



# Space for Giants in Kenya

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## Summary

Even when apprehended, few poachers or traffickers in Kenya and across East Africa are actually prosecuted. While in her previous position at the United Kingdom (U.K.) Foreign and Commonwealth Office, Space for Giants Director of Wildlife Law and Justice Shamini Jayanathan worked to strengthen criminal justice system through development of:

1. A Rapid Reference Guide for use by prosecutors and judges that sets out sentencing and ancillary powers and can be used as a tool in analyzing cases and drafting charges.
2. Criminal Procedure Rules to overcome court delays through improved case preparation and coordination.
3. Draft sentencing guidelines provided to judges in Uganda to ensure sentencing proportionality and consistency.

Space for Giants has undertaken extensive engagement and mentoring in Kenya with the judiciary, prosecutors, non-governmental organizations, customs, wildlife agencies, and the police to support individual cases. Uganda, Botswana, Tanzania, and Malawi are starting to adopt this approach.

## Problem

Kenya's enforcement of wildlife laws was weak and the country was considered a safe haven for poachers and traffickers, even after the introduction of the Wildlife Conservation and Management Act of 2013. Although a Wildlife Crime Prosecution Unit with 35 prosecutors was created within the Office of the Director of Public Prosecutions, successful prosecutions were rarely achieved. In 2013, only 4% of suspected poachers and traffickers received sentences. Critical problems inhibiting effective enforcement and prosecution included:

### Learning Questions Addressed:

- What are good examples of systems, particularly judicial systems, that have made improvements in combating wildlife trafficking enforcement?
- For specific audiences: Which competency-building methods and content works best, especially for maintaining skills and retaining staff?
- Court procedures were chaotic; many files were lost and not shared with the relevant people.
- Information provided by police was inadequate for prosecution, and evidence handling was poor.
- Suspects were arrested without sufficient evidence, leading to repeatedly adjourned cases.
- Sentencing for wildlife crime was inadequate and did not deter poachers and traffickers.

## Approach

Space for Giants and the U.K. Foreign and Commonwealth Office built their approach around three priorities to improve Kenya's wildlife crime prosecutions:

**Strong prosecutions framework:** In Kenya, Ms. Jayanathan worked with prosecutors and law enforcers to create a locally relevant Rapid Reference Guide on wildlife crime. This included codifying a charging test for objective evidence assessment and written reviews (for transparency and anti-corruption). The Rapid Reference Guide includes the Points to Prove toolkit, which provides information for prosecutors to conduct successful trials, with examples of charges and guidance



African elephants are heavily affected by wildlife crime.

relevant to wildlife crime. Interagency protocols facilitate engagement between investigators and prosecutors.

**Trial without delay:** A successful pilot to expedite trials was conducted in three areas and focused on training magistrates, police officers, and prosecutors. An initial step was establishment of a steering committee of senior judges, police, and the Kenya Law Society to draft guidelines for managing trials, including a pre-trial questionnaire to tackle court delays. Key stakeholder groups were engaged, including prisons, police, probation, and human rights groups, to seek their buy-in. The guidelines were published by Kenya's Chief Justice in 2016, who now wishes to expand the pilot nationally.

**Proportionate sentencing:** Prosecutors, police, and judges were informed of the international nature of wildlife crime and the impact on security, biodiversity, and tourism potential. Improving the understanding of these impacts has moved magistrates to impose harsher sentences. In Uganda, sentencing guidelines were drafted at the instigation of Space for Giants.

## Results

In 2012, only 24% of all prosecutions were successful, compared to 60% in 2014. Kenya's prosecution service attributes this to the Points to Prove toolkit. A United Nations Office on Drugs and Crime study of the impact of the Rapid Reference Guide found that 64% of those trained used the guide in their work.

In 2016, Faisal Mohammed Ali, a major wildlife crime kingpin, was convicted and sentenced to 20 years in prison. Using the case management guidelines developed by Space for Giants, the judge set a hearing timetable agreed to by both sides. At each hearing, she used the guidelines to set time limits and identify the evidence to be provided at the next hearing. Cross-examination was time-limited to avoid repetition, and witness requirements were identified to avoid calling superfluous witnesses. Following this process kept a tight rein on the proceedings and enabled prosecution.

**About this case study series:** In 2017, USAID collected [case studies](#) addressing the questions posed in the [Combating Wildlife Trafficking Learning Agenda](#). The finalists represent both USAID-funded and non-USAID-funded activities from around the world. The information provided in the case study series does not necessarily represent the views or positions of USAID or the U.S. Government.

## Lessons

- **For maximum impact, this successful approach needs to be extended beyond the pilot areas and institutionalized.** The Kenya pilot on the charging test has improved accountability and transparency by increasing the number of written reviews, which provide a record of prosecutors' decision-making. However, the pilot currently covers only eight of Kenya's 42 counties and, as personnel move posts, there is no capacity to train new post-holders.
- **Maintain focus on public interest.** In Uganda, Space for Giants codified and updated the charging test in 2014. It was used in the prosecution of Yekoyada Nuwagaba, a corrupt advisor to the president who sought a pardon based on his position in government. It is always in the public interest to charge public officials implicated in wildlife offences. Public interest supported the prosecutor in refusing to drop the charges.
- **Training and mentoring are vital to ensure uptake of good practice and must be tailored to the local context.** Rapid Reference Guides cannot be developed and adopted widely without support by a locally knowledgeable legal professionals. Space for Giants also researched local laws, existing prosecution policies, and gaps in existing laws and policies. They learned that satellite training was ineffective; on-the-ground support and mentoring was key to success. Accordingly, building strong relationships with key people in relevant agencies and adopting a train-the-trainers approach has helped to expand impact.

To learn more about Space for Giants, visit: <https://spaceforgiants.org>