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 Chris Morris

African Courts Need to Take the Lead in Trying Traffickers



It was a mistake. Ten tons of ivory and 190 kilograms of rhino horn were sold over a seven-year period, according [to the indictment](#). It was actually much more than that. Much, much more.

[Moazu Kromah](#), a Liberian national, had pled guilty in March to three charges relating to wildlife trafficking in Africa. In his letter pleading for leniency submitted to the Southern District of New York, he thanked the court for the opportunity to “give some information about myself and the circumstances that led me to make the mistakes which bring me before you.”

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It seems a little understated. If we are to believe Kromah and his counsel, he suffered great personal tragedy during the Liberian civil war, spent time in a refugee camp in Guinea, and in 1992, eventually settled in Kampala, Uganda. “In an effort to provide for my family, I sought out other opportunities to gain income. This pursuit of income ultimately led me to some unsavoury characters who promised me the ability to earn large sums of money.” In this case, “some unsavoury characters,” is represented by hundreds of contacts from all corners of the globe except for South America.

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Kromah’s counsel added that his client was “a first-time offender whose recent criminality appears to be an aberration in a heretofore law-abiding life.” “Kromah’s recent choice was poor,” and “he [Kromah] found himself in the U.S.A. solely for his failure to conform to its standards.”

From a wildlife crime perspective, his prosecution in New York for crimes committed while he was in Kampala, was a test case. A first by which an African was tried in the United States for wildlife trafficking offences committed in Africa using U.S. dollars.

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While Kromah was “handed over” to U.S. authorities in June 2019, the roots of the investigation trace back to late 2015. The EAGLE Network and the Natural Resources Conservation Network (NRCN), both wildlife crime investigative NGOs, arrested Kromah’s son, Bangaly Kourouma, with two tusks weighing 26 kg that he was using as samples for a proposed two-tonne ivory sale to an undercover buyer.

On attaining bail, Bangaly fled Uganda for Guinea but was enticed back in early 2017 through another undercover operation led by the EAGLE Network.

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This led to what many consider a landmark arrest of Kromah and his two sons, Bangaly, and Mohamed, by the EAGLE Network and the NRCN with Uganda law enforcement support. 1,303 kg of ivory were found in their Kampala home, with tools and equipment, to cut, weigh and package ivory and rhino horn. Significant intelligence relating to Kromah’s global operation was also recovered.



Elephant feet on display after poachers had killed the animals. (Kairi Aun)

The U.S. Fish and Wildlife Service and the U.S. Drug Enforcement Administration officially joined the investigation in 2017 and incorporated another confidential source into the mix.

The second co-accused on the indictment was Amara Cherif, a Guinean national. He was arrested shortly after Kromah, also in June 2019, while in Senegal. Besides this indictment, Cherif was also wanted on an Interpol Red Notice for his part in a 1,279-kilogramme ivory seizure executed in Tanzania in 2016. Cherif was officially extradited and flown to

New York in April 2020. Together, they were charged with three offences relating to wildlife trafficking and one for money laundering, all offences using U.S. dollars.

There was also a drug component to this investigation. Mansur Surur and Abdi Hussein Ahmed, Kenyan nationals, were charged on the same indictment with the same wildlife and money laundering offences in addition to a charge alleging conspiracy to possess and distribute 10 kg of heroin to a New York buyer. A fifth individual who was not on the original indictment, Kenyan national, Badru Abdul Aziz Saleh, has also been charged with the same conspiracy to traffic heroin but with no wildlife offences included.

Mansur Surur and Amara Cherif have both entered into plea agreements and are due to be sentenced on September 14th, and October 12th, respectively. Saleh was extradited to the U.S. in June, and Ahmed was ordered extradited by a Nairobi court on September 1st.

The sentencing

On August 18th, with the wildlife conservation community watching closely, Moazu Kromah received a 63-month jail sentence. This included the 42 months he had already served in two New York jails. He was left with 21 months remaining.

The presiding judge, Gregory L. Woods, stated that he agreed with the prosecution that a significant sentence was necessary to send a “[loud and clear message](#)” that such large-scale wildlife trafficking warranted serious consequences.

In a similar vein, U.S. Attorney Damian Williams commented: “Today’s sentence demonstrates that those who are responsible for the decimation of global populations of endangered and threatened animals protected by international agreements will face serious consequences.”

The Duke of Cambridge, Prince William, also [endorsed the sentencing](#) through a press release, stating that the conviction and sentencing were “sending the strongest possible message that together we can defeat the illegal wildlife trade.”

At the same time, many observers globally were stunned, describing the 5-year sentence as farcical. In many African elephant range states, a five-year sentence is handed down to a first-time offender. And in some parks, anti-poaching operations will sometimes lead to the deaths of poachers shot by armed park rangers.



(Lara Zanarini)

In a Nairobi court in 2018, Paul Njogu Muthoni was handed an eight-year sentence when found with 155 kg of ivory. The ivory had been supplied by the Kromah group for onward transit. In 2020, a Tanzanian court sentenced Pastor Sekandi Mkombola to 20 years in jail after finding him guilty of possessing two tusks.

In Malawi in 2021, Chinese national Yunhua Lin was sentenced to 14 years in prison for dealing in rhino horn and money laundering. He will be deported at the end of his sentence.

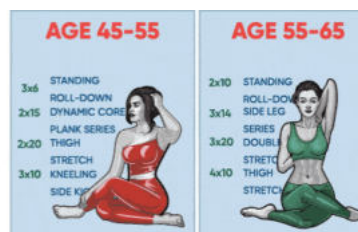
In the most recent case, on September 2nd, Chief Magistrate Gladys Kamasanyu sentenced two men to ten years in jail less time served for killing six lions and ten vultures in Queen Elizabeth National Park.

A mistake in mathematics or a typo?

There were three charges on the indictment relating to wildlife trafficking. Charges two and three related specifically to the acts of selling rhino horn by the accused to a confidential source, one kilogram in March 2018, and five kilograms the following July. On both occasions, the rhino horn was shipped to the U.S.

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The first charge was for “conspiracy to traffic wildlife.” The information pertaining to this charge (from an elephant ivory perspective) was that the “Enterprise” had trafficked 10 tons of elephant ivory, estimated to have involved approximately 100 elephants, that this trafficking had occurred between December 2012 and May 2019, and that it violated the respective laws of Uganda, Kenya, Tanzania, and Mozambique.

100 elephants killed, however, does not equate to 10 tons of ivory. The generally accepted average tusk weight is 4.5 kg per tusk or 9 kg per elephant. Therefore, 10 tons of ivory would equate to well over a thousand elephants and not 100 as

stated in both the indictment and prosecutor's submissions. Commonly, 4.5 kg is rounded up to 5 kg, thereby making 10 tons of ivory equate to a thousand elephants. It is not difficult therefore to see the possibility of either an undetected typo or error in mathematics. If the 63-month sentence was in any way factored on 100 elephants and over a seven-year period, that would be a problem from the get-go. Remarkably, the error stood for over three years.

A mistake in seriousness of conduct?

Secondly, the Kromah group, consisting of Guineans, Malians, Congolese, Ugandans, and possibly even Gambians, selling primarily to Chinese, Vietnamese, and Laotian buyers, trafficked an amount of ivory far in excess of 10 tons. I have been tracking the Kromah group since 2015 through arrests/seizures and subsequent prosecutions in Kenyan courts.

Evidence and intelligence from this court monitoring, taken in conjunction with DNA analysis completed by Samuel Wasser and the Center for Environmental Forensic Science, indicates that over 100 seizures ranging in size from 25 to 8,800 kilograms can be attributed or linked to the Kromah group. While the indictment states approximately 10 tons, my own calculations, going back to mid-2012, total approximately 117,200 kilograms of ivory seized, or 117 tonnes. That would equate to approximately 17,200 elephants killed for their ivory: not 1,000, not 100.

It is to be remembered that these numbers refer to actual ivory seizures. When one considers the law enforcement indicator matrix that contraband seized is approximately 5-10% of the actual amount trafficked, taken in combination with the fact that Kromah was in business for at least seven years, a theoretical extrapolation of ivory trafficked could easily be in excess of 500 tons.

It is very difficult for many to comprehend that one group could be shipping ivory from elephants killed in Mozambique, Tanzania, Kenya, Uganda, Democratic Republic of Congo, Central African Republic, Congo, Malawi, Zambia, Botswana, Zimbabwe, Burundi, Angola, Gabon, Cameroon, and out of seaports and international airports located all over sub-Saharan Africa. But that was happening, and it was not public information before the court.

Perhaps a [March 2021 report](#), sponsored by the Basel Institute on Governance, could have been part of the submission. The report, authored by Jacopo Costa, was based on data found in Moazu Kromah's two iPhones [at the time](#) of his 2017 arrest.

The report, despite being devoid of names, indicated that Kromah had over 400 contacts. These contacts were broken down as follows: 245 in east Africa, 177 in west Africa, 43 in southern Asia, and the remainder divided between the Middle East, North America, Europe, and other parts of Africa. It is difficult to comprehend how he "was a small part of a larger organization in Uganda" as claimed in his leniency letter to Judge Woods.

DNA and other evidence

An analysis of available DNA evidence relating to the Kromah group may have also provided useful context to the presiding judge. In a [2018 peer-reviewed report](#), detail was provided whereby 14 large ivory seizures made in Africa and Southeast Asia, were linked by way of what was referred to as genetic matches of ivory tusks. This describes the circumstance when two tusks from the same elephant were found in different seizures.

As an example, a seizure made in Malaysia in December 2012 yielded genetic matches with five other seizures made prior to and after that seizure; a 1,500-kilogram seizure in Sri Lanka in 2012, a 726-kilogram seizure in Togo in August 2013, two seizures made in Mombasa days apart totaling 4,852 kilograms in October 2013, and two seizures in January 2014, made days apart in Togo and totaling 4,100 kilograms (this was DNA analysed as one seizure). Three of the five were containerised in Kampala and 10 of the 14 genetically linked seizures also originated from Kampala.



Liberian national Moazu Kromah after his arrest.

If this genetic match evidence was not enough, a second, more recently published report expanded on the 2018 report. The study expanded the analysis by matching elephant ivory DNA from parents, siblings, and half-siblings from 49 different seizures.

From the 49 seizures that were the subject matter of the comparison study, 35 seizures indicated strong connectivity to the Kromah group. In addition, genetic matches (now referred to as direct matches) were found between the February 2017 seizure, with a 625 kg seizure (also reported as 1,286 kg) made in South Sudan in June 2016, and 2019, 3,299 kg seizure made just outside Kampala (a case that is still before the Uganda courts). All three of those seizures contained ivory that had leached from the secure Burundi government ivory stockpile.

In addition to the 35 seizures referenced above, and while researching that report, a further 45 non-DNA analysed seizures, were discovered to share some type of link or connectivity with the Kromah group.

A mistake in the rule of law

While wildlife conservationists were ecstatic with Komah's arrest, rule of law proponents were more on the bristling side of the equation. Amongst all the hype, there was no mention of any judicial proceedings or legal process that facilitated Kromah's travel from Kampala to New York within 24 hours. The word "expelled" was often used but never extradition (there is currently no extradition treaty between the United States and Uganda). Some may have gone as far as calling it an "extraordinary rendition" which is defined as an "extrajudicial practice, carried out by U.S. government agencies, of transferring a prisoner to a foreign country for the purposes of detention and interrogation." The moral justification was not part of the definition.

While there was certainly some agreement between governments to facilitate Kromah's 'expulsion,' it was equally certain that it was not done through a constitutional legal process. By all appearances, his arrest, despite its sanction by both involved countries, was illegal. The same was evident in the expulsion, again to the United States, of four members of the Mombasa-based [Akasha drug cartel](#) in 2017. The difference, in that case, was that a legal proceeding had been commenced two years previously.

In the Akasha case, it was later revealed after their “expulsion,” the group had conspired to pay “hundreds of thousands of dollars in bribes to the judges, prosecutors and law enforcement officials” to ensure the extradition hearings went their way. Fred Matiang’i, a senior government minister, later admitted that had the drug cartel not been extradited to the U.S., they probably would not have faced justice in Kenya. Could the same have been said for Kromah?

Show us the money

Moazu Kromah stated in his letter to the judge, “I was poor before this, and I am poor now.” His lawyer wrote in submissions that “Kromah has never lived a lavish lifestyle and has few personal possessions.” Is that believable?

When Kromah and his two sons were arrested in 2017, their residence was described by officials as an “opulent and expansive house.” At the time, the prosecution stated that between 2014 and 2017, Kromah had disguised the illicit origin of \$190,000 that he had received from the Vannaseng Trading Company in Laos.

It was also reported that as part of that 2017 arrest, the Kromah group had tried to negotiate a \$50,000 bribe to law enforcement officials.

In addition, Kromah was known to make frequent trips to Mozambique to visit Ahmed Mahabub Gedi, a Somali. Gedi was a hawala agent while running a travel business in Mozambique, linked to a similar agency in Edmonton, Canada. He was captured in Kenya in July 2017 along with six others, after police raided a house near the international airport and found 217 kilograms of ivory being packaged for air freight to Thailand.

Gedi, at the time, provided to the police a five-page written statement that he had traveled to Nairobi for the sole purpose of facilitating payments relating to the ivory shipment for Asian buyers. Gedi was released on a \$10,000 cash bond after an unprocedural bail hearing and has never been seen again. He is still on the [Interpol Red Notice list](#).

The ivory and rhino horn trade is a lucrative business. Kromah and his group had been in the business for at least seven years. The group was providing ivory and rhino horn for major buyers in China, Vietnam, and Laos. Kromah’s lack of assets is simply not believable.

The status of any possible asset investigation is unknown. The only forfeiture order before the court relates to the seized rhino horn.

Integrity is not the only difference between justice systems

In a case study by the Wildlife Justice Commission, it was stated: “The case appears to present the Kromah network as a wildlife trafficking network first and foremost, which engaged in heroin trafficking opportunistically rather than as part of its usual business activities.” When one examines the investigational timeline, the heroin sale was made after that of the two rhino horn sales. Some may ponder if in fact the drug transaction was injected into the investigative scenario to add to the strength of the case, particularly for the purposes of extradition.

A wildlife trafficking charge under U.S. law has a maximum sentence of 5 years imprisonment as opposed to a drug trafficking charge with a 25-year maximum. Therefore, it is a strong likelihood that Surur, Ahmed, and Saleh, with the addition of the 10 kg heroin charge, will receive a significantly higher sentence than the 63 months of Kromah and probably Cherif, for dealing in over 100 tonnes of ivory and 130 kg of rhino horn.

When Amara Cherif was extradited, the trial regarding the ivory seizure for which he was on the Interpol Red Notice list, was still before the Tanzanian courts. If he had been extradited to Tanzania instead of the United States, he would almost certainly be facing a minimum of 15 years of incarceration.

Fifteen years of incarceration was never going to come from the Southern District of New York. Kromah was facing four charges. In the spirit of a plea deal, it was to be expected that at least one charge would be dropped. That would leave only 15 years as a maximum sentence and maximum sentences do not happen in plea agreements.

United States sentencing guidelines provided for a range of 78 to 63 months of incarceration for Kromah. That number was based on several factors including the economics of the crime. The prosecution agreed to the lower end of 63 months.

Therefore, from the perspective of specific and general deterrence, if a maximum sentence for ivory or rhino horn trafficking in Africa can be up to or exceeding 20 years in jail with a substantial fine, is the American justice system model the one to follow?

On the other side of the coin, Ugandan and many other African criminal justice systems are plagued by what could be called “inconsistent integrity.” One of the primary factors for Kromah’s group remaining active was the significant protection it received from criminal justice and political actors within the countries of operation. The probability of Kromah’s group being convicted for dealing in 1,303 kg of ivory was essentially nil.

These “inconsistent integrity” issues within respective criminal justice systems are not going to dissipate by themselves in the foreseeable future. Bearing that in mind, and the substantial overall costs incurred for the “Enterprise” investigation against the results obtained, is this model of joint forces investigation with prosecution before United States courts sustainable?

The arrest of Kromah and his sons was by way of a sting operation and thorough investigation through a combined effort of the EAGLE Network and NRCN, in cooperation with Ugandan investigators. The January 2019 arrest in the Kampala area of two Vietnamese nationals with 3.3 tonnes of ivory (supplied by Kromah) was another NGO/Uganda investigation joint venture. In Nigeria, the arrests and seizures of massive amounts of pangolin scales and ivory in the past year were again through NGO (Wildlife Justice Commission) intelligence gathering and investigation, working in cooperation with Nigerian authorities. Where the wheels start loosening, however, is in the courts.

The wheels come off in the courts

Following his February 2017 arrest, Kromah was released on bail, and he continued his wildlife trafficking business. The rhino horns he sold to the confidential source were transacted while he was out on bail. In the January 2019 arrest/seizure, the two primary accused (Vietnamese nationals) were released on bail, and to the surprise of no one, fled the country. That prosecution is now essentially on ‘hold.’ The headline in a recent Mongabay article; “Half-hearted prosecution lets ivory traffickers escape in Uganda,” says it all.

In Nigeria, the challenge will be attaining a suitable result within a fragmented justice system that has had essentially little success in previous wildlife trafficking cases.

These recent cases would indicate that it is time now to provide more focus and resources on the prosecution and the courts. This is where the good wildlife crime-related investigations are being de-railed. This is not new information. For whatever reason, while considerable resources have been allocated to law enforcement and investigation, towards capacity building, technology, and vetting, scant attention has been paid to what is specifically happening in the courtroom.

While nobody likes to acknowledge that lawyers, prosecutors, magistrates, or judges, can be bribed or coerced, they are, unfortunately, no different from the public service of which they are part. In Kenya, the reason for having realized only one conviction in a major ivory case in the last 12 years is not solely because of poor investigations. Vincent Opyene, the head of NRCN, stated in a recent interview: “Corruption can manifest at any stage during the investigation – police, judiciary or at the directorate of public prosecutions.”

This would perhaps be a time to re-visit, in a more committed fashion, courtroom monitoring or trial observation initiatives. The concept of courtroom monitoring or trial observations is not new. There are several organizations throughout Africa that conduct their own version of this. Among them: TRAFFIC (Tanzania), African Wildlife

Foundation (Kenya), Space for Giants (Kenya and Uganda), Speak Out for Animals (Zimbabwe), Lilongwe Wildlife Trust (Malawi), Eagle Network (West Africa), and SEEJ-AFRICA (Kenya).

Recently, the Basel Institute on Governance began monitoring the progress of corruption cases for the International Centre for Asset Recovery in Kenya. While a number of these organizations use the initiative primarily as a mentoring and data gathering initiative, it can be used as a corruption risk mitigation stratagem.

In a similar vein, there is presently a Trial Observation mission happening in Kenya where high-ranking jurists from a number of African countries are attending the Supreme Court, listening to petitions relating to the recent election. In conclusion, they will “produce a comprehensive report after the trial observation to contribute to a more professional, independent, impartial, and accountable Judiciary, a more independent legal profession, and better adherence to the rule of law and international legal standards.” Could this be a template to follow in relation to wildlife trafficking cases that are deemed vulnerable; a caveat being that they are active, objective, vocal, and public, in the observation/monitoring process?

The Duke of Cambridge remarked that the operation’s “complexity has been skilfully met by a global alliance of international law enforcement agencies, governments, NGO’s and private sector organisations.” This was true. A high-profile international wildlife trafficker and four co-conspirators were taken out of the game at a time when there was a minimal likelihood of success in Uganda.

Having said that, and clearly, with the benefit of hindsight, the passing of a five-year three-month sentence has left a bad taste in the mouths of many. Perhaps it is best to refer to this operation as a qualified success, chalked up as lessons learned, not to be repeated.

Judge Woods and the Southern District of New York believed that, using the old adage, “Justice was done and was seen to be done.” On the eastern side of the Atlantic, not so much.

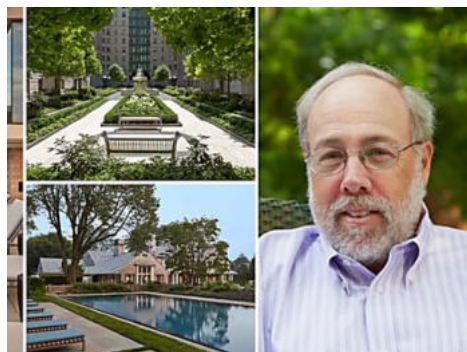
Author’s note: In presenting this perspective, I am in no way minimising the thousands of man hours, the dedication, determination, and perseverance of all who were part of this operation. For that, I thank you.

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