

OBSERVATORY OF ILLICIT ECONOMIES IN EASTERN AND SOUTHERN AFRICA



RISK BULLETIN

SUMMARY HIGHLIGHTS

1. Death and forced labour at sea as Chinese fishing trawlers pillage northern Somalia.

For over a year, about a dozen trawlers belonging to the *Liao Dong Yu* fleet have been fishing illegally in Puntland, a semi-autonomous region in northern Somalia. Many abuse allegations have surrounded the vessels, including forced labour practices, hazardous working conditions and numerous violations of Somali fisheries law. Foreign fishing companies in Somalia rarely operate without the assistance of local facilitators on land. In the case of the *Liao Dong Yu* vessels, the GI-TOC's investigation has revealed that they appear to enjoy protection at the very top of Puntland's business and political elite.

2. 'Loved to death': poaching for the horticultural market threatens cycads in South Africa.

Cycads, an ancient group of plants dating from the time of the dinosaurs, are threatened globally by extinction. The plants are also coveted by collectors, especially rarer specimens. In South Africa, a hotspot of cycad diversity, this demand has given rise to a harmful illicit market that has placed dozens of species at risk. Working with rudimentary gear under cover of darkness, groups of poachers have dug up thousands of cycads from the wild, including the last known population of one species. The existence of a legal cycad market enables poachers to launder their harvests. 'Many homes could have cycads purchased from traffickers and no one would know,' one cycad expert said.

3. Kidnappings target the Somali community in Kenya.

Somalis living in Kenya are targets of kidnapers, whether for ransom or because of their political stance. The victims are varied: high-profile businesspeople, scholars and even school-age children. Quantifying the number of people kidnapped remains a major challenge, due in part to the underreporting of cases to law enforcement. Families are left in precarious positions, torn between parting with huge amounts of money for ransom or reporting to the police, with whom the Somali community has an estranged relationship bred by a long history of extortion and harassment.

4. Inadequate protection for witnesses and whistle-blowers in Kenya.

Witnesses and whistle-blowers in Kenya face widespread intimidation and violence. Kenya is one of the few countries in East and southern Africa with an institutional witness protection programme. However, witnesses themselves, civil society groups and other institutions have voiced alarm about shortcomings in this programme and the continued risks that witnesses face. The Witness Protection Agency faces underfunding and long case backlogs, which means that witnesses must be protected for a long time with few resources. Allegations of poor performance, lack of independence, poor cooperation with other institutions and overly restrictive limitations of who qualifies as a witness were also made against the Agency. Witnesses have turned to other agencies – including NGOs – for protection.



ABOUT THIS ISSUE

At The Global Initiative Against Transnational Organized Crime (GI-TOC), the aim of much of our research is to investigate the systemic issues around organized crime: the social, economic and political issues that drive organized crime and shape forms of organized crime, and how responses can better address these underlying systemic issues.

All four stories in this issue of the Risk Bulletin speak to these systemic imbalances. For example, our research this month has investigated how the Somali community in Kenya has been targeted for kidnapping for ransom. The victims vary widely, from prominent scholars and political analysts (believed to be targeted for their political views) to school-age girls. Yet the common denominator among these victims is their ethnicity. Why is this the case? People within the community suggest that at least one factor driving this is the fractured relationship between the Somali community and Kenyan authorities, particularly police, due to a history of police harassment and intimidation. This makes some Somali families less likely to report kidnappings and extortion or, if they do, receive the adequate support and investigation from authorities. The fractious political history between Somalia and Kenya is shaping the behaviour of criminal groups.

Also in Kenya, our investigations look at the violence and intimidation faced by whistle-blowers and witnesses in criminal cases. Although Kenya is one of the few countries in East and southern Africa to have an

institutionalized witness protection programme, the programme faces challenges of underfunding, a lack of independence and allegations of poor practice. This creates a systemic weakness in Kenya's criminal justice system, hampering prosecutions in serious organized crime and corruption cases. A number of witnesses have been killed, and others fear for their lives.

Looking north to Somalia, the case of the *Liao Dong Yu* fishing fleet demonstrates some of the classic characteristics of illegal, unreported and unregulated (IUU) fishing cases in Somalia. A range of allegations of forced-labour practices and illegal fishing practices have dogged this foreign-owned fleet in recent years. The GI-TOC has evidence that the illicit operations of the fleet have been facilitated by an individual part of Somalia's political and business elite. These commonalities are found in other prominent IUU fishing cases in Somalia that the GI-TOC has researched, showing the systemic lack of accountability that has played a part in allowing IUU fishing to flourish in Somali territorial waters.

Finally, the biggest threat to cycads – a highly endangered group of plant species – from illegal trade comes from collectors, obsessed with owning the rarest varieties. This is a common theme seen across other forms of illegal wildlife trade: from endangered Malagasy tortoises to rare orchid species, the fanaticism of the 'collector' provides the demand that is fed by illegal supply.

1. Death and forced labour at sea as Chinese fishing trawlers pillage northern Somalia.

On 19 July 2021, the chains holding a net in place on board the fishing trawler *Liao Dong Yu 571* snapped, striking and killing two Indonesian members of the crew.¹ One fisherman died aboard the vessel, while the second was knocked overboard; his body was never recovered. It was not the first reported instance of a crewmember dying aboard a *Liao Dong Yu* vessel. In a similar incident a year earlier, a Chinese crewmember was killed when a dislodged fishing net swept him overboard.² His body was recovered within hours and initially stored in a freezer unit, but was allegedly later dumped at sea rather than returned to his family.³

The *Liao Dong Yu* fleet is operated by a Chinese company, Liaoning Daping Fishery Group, based in the port of Dandong. According to the NGO Destructive Fishing Watch Indonesia, 35 Indonesian crewmembers died while working on foreign fishing vessels between November 2019 and March 2021.⁴ Over 80 per cent of these deaths reportedly occurred on board Chinese fishing vessels.⁵

At the time of the fatal July 2021 incident, the *Liao Dong Yu* fleet had been fishing in the proximity of Bandarbeyla, a town on the eastern coast of Puntland, a semi-autonomous region in northern Somalia. The GI-TOC briefly noted the Somali operations of the *Liao Dong Yu* fleet in a July 2021 research report detailing the corruption of state institutions in Somalia by illegal, unreported and unregulated (IUU) fishing networks.⁶ However, since the publication of that report, the GI-TOC has become aware of a wider range of allegations involving the *Liao Dong Yu* vessels, including forced-labour practices, operating without valid fishing licences, deploying prohibited gear, fishing restricted species and additional violations of Somali law. Furthermore, the GI-TOC has uncovered evidence that the illicit operations of the *Liao Dong Yu* fleet have been facilitated by an individual situated at the very top of the Puntland business and political elite.

RUNNING DARK

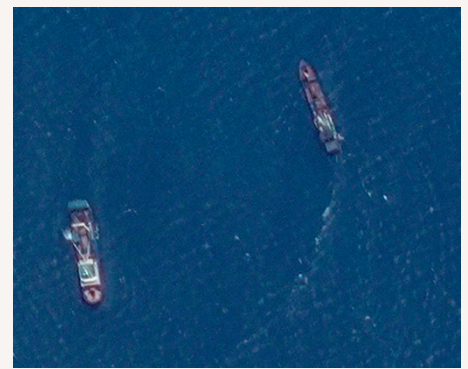
Liao Dong Yu vessels have been routinely present in Somali waters since at least early 2020. It is difficult to precisely assess the full extent of the vessels' activities, as they often switch off their AIS transponders, a practice known as 'running dark'.⁷ None of the *Liao Dong Yu* vessels are registered with the International Maritime Organization, which makes monitoring their movements more difficult.

However, satellite imagery analysis by the human-rights NGO International Justice Mission found as many as 12 *Liao Dong Yu* trawlers active in Puntland waters since October 2020.⁸ Satellite imagery has also confirmed that the vessels routinely operate close to shore, in violation of Somali fisheries law.

An internal report by the non-profit organization Environmental Justice Foundation, seen by the GI-TOC, assessed that the *Liao Dong Yu* fleet may have committed as many as 20 distinct violations of Somali and Chinese fishing laws and regulations.⁹ Among the alleged violations of Somali law were fishing without valid licences, operating within the 24-nautical-mile zone reserved for local fishermen, and the fishing of restricted species, including leatherback turtles, bottlenose dolphins and whale sharks.¹⁰ Crucially, the fleet appears to have been engaged in bottom trawling, which is prohibited under both Somali federal and Puntland law.¹¹



Two crewmembers on board the *Liao Dong Yu 571* fishing trawler died in a July 2021 incident. Photo: Social media



▲ Satellite imagery of two *Liao Dong Yu* vessels north of Hafun, Puntland, August 2021. The vessels were operating within the 24-nautical-mile zone reserved for local fishermen. Photo: International Justice Mission/Maxar Technologies

◀ *Liao Dong Yu* trawlers at port in China. Photo: Liaoning Daping Fishery Group corporate website

NO VALID LICENCES

Somalia is in the midst of a three-decade-long civil war. State authority has fractured along clan and geographical lines and the country currently is made up of five semi-autonomous federal member states overseen by a weak federal government in the capital, Mogadishu. The federal government and its constituent member states have long struggled to agree on a resource-sharing framework that would clarify their respective commercial rights and obligations.

By March 2019, however, they had reached a provisional agreement on the issuing of fishing licences and sharing of fisheries revenue. Under its terms, the federal government issues licences beyond a

24-nautical-mile limit from shore, while the management of marine resources within this limit devolves to the member states. No foreign fishing vessel is permitted to fish within the 24-nautical-mile limit, which is reserved for domestic use. In effect, the agreement limits federal member states to issue licences exclusively to local fishers.

The Puntland government, however, has routinely violated this agreement by issuing licences to foreign vessels, including dozens of environmentally destructive Iranian gillnetters.¹² As the GI-TOC previously reported, a long-standing network of local agents and fixers in Puntland facilitates access to licences, supplies and armed security for foreign fishing vessels.¹³



A leatherback turtle reportedly caught on board the *Liao Dong Yu* 577 (left) and five bottlenose dolphins on board the *Liao Dong Yu* 585 (right). The images of crew members have been blurred. Photo: Social media/Environmental Justice Foundation



Puntland businessman and senator Dahir Ayanle Said, who reportedly secured approval for the *Liao Dong Yu* vessels to fish in Puntland. Photo: Twitter

Since the operator of the *Liao Dong Yu* fleet, Liaoning Daping Fishery Group, is a foreign company, valid licences for the vessels would have had to be issued by the federal government. Yet, at the time of writing, no *Liao Dong Yu* vessel has been licensed by the federal Ministry of Fisheries and Marine Resources.¹⁴ Contrary to Somali law, the *Liao Dong Yu* fleet appears to have obtained fishing licences through Puntland authorities. Furthermore, they were apparently procured through irregular channels.

CONNECTED TO THE VERY TOP OF THE PUNTLAND ELITE

In addition to its alleged violations of Somali fisheries law, Liaoning Daping Fishery Group also appears to have circumvented Puntland's internal regulations. A source within the Puntland Ministry of Fisheries and Marine Resources told the GI-TOC, on condition of anonymity, that the licences for the *Liao Dong Yu* vessels had not been issued through the ministry, as is proper practice, but through central authorities in Puntland's capital, Garowe.¹⁵ Nor were the licence fees themselves paid to the fisheries ministry.¹⁶ Thirdly, the licenses issued to the vessels were valid for over one year, far longer than the standard three-month duration.¹⁷ The fisheries official summarized the Puntland administration's arrangement with the vessels as 'daylight robbery'.¹⁸

The irregular issuing of fishing licences might be explained by Liaoning Daping's apparent links to the very top of the Puntland business and political elite.

According to multiple GI-TOC sources, approvals for the *Liao Dong Yu* vessels to fish in Puntland were secured through Dahir Ayanle Said, a prominent local businessperson, politician and close ally of Puntland President Said Abdullahi Deni.¹⁹ Ayanle is one of 11 senators representing Puntland in the federal parliament of Somalia; he was elected unopposed by Puntland's regional assembly in August 2021 after his only opponent withdrew from the race.²⁰ The candidature of each senatorial hopeful had required the prior approval of President Deni.

The GI-TOC received independent evidence corroborating Ayanle's connections to Liaoning Daping Fishery Group. Documents obtained by the GI-TOC demonstrated that, between May and September 2021, Ayanle had multiple communications with a representative of Liaoning Daping who identified herself as 'Lily'. Ayanle declined the GI-TOC's request for comment, stating that any questions about the *Liao Dong Yu* fleet should be directed to the Puntland and Somali federal governments.²¹ President Deni and the Puntland Ministry of Fisheries and Marine Resources did not respond to requests for comment.

LABOUR AND HUMAN RIGHTS ABUSES

The *Liao Dong Yu* fishing fleet has been the subject of a litany of labour and human rights abuse claims that have been widely reported in the international press. In one case, at least 13 *Liao Dong Yu* crewmembers reportedly had their passports withheld²² and were forced to continue working, despite their labour contracts having expired in December 2020.²³ One of these crewmembers claimed that he and his colleagues had subsequently worked for months without pay, been deprived of food and sleep, and suffered physical abuse at the hands of their captain.²⁴

The 13 crewmembers were originally serving across four vessels (*Liao Dong Yu* 571, 572, 575 and 577), but were later transferred to the *Liao Dong Yu* 535, a small carrier vessel accompanying the trawlers.²⁵ On 15 August 2021, four crewmembers attempted to escape by jumping overboard and swimming to the Somali shore.²⁶ Three of the men were tracked down and brought back on board, and the fourth is believed to have drowned.²⁷

Over the course of their ordeal, members of the crew managed to alert their families and publicize their

plight through Facebook. The resulting pressure from the Indonesian government and several non-profit organizations led to the repatriation of the 12 surviving crewmembers by the end of August 2021.²⁸

A QUESTIONABLE HISTORY IN SOMALIA

The *Liao Dong Yu* fleet was first fingered for fishing without legitimate licences in Somalia in early 2020, over a year before the labour and human rights abuses described above came to light. In May 2020, the federal Ministry of Fisheries and Marine Resources lodged a strongly worded protest with the Chinese embassy in Mogadishu concerning the IUU fishing activities of six *Liao Dong Yu* vessels, following which the fleet temporarily retreated from Somali waters.²⁹ A senior official at the fisheries ministry told the GI-TOC that *Liao Dong Yu* vessels had been illegally operating in Somalia since 2019, and that the ministry had urged the newly appointed Chinese ambassador to Somalia to take action against the vessels during a meeting in late 2021.³⁰ When asked if any action had been taken against the vessels or their parent company, the Chinese embassy in Somalia told the GI-TOC that the Chinese government strictly supervises overseas fishing companies and requires them to adhere to local laws.³¹ They further stated that the status of the *Liao Dong Yu* vessels was an internal affair of the Somali government.³²

Liaoning Daping Fishery Group, the operator of the *Liao Dong Yu* fleet, had made initial forays into Somalia long before 2019. In 2015, its affiliate, Doggang Daping Enterprises Group, had tried to obtain a highly favourable fishing concession from the federal government. A draft contract obtained at the time by UN sanctions monitors stipulated that Doggang Daping would receive a seven-year sole authorization to fish within Somalia's exclusive economic zone and be allowed to bring its own armed security on board its fishing vessels, which would have violated the UN arms embargo on Somalia.³³ However, the agreement did not advance past the preliminary stages.³⁴

The Liaoning Daping Fishery Group did not respond to the GI-TOC's requests for comment on any of the allegations detailed above.

DISRUPT IUU FISHING NETWORKS ON LAND

The *Liao Dong Yu* fleet continues to operate in Somalia: as recently as 27 October 2021, satellite imagery showed 11 trawlers fishing in Puntland waters south of Hafun.³⁵ In the past, when IUU fishing operations in Puntland have been exposed, their local agents have sought to co-opt allies within federal government institutions. This has often resulted in licences or other documentation being issued to confer post-hoc legality on the illicit operations.³⁶ The Somali federal government should forestall this possibility by publicly declaring the illegal status of the *Liao Dong Yu* vessels. An official complaint could also be made to INTERPOL.³⁷ The Somali government should also offer bilateral assistance to Indonesian authorities in bringing justice to the crewmembers who suffered abuse and unpaid wages on *Liao Dong Yu* vessels.

Secondly, action might be taken by national authorities in the destination markets for the vessels' catches. According to the Liaoning Daping corporate website, the company exports its products to several developed economies, including Japan, South Korea, Singapore, the United States and the European Union.³⁸

Foreign fishing in Somali waters is a highly emotive issue domestically. Somali political elites often attempt to tap into widespread local frustrations over the perceived theft of Somalia's maritime resources by predatory foreign companies. Most recently, the federal attorney-general declared that illegal fishing in Somalia was a 'natural disaster' and threatened punitive measures against foreign vessels flouting Somali law.³⁹ Yet foreign fishing fleets rarely operate in Somalia without the collusion of local elites. If Somali authorities are sincere about disrupting IUU fishing networks, they should seek to identify and hold accountable the agents, businesspeople and corrupt government officials who facilitate illicit operations of foreign fishing interests. Tackling criminal networks on land may be the key to the long-term conservation of Somalia's marine resources.

2. 'Loved to death': poaching for the horticultural market threatens cycads in South Africa.

The Kirstenbosch National Botanical Garden, in Cape Town, South Africa, is globally famous for its displays of indigenous vegetation. One section of the garden is given over to cycads, a group of plants so ancient that dinosaurs once roamed among them. Cycads are greatly prized by collectors, and rare specimens can sell for tens of thousands of dollars. This is why the most valuable cycad in Kirstenbosch is now secured inside a cage – to prevent poachers from digging it up.⁴⁰

This is not an imagined threat. Over two rainy nights in August 2014, poachers made off with 24 *Encephalartos latifrons* cycads from the gardens, collectively worth more than US\$65 000.⁴¹ That particular species of cycad is critically endangered, with fewer than 100 surviving plants in the wild. The incident received international attention,⁴² yet dozens like it take place each year. The illicit cycad trade in South Africa has grown so organized, lucrative and harmful that the authorities

have identified it as a priority wildlife crime, alongside rhino, elephant and abalone poaching.⁴³

HOME OF RARE CYCADS – AND CYCAD POACHING

South Africa is a hotspot of cycad diversity, hosting 38 species, or around a tenth of the world's total. Of these species, 29 are endemic, found nowhere else on earth. Already, three of South Africa's cycads are extinct in the wild, and half of the remaining species are at risk of extinction in the near future, according to scientists.⁴⁴ In 2005, poachers dug up the last 11 survivors of one species on a mountain where, less than three decades earlier, more than 200 of the plants had been counted.⁴⁵

The costs are especially pronounced given the global conservation status of cycads, which have been described by the International Union for Conservation of Nature (IUCN) as the most threatened plant group in the



Cycads, seen as status symbols, at a private property in South Africa. The plant group is considered the most threatened in the world.

Photo: Daniel Stiles

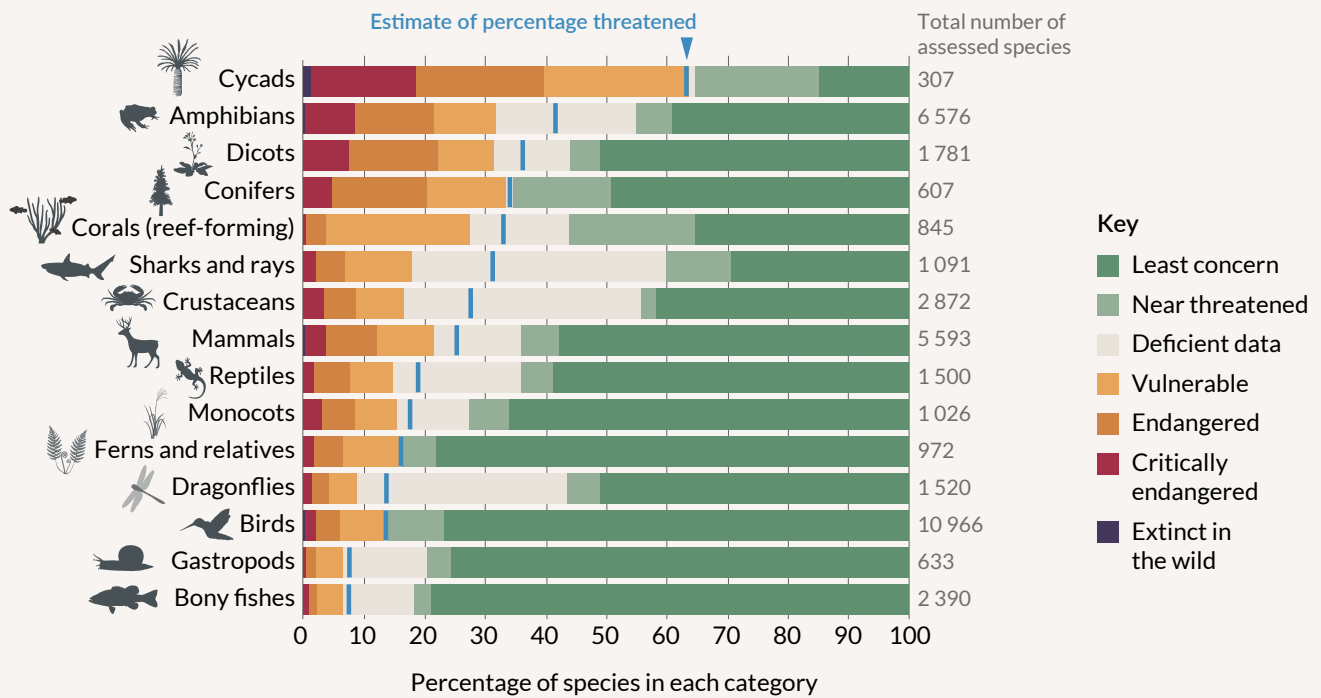


FIGURE 1 Threat level to cycads compared to other species groups.

SOURCE: IPBES Global assessment report on biodiversity and ecosystem services.

world.⁴⁶ Cycads flourished during the Jurassic period and were previously found around the world. Now, the spiny plants only occur in southern Africa, central America, South East Asia and Australasia. Individual plants can live 1 000 years or more because they continue to produce new offshoots at the base of the trunk.

The biggest threat to cycads in South Africa comes from people obsessed with owning them; as one recent magazine feature put it, cycads ‘are being loved to death’.⁴⁷ Cycads are considered status symbols by wealthy collectors in South Africa and internationally: as one participant said to researchers studying the trade in South Africa, ‘owning a rare cycad displays wealth and intelligence in a way owning luxury cars does not’.⁴⁸

But the plants grow extremely slowly – around a centimetre per year – and take decades to reach maturity. Lacking patience, many collectors prefer to buy fully grown cycads, driving the illicit market. This illicit trade has operated for decades in South Africa, but may have intensified in recent years as the plants become rarer in the wild, and thus more coveted. Of more than 630 cycads confiscated by police in the Eastern Cape between 2011 and 2016, every single

one was on the IUCN Red List, demonstrating a clear market preference for threatened species.⁴⁹

Cycads are also harvested illegally in South Africa for producing traditional medicine, or *muti*. Researchers estimate that several tonnes of cycad bark are sold annually.⁵⁰ People who trade illegally in live cycads have justified doing so by arguing that, if left in the wild, the plants would be harvested for medicine (or fall foul of ground clearance for development or agriculture). Yet the medicinal market is far smaller and less damaging to cycad populations than the horticultural trade.

Since the 1970s, it has been prohibited to harvest, trade or possess wild cycads in South Africa, but a legal market still exists for cultivated plants. This provides cover for traffickers and enables the laundering of poached cycads.⁵¹ Conservationists recently estimated that, in the South African city of Pretoria alone, there were as many as 36 000 households with cycads – many times more than officials have capacity to inspect. (This is compounded by the widespread securitization of wealthier houses in South Africa, with many located within gated communities, making access even more difficult for inspectors.)⁵² ‘Many homes could have cycads purchased from traffickers and no

one would know,' says John Donaldson, a cycad expert who formerly worked for the South African National Biodiversity Institute.⁵³ Conservationists have reported visiting homes with ostensibly cultivated cycads that bore unmistakable traces of wild origins, such as burn marks from fires and bites from porcupines.⁵⁴

There are also international protections for South African cycads, but these, too, can be circumvented. All of South Africa's cycad species are listed on the Convention on International Trade in Endangered Species (CITES) Appendix I, which means, in theory, that plants obtained from the wild may not be exported. Yet informants in the horticultural industry say that traders continue to export cycads illegally, for example by misdeclaring the plants as palm trees, which superficially resemble cycads and are not protected under CITES.⁵⁵ In a 2001 sting operation, dubbed 'Operation Botany,' US authorities arrested six men for a scheme to traffic wild cycads worth an estimated US\$1.3 million from South Africa. The available evidence, however, points to South Africa's domestic cycad market as a bigger threat than international trafficking.⁵⁶

THE EASTERN CAPE-GAUTENG CONNECTION

A major centre of South Africa's cycad poaching crisis is the Eastern Cape province, home to 14 native cycad species. Research by a retired high-ranking police official indicates that, between 2011 and 2018, close to 1 000 cycads were uprooted in 27 separate poaching incidents, with an estimated value of US\$1.2 million.⁵⁷

Police in the small town of Jansenville alone (population 5 600) recorded more than 350 stolen cycads. And these are only poaching incidents that have been reported to the police.

Several cycad poachers have been arrested on multiple occasions, including a local farm owner. This suggests that cycad poaching is a specialized market, requiring specialist knowledge of which species are valuable, as well as access to buyers. The majority of offenders have residential addresses in and vehicle registration numbers from Gauteng, South Africa's wealthiest and most populous province, supporting a conclusion that poached cycads are being transported across the country before being sold.

Brigadier General Andre Krause, the retired police official, said in an interview that 'rich collectors' in Gauteng were behind the illicit trade. Interviews with incarcerated poachers by TRAFFIC, the wildlife-trade monitoring organization, reveal a similar connection. One poacher described how poached cycads were 'simply covered with plastic sheeting' and driven from the Eastern Cape to Gauteng.⁵⁸ Research for this risk bulletin found that cycad prices are typically higher at nurseries in Gauteng than elsewhere in South Africa.⁵⁹

Cycads are typically priced per centimetre, with rarer species considered more valuable; other factors that influence the cost of cycads include age and signs of damage. In general, poached cycads retail for around a quarter of the legal price, according to informants. This is because the plants are usually in poor condition after being crudely dug out using crowbars and pangas, and then transported without adequate care or maintenance. This provides buyers with opportunities to obtain cycads cheaply, and is also said to provide incentives for corrupt nurseries to buy poached plants and launder them into licit markets.⁶⁰

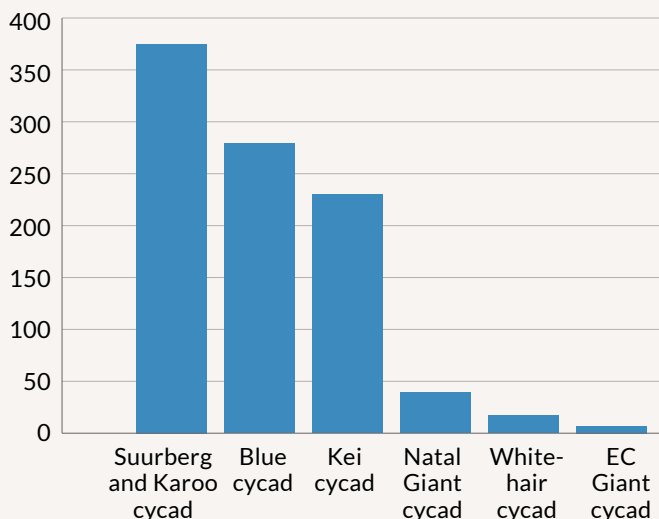


FIGURE 2 Number of cycads reported stolen in Eastern Cape province, South Africa, 2011–2019.

SOURCE: South African Police Service



Cycad plants recovered from poachers. Source: SANParks

Very little of this money reaches the people responsible for harvesting the plants. Some poachers have reported being hired on false pretences – ‘to cut down trees,’ as one incarcerated poacher told TRAFFIC – and earning little more than US\$40 per job. More experienced poachers report higher earnings, and some go on to become so-called ‘recruiters,’ hiring other people to chop down cycads.⁶¹ It appears that the trade operates via kinship networks, with police data from the Eastern Cape showing that a large number of arrested poachers are Zimbabwean nationals.⁶²

A ROBUST ILLICIT TRADE

The COVID-19 pandemic, which restricted passenger flights and interprovincial travel for more than six months in 2020, appears not to have had a major effect on the illicit cycad trade. Informants reported that there were no significant changes in cycad prices. Two cases of cycad theft from private residences were reported in the Eastern Cape during lockdown, while authorities in the neighbouring Western Cape noted a brief decline in cycad poaching, followed by a rapid escalation, with cycads worth approximately US\$1 million stolen in just six months of 2021.⁶³

Various attempts have been made to deter cycad poaching, including implanting microchips and a

technique known as micro-dotting, or spraying the plants with miniscule dots, each of which has a scannable reference code unique to each plant. But both methods are time-consuming, requiring individual plants to be tagged in the wild, and poachers have developed workarounds, such as x-raying plants and digging out the microchips. Researchers from the University of Cape Town have now developed a promising technique for identifying wild cycads using radiocarbon dating and stable isotopes, which act as hyper-local signatures of the landscape where individual cycads grew.⁶⁴ These signatures are intrinsic to each plant and cannot be removed. The primary application of this method, however, is in detecting cycads that have already been poached, not preventing poaching in the first place.⁶⁵

For now, the surest method of keeping wild cycads in the ground appears to be physically enclosing them, an option available mainly to private landowners. Currently, on a wine farm in the Western Cape, engineers are discussing how to secure an exhibit of valuable cycads, due to fears they may be stolen. For the shrinking number of wild cycads in South Africa, though, there is no such protection.

3. Kidnappings target the Somali community in Kenya.

On 8 September 2021, Abdiwahab Sheikh Abdisamad, a Somali scholar and the executive director of the Institute for Horn of Africa Strategic Studies, was kidnapped by four men in Nairobi's central business district. Abdisamad had been vocal on political issues related to Somalia's opposition groups and to Ethiopia's Tigray rebels. Abdisamad was interrogated and threatened for 12 days before being released. He told the media that he was warned not to speak on regional political affairs again.⁶⁶ His wife, Halima Mohammed, has accused a key Mogadishu government official of being behind her husband's kidnapping.⁶⁷

Three months earlier, Somali mothers from Nairobi's South C estate held a press briefing to draw attention to increasing cases of kidnap for ransom targeting young Somali women and girls and to protest delayed responses by security forces after four were reported missing.⁶⁸

These crimes seem to have different motives. Yet they are part of a series of kidnappings in the Somali community in Kenya that has targeted a variety of businesspeople, school-age children, scholars and activists. Community members and researchers speculate that structural political issues, such as an estranged relationship with Kenyan security forces bred from a long history of extortion and harassment, have left them more vulnerable as targets for kidnappings.

GIRLS AND YOUNG WOMEN TARGETED IN KIDNAP FOR RANSOM ATTACKS

Among the four young women missing in July 2021 was Hafsa Mohamed Lukman, aged 23, from Eastleigh, a Somali-dominated suburb in Nairobi. Her mother reported that she received calls from unknown people who claimed they had her daughter and demanded 5 million Kenyan shillings (just under USD 45 000) as ransom. Although the ransom was not paid, the captors managed to get KSh 650 000 from Lukman's bank account when she was in captivity.⁶⁹ Lukman's business partner, Hafsa Abdi, and another suspect, Jackson Njogu, have been charged with her abduction and torture.⁷⁰

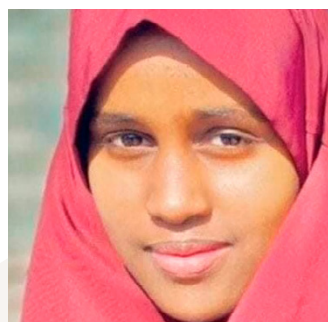
In a similar case, KSh 300 000 (USD 3 000) was demanded from 13-year-old student Hibo Farah's family after she disappeared on her way to school



Abdiwahab Sheikh Abdisamad, a Somali scholar kidnapped in Nairobi in September 2021. Photo: Social media

in June 2021. She was dropped in Eastleigh by an 'unknown taxi man' hours after she went missing and ransom was paid.⁷¹

Abdulrahman Yusuf, chair of the Somali community in the Coast region of Kenya, says the rate of these kidnappings (which can also result in murder) has become so extreme that some Somali girls shun education. 'Girls from our community now do not want to join universities for fear of being killed,' he said.⁷² Leaving for tertiary education physically isolates these young women, leaving them without the protection that family can provide.



Hibo Farah (above) and Hafsa Mohamed Lukman (right) were kidnapped for ransom in June and July 2021. Photos: Social media

Tabitha Mwangi, a researcher at the Centre for Counter-Terrorism Research, also argues that perceptions of honour and shame in Somali culture mean that ‘family members are more likely to pay the ransom to avoid the “shame” that would come if they are raped in captivity and, worse still, if they get pregnant’. She added that attacks on women are perceived as reflecting poorly upon the men in the family.⁷³

POLITICALLY TARGETED KIDNAPPINGS

Abdisamad’s experience of a kidnapping that seems politically motivated is not unique. Ali (name changed for anonymity), who survived an attempted kidnapping, also suspected that his political views were a factor. The 31-year-old businessperson said that being outspoken on social media about the Kenya–Somalia maritime dispute, in which Somalia instituted proceedings against Kenya at the International Court of Justice in August 2014, might have led to him being a target in March 2021.

‘I was approached by four people in Eastleigh who demanded I follow them. I refused and started screaming, attracting the attention of people around me. I think they panicked, because they disappeared into the crowd. Coincidentally, this was a few days after I had started receiving threatening texts asking me to stop discussing the issue on my social media platforms,’ he said.⁷⁴

Tabitha Mwangi described the pressure Somali scholars and activists are under in the face of kidnappings: ‘It forces other scholars, opposing politicians and activists to fear that they’ll be next, so they are likely to change their stance out of fear.’⁷⁵

THE SCALE OF THE PROBLEM

There are no official statistics on kidnappings in Kenya broken down by ethnicity of victims.⁷⁶ However, unofficial estimates point to the scale of the problem. Two MPs representing the Somali community in Nairobi called on the government to do more in their investigations and publicly condemned a spate of kidnappings in Eastleigh.⁷⁷ A well-known Somali businessperson (who spoke anonymously) claims that the community has recorded 20 cases where high-profile businessmen and public figures have been kidnapped.⁷⁸

Some of the kidnap cases have ended in the death of the victims. Security and terrorism analyst Richard Tutah attributes some of the killings to panic by kidnapers and a desperate attempt to cover their trails. He believes that ‘mishandling of the victims [for example, torture aimed at pressuring families to pay the ransom], coupled with fear of being caught, has played a huge role in the death of the victims’.⁷⁹

Joseph Muraya, the secretary-general of the Crime Journalists Association of Kenya, said that his association’s investigative work has recorded at least 20 kidnapping cases in the last two years.⁸⁰ However, he maintains that cases are under-reported due to fear of harassment and intimidation by the security agencies across the country.

‘In Somali-dominated suburbs like Eastleigh, we discovered that some cases went unreported to the police because the family of the victims is either in the country illegally or their immigration papers have expired. They opt not to draw attention to their side, choosing to pay hefty ransoms,’ he explained.⁸¹



In Somali-dominated suburbs of Nairobi, such as Eastleigh, shown here, some kidnapping cases go unreported because of fears related to the victims’ immigration status. © Simon Maina/AFP via Getty Images

DISTRUST BETWEEN COMMUNITY AND POLICE BASED ON HISTORIC ABUSE

Others agree with Muraya's assessment that police harassment has worsened the trend. Asli (name changed), a journalist and member of the Somali community, noted that there are often delays in the Kenyan government issuing official documents, including passports and identity cards, which has presented an avenue for extortion by the Kenyan police. This has made community members reluctant to report the kidnapping cases. According to Asli, 'many opt to settle them privately, without involving the community or the police. Police also demand to be paid to carry out the investigations, which does not sit well with the community members.'⁸²

'We feel like an ATM and are in constant fear of being forced to cough up money to either corrupt security agencies or kidnapers. We just want to walk on the streets without fear of someone popping up with a gun and demanding huge amounts of cash from us,' said businessperson Hussein Abdi.⁸³



Members of Kenya's anti-terror police. Somali communities argue that arbitrary arrests by Kenyan police, including by this unit, have damaged trust between these communities and authorities. © Simon Maina/AFP via Getty Images

Tabitha Mwangi pointed out that arbitrary arrests by police units, such as the anti-terror unit, makes the state a source of insecurity for the Somali community, which complicates the fight against kidnapping. 'Poor community relations makes it hard for the public to share information with the police that could help prevent and solve kidnappings,' she said.⁸⁴

She also argued that media reporting – which can advertise how lucrative these attacks can be in ransom money – has driven more kidnappings.⁸⁵

Asha Jaffer, an activist and freelance journalist, attributes the rise in kidnappings to the success and testimonials of previous kidnappings. 'After a successful mission, perpetrators rarely keep their success a secret. They share the news, proceedings and income of their mission with other criminal friends. This, in turn, results in more people planning and executing kidnappings.'

According to Jaffer, Kenyan media have deliberately moved away from reporting on these cases, 'in an effort to indicate that the trend has been reducing for the last few months' and to prevent media coverage from encouraging other groups to engage in kidnapping.⁸⁶

There seems to be a contrast between Somali groups that wish to highlight their plight in the media (such as the mothers in Nairobi's South C estate) and media groups that see the risk of these inadvertently inspiring attacks.

A RISK FOR THE FUTURE?

Without more detailed data collection, it is difficult to monitor whether kidnappings targeting Somali people in Kenya have increased. However, Somali residents have raised the alarm,⁸⁷ and argue the trend could worsen in future.

Kenya Muslim National Advisory Council Chairperson Sheikh Juma Ngao sounds a word of warning. 'We are afraid that this will get worse in 2022 as the general elections draw near, as insecurity will be higher since people take political sides and align by their tribes and communities. We call on President Uhuru Kenyatta to take action on this rash of kidnappings.'⁸⁸

4. Inadequate protection for witnesses and whistle-blowers in Kenya.

Convincing a witness to testify can make or break a prosecution. Particularly in complex cases relating to organized crime and corruption, witnesses and whistle-blowers may be divulging information at great personal risk.

Kenya is one of few countries in East and southern Africa with an institutional witness protection programme. The derailing of justice through the intimidation of witnesses looms large in the country's political history. In 2015, International Criminal Court (ICC) charges of crimes against humanity, related to ethnic violence following the 2007 Kenyan elections, against six Kenyans collapsed. Among them were current President Uhuru Kenyatta and his deputy, William Ruto. The ICC prosecutor said that the cases were withdrawn due to interference with witnesses, including bribery and threats. Among the ICC witnesses killed was Meshack Yebei, who had been expected to testify against Deputy President Ruto.

Violence against witnesses has reportedly grown worse in the years since. 'It's an issue of huge concern; it has taken on a new level,' said Otsieno Namwaya, East Africa Director at Human Rights Watch. 'The problem with this is that it will have a negative effect on the delivery of justice; witnesses will be scared; they won't want to take part in court proceedings.'⁸⁹

KILLINGS OF HIGH-PROFILE WITNESSES

In several high-profile incidents, witnesses have been threatened, harassed or killed. Among these are Jennifer Wambua, who was killed in March 2021, and police sergeant Kipyegon Kenei, killed in February 2021.

Wambua, a deputy communications director at the National Land Commission, was a key witness in a case where a vocal MP and a former top bureaucrat were charged with conspiring to defraud the government of KSh122.3 million (about US\$1.11 million).⁹⁰ Her body was dumped in a thicket kilometres away from her office in Nairobi.⁹¹

Sergeant Kenei, a bodyguard and confidant of Deputy President Ruto, was drugged and shot dead 'by powerful individuals', according to the Director of Criminal

Investigations.⁹² Kenei was a potential witness in a case in which several people (among them a former Cabinet secretary) allegedly used Dr Ruto's office to attempt to defraud foreign investors of billions of shillings in a fake military tender.

These killings led civil society groups and human rights advocates to sound the alarm about the dangerous environment for Kenyan whistle-blowers and witnesses. That Wambua, a director in a national institution, 'can be targeted and eliminated that easily means that almost every witness is insecure and can thus be interfered with easily,' said human rights activist Stephen Njuguna.⁹³ Wambua had expressed fears for her security. According to Cyrus Ombati, a leading crime reporter, 'she always asked court reporters not to mention her name every time she appeared in court as a witness in the corruption case.'⁹⁴

The threats facing whistle-blowers in such cases are enormous, according to Rose Mwaaura, the chairperson of the Institute of Certified Public Accountants of Kenya (ICPAK): 'Some have ended up losing their lives or voluntarily or involuntarily leaving their jobs. Many others have suffered through long-term unemployment, financial instability, anxiety, alcoholism, social isolation, violence, discrimination, marital problems among others.'⁹⁵

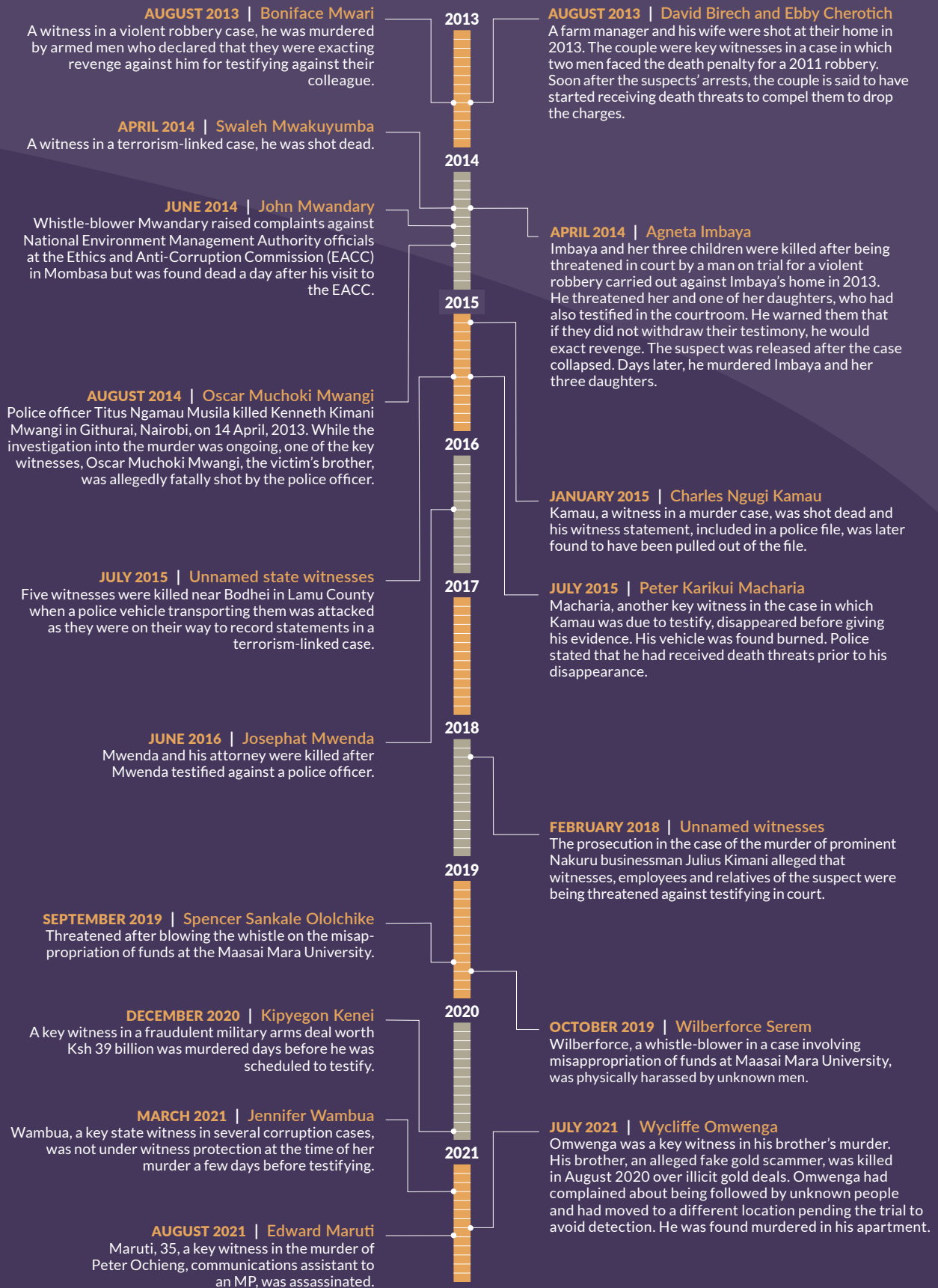
High-level corruption lies at the centre of almost all these cases. Human rights lawyer Lempaa Suyianka mentioned four cases in which governors face corruption and murder charges, and said that securing witnesses is difficult: 'To protect the witnesses testifying against such people is very tough. It's very easy to compromise witnesses in these cases.'⁹⁶

Transparency International's 2019 Kenya Bribery Index suggests that the issue is systemic. About 87% of Kenyans who witnessed bribery incidents did not come forward to report corruption, with 20% of these citing fears of intimidation or reprisal as the reason.⁹⁷

PRESSURES ON THE WITNESS PROTECTION AGENCY

Kenya's Witness Protection Agency (WPA) is mandated to protect witnesses at risk of, or facing, intimidation.⁹⁸

KEY CASES OF WITNESSES WHO HAVE BEEN INTIMIDATED OR KILLED IN KENYA



Protection measures include redacting identifying information from court documents, allowing witnesses to testify by video link and distorting their voices, physically protecting them in court, changing their identity, and relocating them and those close to them to another city, state or even country.⁹⁹

Alice Ondieki, CEO of the WPA, points out that none of the witnesses killed in Kenya were formally under the WPA's protection. 'Our mandate does not cover anyone who is not in our programme,' she said.¹⁰⁰ Nor had formal recommendations for protection been made on their behalf by the Directorate of Public Prosecutions (DPP), under which the WPA falls. Some of these cases were new in court and the DPP had not yet filed for the protection of witnesses involved.

However, questions are being raised – by witnesses themselves, civil society and other Kenyan institutions – about the WPA's capacity to provide adequate protection to all witnesses who may need it.¹⁰¹ In February 2021, the National Council on Administration of Justice (the Council) reported that '[w]itness protection schemes are grossly inadequate to cover all the vulnerable witnesses, especially in cases such as murder, robbery and cases involving high-value subject matters. Many witnesses withdraw from such matters fearing harm from the accused.'¹⁰²

The WPA has faced consistent funding shortages since its inception, with the government's budget allocation by the Kenyan government rarely meeting even 25% of the Agency's estimated need. While funding has remained consistently low, demand for witness protection has increased.¹⁰³

This means the WPA can handle at most only half of the 100–300 applications it receives per year. About 720 witnesses have been admitted into the programme since it began operations in 2011. 'The money we have is not enough,' said Alice Ondieki. 'We continue admitting witnesses but the budget has always remained the same. Lengthy trials have also made the programme very expensive'.¹⁰⁴

WPA officials have publicly raised the alarm about funding shortages in previous years,¹⁰⁵ and has relied on international donors. In the last two years, the EU and the United Nations Office on Drugs and Crime have donated laptops, printers and scanners, four trucks, safes and digital voice recorders.¹⁰⁶

The situation is compounded by a backlog of cases in Kenya's judicial system, which the judiciary itself describes as 'severe' and a perennial challenge. The Council estimates that over 250 000 cases remain unresolved more than one year after being filed in

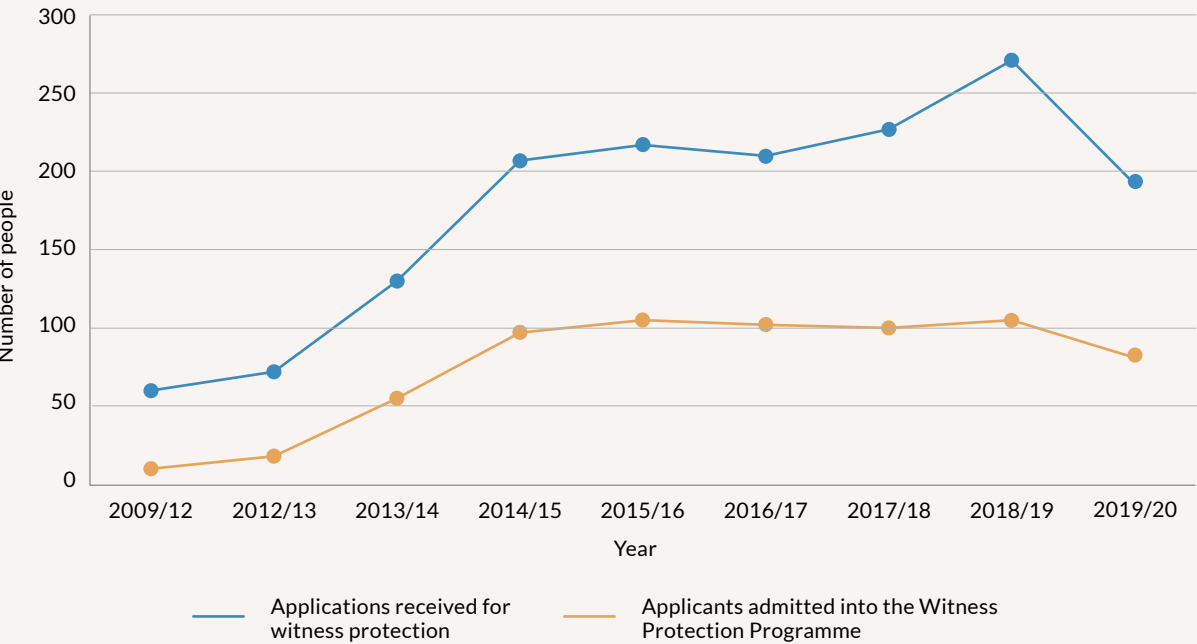


FIGURE 3 Applications submitted to the Witness Protection Agency in Kenya remain consistently lower than the number of applicants who can be accepted for protection.

SOURCE: Witness Protection Agency

Kenya’s magistrates’ courts alone, emphasizing that [d]elay in prosecution of criminal matters not only affects the right to fair trial but also leads to dangers such as loss of witnesses and evidence, and costs of case management.¹⁰⁷ Protecting a witness through a trial that may drag on for years is a long and costly affair.

The Council admits that some cases involving witnesses who are referred for protection are poorly investigated by police. ‘This poses a big risk to the witnesses expected to give evidence due to investigative loopholes that expose the witness to crime perpetrators. There is still a lack of awareness among judicial officers and counsel on the substantive and procedural issues of witness protection, which limits the application of protection measures.’¹⁰⁸

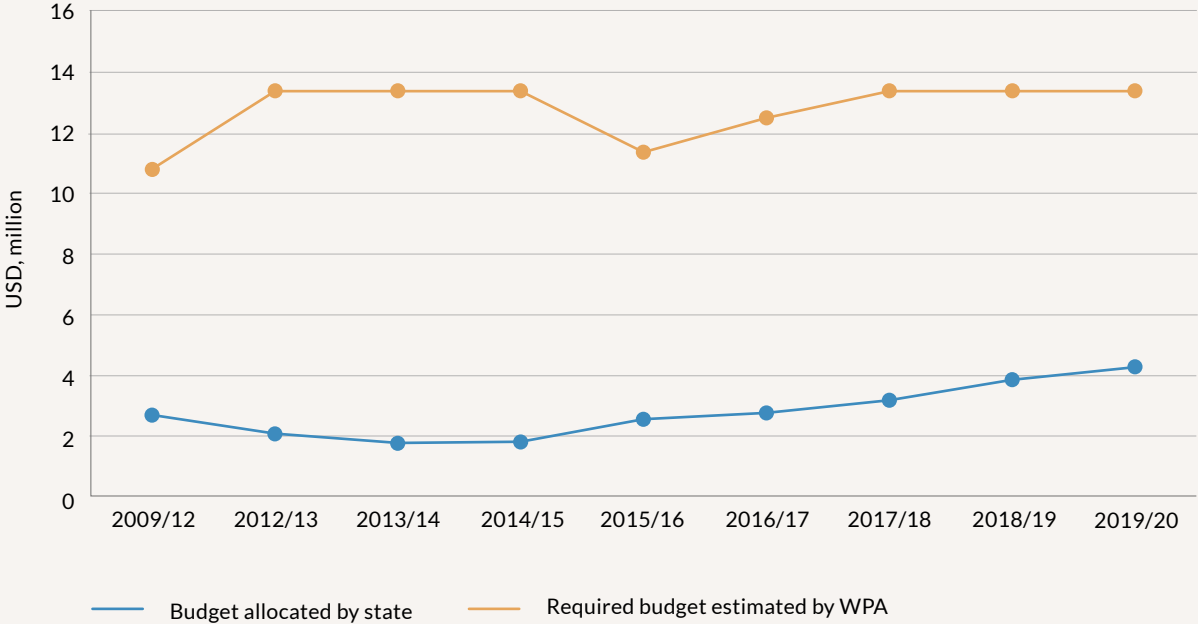


FIGURE 4 Estimated budget needed by the Kenyan Witness Protection Agency to fulfil its mandate has been around five times greater than the actual budget for more than a decade.

SOURCE: Witness Protection Agency

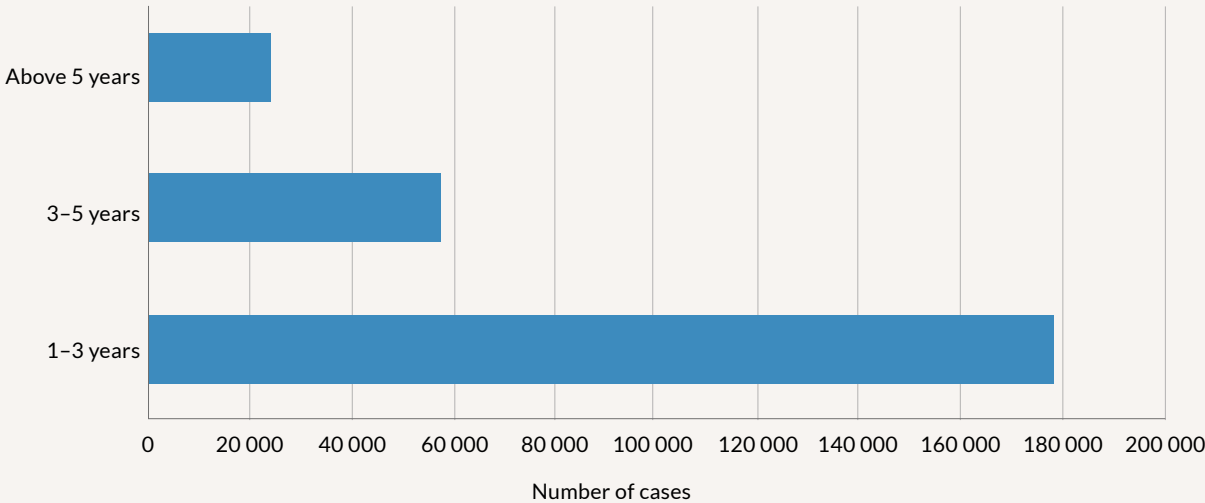


FIGURE 5 A backlog of cases in Kenya’s courts puts additional pressure on witness protection, as the period of time for which witnesses require protection becomes untenably long.

SOURCE: National Council on Administration of Justice, State of the Judiciary and the Administration of Justice Report 2019/2020.

OPERATIONAL PROBLEMS IN THE WPA

Whistle-blowers and civil society activists who spoke to GI-TOC also identified several problems in the Agency's operation. First, admitting a witness to the protection programme can be a long and laborious process. 'Inertia and lethargy on the part of authorities hasn't made matters better for the protection programme,' explained Otsieno Namwaya.¹⁰⁹

In one case, police officer Oscar Edwin Okimaru was accused of killing Joshua Munagi on 18 April 2021, allegedly for flouting curfew rules. When the matter came to court on 10 June, the DPP had not yet placed the witnesses under protection. Judge George Odunga took note: 'In this case, the Prosecution intimated that it was in the process of placing the vulnerable witnesses under [the] witness protection programme. The accused was arrested on [14 May 2021], more than three weeks ago. I have not been told what steps have been taken to complete the said process.'¹¹⁰

This delay seems typical. Targets released as part of Kenya's 2019–2020 budget show that the WPA can

take up to 21 days to acknowledge receipt of applications before conducting a risk assessment. Where witnesses must be relocated to a safe house, the process takes approximately 58 days. In other countries, such as South Africa, a witness deemed to be in immediate danger can be placed in temporary protection while the formal application is under way.¹¹¹

Whistle-blowers and civil society activists also argue that the eligibility requirements for protection are overly restrictive.¹¹² Section 3 of the Witness Protection Act defines a witness as anyone willing to formally testify for the State about the commission or possible commission of an offence, or has made a statement to a law enforcement agency, or is required to give evidence before a court, commission or tribunal outside of Kenya. A witness in need of protection is identified as such by the DPP or by an investigator who is dealing with the file.¹¹³

Thus, whistle-blowers and eyewitnesses who are yet to give a formal statement or testify in court are excluded from obtaining protection.¹¹⁴



 ACTIVITY	 PERIOD (DAYS)
Acknowledging receipt of applications to the Witness Protection Programme	3
Interviewing and recording statements from the applicants	6
Carrying out detailed threat/risk assessments from time of interview and recording statements	5
Carrying out psychosocial assessments on witnesses and related persons from time of signing memorandum of understanding	7
Admitting and signing memorandum of understanding from time of threat/risk assessment	7
Procuring safe houses for witnesses and related persons after admission into the programme	8
Relocating witnesses and related persons to safe houses after admissions	3

FIGURE 6 Witness Protection Programme performance indicators, 2018–2019.

SOURCE: Governance, Justice, Law and Order Sector (GJLOS) report for medium term expenditure framework period 2020/2021–2022/2023, <https://www.treasury.go.ke/wp-content/uploads/2021/05/Governance-Justice-Law-and-Order-Sector-Report-DRAFT.pdf>

This is a significant problem for witnesses of serious crime and high-level corruption who may need protection from the moment of discovery, reporting or whistle-blowing.

The WPA is also not considered to be wholly independent. A 2020 US State Department report found that '[w]itness harassment and fear of retaliation severely inhibited the investigation and prosecution of major crimes. The Witness Protection Agency was underfunded, and doubts about its independence were widespread.'¹¹⁵ 'Safe houses are well-known by government people, and even the personnel are known people,' said Otsieno Namwaya.¹¹⁶

The WPA relies on the goodwill of the Kenyan Police Service (KPS) to escort witnesses to and from safe houses and courts and to conduct risk assessments. In certain cases, police have been seconded to the WPA.¹¹⁷ This is problematic when witnesses are meant to give evidence against a police officer. The KPS is also notorious for its involvement in extrajudicial killings.¹¹⁸ According to a senior protection officer at a local NGO, police officials have leaked sensitive witness information.¹¹⁹

Unprofessional communication between witnesses and witness protection officers, and poor cooperation between the WPA and other agencies, have also led to distrust, causing several witnesses to either leave the programme or refuse protection from the Agency.¹²⁰

Spencer Sankale, a financial officer at the Maasai Mara University, reported large-scale misappropriation of funds. Following the revelations, he was chased on several occasions by unmarked vehicles and motorcycles and unknown people attempted to locate his family.¹²¹ Three months later, he received a call requesting a meeting at a location 95 kilometres from his home. The caller failed to identify themselves as a WPA representative. After five meetings with WPA officials at this location, Spencer refused to accept any help from the WPA. He believed that the officials requested meetings

to claim travel and accommodation expenses from the WPA while he had to absorb his own travelling costs. Despite the threats he had experienced, he was only offered lunch and transport to court on the days that he needed to testify.

Wilberforce Serem, another whistle-blower in the same case, was chased by unknown men on a motorcycle and fled to the nearest police station to report the incident. At that stage, several witnesses in this case had reported similar harassment, but the police failed to open a case and he was not referred to the WPA.¹²²

IMPACT OF SHORTFALLS IN WITNESS PROTECTION

Cumulatively, these shortcomings have resulted in witnesses not feeling comfortable enough to engage with the WPA. Some fatigued witnesses have changed their minds about testifying.¹²³ In some incidents, an awaiting-trial accused was able to identify key potential witnesses and intimidate or threaten them.¹²⁴

Many witnesses instead approach NGOs and other independent investigatory agencies such as the Independent Police Oversight Authority, the Kenya National Commission on Human Rights and the Ethics and Anti-Corruption Commission.¹²⁵

This not only shifts the state's responsibility to protect witnesses, but also places undue pressure on NGOs. A senior protection officer explained that 'NGOs do not have the necessary resources to guarantee proper and holistic protection to combat witness fatigue.'¹²⁶ This has resulted in NGOs investing a substantial amount of time and other resources to assist witnesses over the extended investigation and trial period only for the witness to opt out.¹²⁷

Yet the work of NGOs can only ever be a poor substitute for a robust protection programme. As witness testimony is vital to prosecuting organized crime and high-level corruption, investment in such programmes – not only in Kenya, but across the region – could boost prosecutions and save lives.

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