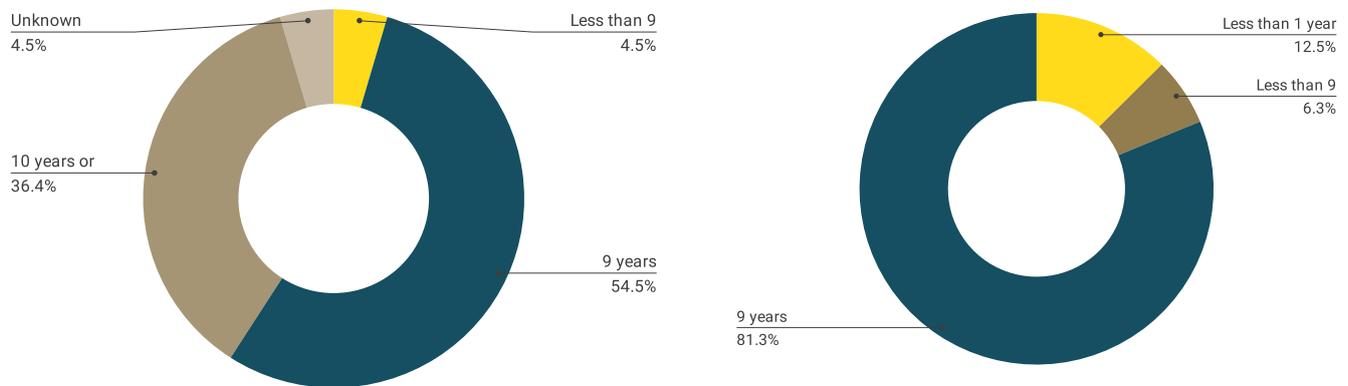
The length of imprisonment terms imposed however was not uniform in elephant and SPS cases. In elephant cases 55% of accused persons received the mandatory minimum term of nine years prescribed under s128 of the PWA with a further 36% receiving an imprisonment term of 10 years or more (Figure 10a). For SPS cases over 80% were given the mandatory nine year minimum imprisonment term (Figure 10b) with three cases (19%) receiving less than the mandatory nine years.



**Figure 8:** Case outcome for wildlife crime cases within Zimbabwe’s KAZA region 2015 - 2018  
 \*CR 720/15 (elephant meat case) resulted in a conviction. Included under General Wildlife.



**Figure 9:** Sentencing pattern for general wildlife crime cases within Zimbabwe's KAZA region 2015 - 2018 \*CR 720/15 (elephant meat case) resulted in an imprisonment term of 9 months. Included under General Wildlife.



**Figure 10:** The prison sentences handed down to offenders in elephant cases (a) and SPS cases (b) in Zimbabwe's KAZA region 2015 - 2018

## 4. DISCUSSION

Zimbabwe's KAZA region is one of the most wildlife rich areas in the country and it is likely that wildlife crime is prevalent. This baseline study documents 345 cases over a four year period cutting across eight courts that relate to Zimbabwe's KAZA region. The following discussion comprises five sections that correspond to the key findings and results sections above, with a view to making recommendations for improving the handling of wildlife cases in this area.

### 4.1 ON LEGISLATION

The study shows that all ivory related cases are charged under the Parks and Wildlife (General) Regulations created by Statutory Instrument 362 of 1990. These regulations are issued under the Parks and Wildlife Act of 1975; at section 129 of that Act, it is in the power of the Minister responsible to issue regulations governing the control, possession, sale, transfer, etc. of trophies in general (s129(1)(q); import and export (s129(1)(r) and regulation and prohibition on matters concerning possession, sale, transfer, etc. of rhino horn and ivory (s129(1)(x).

#### **Sentencing Provisions for Regulatory Offences.**

Under s111 of the Regulations, the penalty prescribed for a s82 offence which relates to possession, sale or transfer of raw ivory, is a maximum of two years and/or a fine of up to three times the value of the trophy or five thousand dollars, whichever was the greater.

However, under s129(3) of the Parks and Wildlife Act as amended in 2001 (section 4 of Act 22 of 2001), the penalty to be availed for regulatory offences for ivory or rhino horn was then reduced and even though not applicable retrospectively, it does signal parliament's intention regarding sentencing for regulatory offences.

Under s129(3) of the Parks and Wildlife Act, the penalties issued in relation to regulations cannot exceed a fine of level 6 or three times the value of the trophy, or a maximum period of one-year imprisonment – specific mention is made under s129 about offences concerning elephant ivory and rhino horn.

This restriction on sentencing for regulatory offences has never been repealed.

#### **Sentencing Provisions under the Parks and Wildlife Act**

In 2011, the PWA was amended<sup>7</sup> to increase the penalty under s128 of the PWA to a minimum of nine years imprisonment for 'offences charged under this Act' in relation to specially protected species, rhino and ivory and trophies of specially protected animals (sic). That liability arises for any person found guilty of an offence 'under this Act'.

Leaving aside the question of whether such a high minimum term, regardless of culpability or level of harm, is meritorious, or even in the public interest, it is clear from the drafting that the s128 elevation to mandatory penalties only applies to offences that are charged under the Parks and Wildlife Act. It has been implied, through practice, that this extends to any regulations issued under the Act. However, there is a question over whether the s128 PWA elevation in penalty can lawfully apply to any offence concerning ivory charged under the Regulations in light of the express restriction under s129 that provides for a limitation on sentence for ivory and rhino cases charged under the Regulations.

<sup>7</sup>Section 11 of Act 5 of 2011.

It appears that the Regulations are being used to prosecute ivory cases because the PWA does not currently provide a comprehensive range of offences relating to elephants and ivory such as offences for possession, dealing, import, export, transit and manufacturing ivory products (and other trophies). However, it would appear that all nine year penalties imposed upon conviction for such offences are - should be - open to appeal. Furthermore, creating offences through regulations, particularly those that result in significant sentences, does raise questions of democratic legitimacy, fair notice and proportionality of penalty.

The recommendation is for an urgent amendment to the PWA to address this lacuna especially in relation to the lack of any statutory offences for possession of or dealing in ivory. One option would be to import those offences under the regulations to mitigate the risk of any judicial review or appeal on the grounds identified above. An alternative would be to insert a simplified section 128A into the PWA to allow for offences of unlawful possession, dealing, manufacture, hunting, injury, import, export and transit of ivory and horn as well as live species and trophies of specially protected species.

A wider review of all of the offences under the PWA is required nevertheless. Given the finding in the ETIS Report for Conference of the Parties 18 Doc. 69.3 (Rev. 1) that 38% of illegally seized ivory originated from Zimbabwe or Angola, export of trophies needs to be specifically provided for within the Act and not left to regulation. There are a number of provisions relating to export of live species from national parks or sanctuaries, and a number of statutory provisions relating to the export of plants and fish but the export of trophies is largely left to regulation which then presents the same sentencing problem identified above.

The prominence of offences relating to bushmeat also needs to be addressed through legislation – for example, there is no offence for possession of bushmeat – only sale and purchase, placing an additional evidential hurdle for prosecutors. In light of the significant number of offences of illegal fishing within the KAZA region of Zimbabwe and the relatively low penalties imposed for such offences, there is also a need to address the legislation and penalties for fisheries offences provided for within the Act.

In the meantime, in relation to offences involving ivory, prosecutors should consider firstly offences under PWA in particular s59 (hunting or removal of an animal or any part of an animal from any land); s25 (hunting of any wildlife in a national park or sale of any wildlife hunted in a national park - or part thereof ), s73 (sale or manufacture of articles from any trophy for offences involving manufacturing or processing of ivory). Prosecutors might also consider the option of s8 offences under the Money Laundering and Proceeds of Crime Act i.e. ‘possession of property knowing or suspecting at the time of receipt that such property is the proceeds of crime’. Knowledge or suspicion can be inferred from objective factual circumstances and ‘proceeds of crime’ is defined as any “property or economic advantage’ derived from or obtained directly or indirectly through the commission of a criminal offence.....’. Under s8(6), it states clearly that in order to prove that property is a proceeds of crime it is not necessary for there to be a conviction for the offence that generates the proceeds or for there to be a showing of a specific offence rather than some kind of criminal activity, or that a particular person committed the offence’. ‘Property’ is defined as financial assets and property ‘of every kind’. The penalty for possession, concealing, using or transferring a proceeds of crime is a fine of up to \$500,000 or at least twice the value of the item whichever is the greater, and/or a term of imprisonment of up to twenty five years. Whilst the high minimum term is not applicable in this case, it may be the only alternative to a possible erroneous application of the PWA sentencing provisions to a Regulation-based offence.

Where an offence under s82 is deemed the only option, prosecutors – and magistrates – must be mindful of the concerns regarding the application of s128 of the Parks and Wildlife Act.

#### 4.2 ON ACCUSED PERSONS

Zimbabwean nationals were implicated in the majority of cases relating to elephant and specially protected species in and around the KAZA region during the study period. The only Chinese nationals found in this study related to a rhino horn case that has yet to be concluded. The only other foreign nationality implicated were Zambians and their offences primarily related to illegal fishing. The majority of offences were committed by individuals acting alone with about 20% of offences committed in ‘pairs’. The picture of organized criminal gangs operating in and around KAZA, if it exists, is not reflected in the courts studied.

Accordingly, in focusing resources in and around KAZA, it would appear that sensitization with the local communities within Zimbabwe would be a justifiable use of resources. Illegal fishing, however, is a prevalent offence with the majority of offences committed by Zambian nationals. There should be cross-border engagement with the Zambian nationals, recognizing the prevalent offence being committed within Zimbabwe’s borders in this region and seeking a solution to minimize what collectively amounts to significant threat to her marine resources.

#### 4.3 ON PROSECUTIONS

Charges relating to bushmeat, illegal fishing, snaring and immigration offences largely attract a guilty plea (75%). This may be reflective of the lower penalties associated with offences related to bushmeat, illegal fishing, snaring and immigration<sup>8</sup>. This trend is in line with a study<sup>9</sup> conducted in Zimbabwe that stated, “Most hunters surveyed had been caught before and yet most plan to continue hunting. The value of fines was lower than potential earnings from selling bushmeat, particularly given hyperinflation. The penal system requires adjustment to reflect the value of the wildlife resource”.

With specially protected species and elephant cases, the guilty plea rates were 39% and 30% respectively. These lower guilty plea rates are reflective of the high minimum term of nine years imprisonment prescribed under s128 of the PWA.

However, on charging decisions in relation to specially protected species, there is a spread of offences across both the PWA. Offences under PWA for specially protected species were charged under sections 45, 59 and 24 of the PWA. There is a need for training and sensitisation to achieve consistency in choice of charges. This training should be targeted at both the NPA, ZRP and also the ZPWMA with a view to encouraging prosecution guided investigations and, within ZPWMA, early identification of the probable charge in order to maximise the efficacy of any investigation, particularly in relation to elephants that are not ‘specially protected’.

#### 4.4 ON TRIAL

Cases are concluded relatively quickly; however, record keeping as to why adjournments occurred is not comprehensive enough to draw any conclusions as to why cases may be delayed. It may be capacity building is required to address how adjournments are recorded, to set performance management targets on trial times and to encourage accountability and transparency in the conduct of criminal cases at court. Given that the lengthiest delay occurred in elephant cases, there may be a need to review existing criminal procedure rules and consider the need for ‘active

<sup>8</sup> Sale of bushmeat under s71 PWA: Level 6 fine and maximum 1 year imprisonment. Unlawful fishing/unlawful possession of fish (s90, s95, PWA) – level fine and/or maximum six months; ‘Snares’ if class 1 traps – Level 8 fine and/or maximum 3 years, if class 2, Level 7 fine and/or max

<sup>9</sup> 2 years (s5/6 Trapping of Animals Act); s11 Immigration Act Cap 4:02, level 6 fine and/or 1 year imprisonment. Lindsey et al. 2011. Dynamics and underlying causes of illegal bushmeat trade in Zimbabwe. *Oryx*, 45(1), 84–95 doi:10.1017/S0030605310001274

case management' to reduce delay and adjournments. With 37% of elephant cases registered at Hwange Magistrates Court (which may be explained by its location directly on the boundary of Zimbabwe's most critical elephant habitat, Hwange National Park) such interventions might be piloted at this court but would ultimately would likely be of huge benefit to the entire criminal justice system and the issue of backlog in other criminal offences.

#### 4.5 ON SENTENCING

**Elephants:** Looking specifically at cases concerning elephant and specially protected species, magistrates are applying, in the majority of cases, a minimum term of nine years imprisonment. This approach may help deter such criminality because the option of a fine is not being applied in the majority of such cases. Leaving aside the questions raised regarding elephant cases and this type of sentencing raised above, there nevertheless appears to be some inconsistency in sentencing of such cases:

##### CASE STUDY 1

Case Details:	205A/2015; State vs. Amion S Dube
Court Dates:	23/6/15 – 1/7/15; 8 days Binga Magistrates Court
Particulars:	Possession of ivory weighing 0.145kgs
Outcome:	Not guilty plea, convicted after trial, 12 months imprisonment.
Comment:	This case concerned a relatively small amount of ivory that had been inherited from the accused's grandfather who used it as a talisman. The magistrate found this amounted to 'special circumstances'.

##### CASE STUDY 2

Case Details:	44-5/18 State vs. Molo Mweembwe & another
Court Dates:	29/7/18 – 29/1/19; Binga Magistrates Court
Particulars:	Possession of two pieces of ivory
Outcome:	Guilty plea
Comment:	Upon plea, the magistrate imposed a term of 20 years imprisonment. This was reduced to 9 years upon review. The reasons given were that the magistrate did not have jurisdiction to impose such a sentence.

**Pangolins:** Pangolins are recognised as specially protected species and sentences are in line with the minimum prescribed even where the quantities involved are different e.g. 0.4kgs vs 5kg of scales were both met with the same sentence. This does suggest that there is no clear guidance on where a threshold may lie on sentencing above the minimum term according to aggravating features such as the presence of an organised criminal group or large quantities of wildlife product. If the same mandatory sentence is imposed regardless of, for example, quantity or the level of culpability or harm, there is little incentive to plead guilty or cooperate

with authorities on wider investigations. This is significant for those involved in large scale trafficking. This can lead to uncertainty and makes plea-bargaining between prosecution and defence a difficult exercise where there is no certainty in any outcome. For the public, the absence of consistency and proportionality in sentencing negatively impacts perceptions of the criminal justice system.

**Pythons:** There was a disparity in sentencing, possibly lending uncertainty to the process, feeding perceptions of corruption and incompetence and potentially encouraging ‘forum shopping’ by defence counsel (See Case Study 3 – 5).

### CASE STUDY 3

Case Details:	75/18 State vs. Christopher Nkomo
Court:	Tsholotsho Circuit Court in Nyamandlovu
Particulars:	Possession of a python skin charged under s45 PWA
Outcome:	Guilty after trial.
Sentence:	\$400 fine or 12 months imprisonment

### CASE STUDY 4

Case Details:	67/2017; State vs. Philemon Gubmo
Court Dates:	Lupane Magistrates Court
Particulars:	Possession of 240cm of python skin. Charged under s45 PWA
Outcome:	Not guilty plea, Convicted after trial.
Sentence:	Sentence imposed was 12 years imprisonment with 3 years suspended making a total of 9 years.

### CASE STUDY 5

Case Details:	189/16 State v Elliot Ndlovu
Court:	Lupane Magistrates Court
Particulars:	Possession of 320cm of python skin
Outcome:	Guilty plea
Sentence:	Upon plea, the magistrate imposed a term of 3 months imprisonment or a \$100 fine.

The sentences given differed between three of the five python cases recorded (the other two received the prescribed minimum term of imprisonment of nine years for these cases charged under the PWA). However, in two of those three cases, a fine was given, which would only result in a prison sentence if it was not paid, and the prison sentence applied was less than the prescribed minimum penalty. These penalties are not in accordance with sentences that were meant to be handed down by s128 of the PWA.

In order to achieve consistency and proportionality, prescriptive sentencing guidelines can assist in establishing a 'bandwidth' for sentence dependent on the presence of identified aggravating features. This would also encourage effective plea negotiations and cooperation even where the high minimum term applies.

Having said that, the high minimum terms appear to be excessive given a) that less than 200 kgs of ivory has been seized over a four year period and b) the quantity regarding other specially protected species is low and c) there would appear to be a lack of organised crime involvement given the number of offenders involved are low (61% of elephant cases involved only a single accused person) although this may be because organised criminal groups are not being caught - in which case the high minimum term is irrelevant. A more nuanced and fair approach would be to stagger the penalties applicable according to the type of criminality involved - dealing, import and export and manufacture involve a different degree of criminality compared to simple possession and even a hunt itself. To send an individual to prison for nine years over 0.4kg of pangolin is not in the author's view likely to further the cause of justice or build community support for wildlife.

There is also a need to develop guidelines for the judiciary specifically mentioning the types of factors that might amount to "Special Circumstances". Whilst judicial officers should always maintain their power to exercise discretion, that power must be exercised consistently in accordance with clearly recognised principles. It would be helpful to have those principles identified and presented in a guidance for sentencing under s128.

## 5. CONCLUSION

The proposed recommendations for change in the criminal justice pathway regarding wildlife crime in Zimbabwe are focussed primarily on legislative reform and general capacity building. If appetite allows, the development of sentencing guidelines that can be applied nationally would also be a worthwhile addition to the way in which wildlife cases are resolved post-conviction. At present, it appears every elephant case that has received a nine year minimum since 2011, is open to challenge. The legislation must be urgently addressed and the prosecution authority must agree a way forward in the interim in relation to the decision to charge and the consequences insofar as sentencing options are concerned.

## APPENDIX 1:

Court Cases involving elephants and SPS in Zimbabwe's KAZA region 2015 - 2018

### 2015

No.	Case No.	Court Station	Species	No. of Pieces	Weight / size	Case Outcome
1	734/15	Kariba	Elephant	N/A	4.48 kgs	Conviction
2	806/15	Kariba	Elephant	N/A	10.4 kgs	Conviction
3	340/15	Binga	Elephant	N/A	10 kgs	Conviction
4	205A/15	Binga	Elephant	1	0.145 kgs	Conviction
5	423/15	Binga	Elephant	4	N/A	Conviction
6	166/15	Hwange	Elephant	11	N/A	Conviction
7	445/15	Hwange	Elephant	N/A	26 kgs	Conviction
8	64/15	Victoria Falls	Elephant	N/A	N/A	Conviction
9	720/15	Victoria Falls	Elephant	Meat	128.6 kgs	Conviction
10	409-10/15	Hwange	Pangolin	N/A	N/A	Acquitted
11	319/15	Hwange	Elephant	N/A	N/A	Ongoing
12	424-30/15	Hwange	Elephant	N/A	N/A	Withdrawn

### 2016

No.	Case No.	Court Station	Species	No. of Pieces	Weight / size	Case Outcome
13	191/16	Kariba	Elephant	N/A	5.05 kgs	Conviction
14	413/16	Kariba	Elephant	N/A	3.65 kgs	Conviction
15	426/16	Kariba	Elephant	N/A	N/A	Conviction
16	627/16	Kariba	Elephant	N/A	17.3 kgs	Conviction
17	161/16	Hwange	Elephant	4	13.5 kgs	Conviction
18	175/16	Hwange	Elephant	2	19 kgs	Conviction
19	151/16	Plumtree	Elephant	N/A	N/A	Conviction
20	24/16	Binga	Pangolin	1	N/A	Conviction
21	467/16	Hwange	Pangolin	145 (scales)	N/A	Conviction
22	133/16	Plumtree	Python	N/A	N/A	Conviction
23	189/16	Lupane	Python	1	320 cm	Conviction
24	716/16	Victoria Falls	Elephant	N/A	34 kgs	Acquitted
25	3561/16	Bulawayo	Pangolin	N/A	N/A	Withdrawn
26	1604/16	Bulawayo	Elephant	N/A	N/A	Unknown
27	18-23/16	Hwange	Elephant	N/A	N/A	Unknown

## 2017

No.	Case No.	Court Station	Species	No. of Pieces	Weight / size	Case Outcome
28	191/17	Hwange	Elephant	1	16.4 kgs	Conviction
29	243/17	Hwange	Elephant	1	12.7 kgs	Conviction
30	285/17	Hwange	Elephant	2	0.76 kgs	Conviction
31	219/17	Victoria Falls	Elephant	N/A	8.91 kgs	Conviction
32	503/17	Victoria Falls	Elephant	N/A	N/A	Conviction
33	46/17	Tsholotsho	Elephant	N/A	N/A	Conviction
34	67/17	Lupane	Python	1	240 cm	Conviction
35	304/17	Kariba	Python	N/A	N/A	Conviction
36	369/17	Kariba	Pangolin	N/A	N/A	Conviction
37	428/17	Hwange	Pangolin	N/A	N/A	Conviction
38	236/17	Hwange	Elephant	1	N/A	Ongoing
39	375/17	Kariba	Pangolin	N/A	N/A	Acquitted
40	231/17	Hwange	Elephant	1	N/A	Acquitted

## 2018

No.	Case No.	Court Station	Species	No. of Pieces	Weight / size	Case Outcome
41	286/18	Kariba	Elephant	2	3.75 kgs	Conviction
42	44-5/18	Binga	Elephant	2	N/A	Conviction
43	239-240/18	Kariba	Pangolin	N/A	0.62 kgs	Conviction
44	396-8/18	Binga	Pangolin	2	2.22 & 2.72 kgs	Conviction
45	495-6/18	Binga	Pangolin	120 (scales)	1.41 kgs	Conviction
46	497/18	Binga	Pangolin	21 (scales)	0.4 kgs	Conviction
47	224/18	Hwange	Pangolin	N/A	N/A	Conviction
48	242/18	Hwange	Pangolin	N/A	N/A	Conviction
49	75/18	Tsholotsho	Python	N/A	N/A	Conviction
50	479/18	Kariba	Pangolin	N/A	N/A	Conviction
51	850/18	Victoria Falls	Rhino	N/A	20.89 kgs	Ongoing
52	498/18	Binga	Pangolin	N/A	N/A	Ongoing
53	231/18	Hwange	Elephant	8	8.7 kgs	Acquitted
54	789/18	Victoria Falls	Elephant	N/A	N/A	Acquitted
55	126/18	Hwange	Pangolin	N/A	N/A	Acquitted
56	243/18	Hwange	Pangolin	N/A	N/A	Acquitted
57	368/18	Bulawayo	Elephant	2	N/A	Unknown
58	633/18	Bulawayo	Elephant	2	N/A	Unknown
59	2056/18	Bulawayo	Elephant	N/A	N/A	Unknown
60	1714/18	Bulawayo	Pangolin	N/A	N/A	Unknown
61	2554/18	Bulawayo	Pangolin	N/A	N/A	Unknown
62	2615/18	Bulawayo	Pangolin	N/A	N/A	Unknown
63	4280/18	Bulawayo	Pangolin	2	N/A	Unknown



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