

A PAPER PRESENTED AT THE 3RD
MEETING OF THE GREAT LAKES
JUDICIAL COOPERATION NETWORK
ON WILDLIFE CRIMES

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ZAMBIA

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1.0 INTRODUCTION

- In Zambia the main piece of legislation which governs Wildlife Crimes is the Zambia Wildlife Act Number 14 of 2015. This piece of legislation provides for, among other things the establishment, control and management of national parks, birds and wildlife sanctuaries, provides for licensing of hunting and control of the processing, sale import and export of wild animals and trophies as well as the implementation of the convention on international trade in endangered species of wild fauna and flora.

2.0 MAIN BODY

- The Zambia wildlife Act being the main piece legislation on which prosecution of wildlife cases is premised, as it is the Act which outlines the various wildlife related matters and the prescribed penalties. The act enables the prosecution of wildlife related offences of a transnational nature. Article 3(2) of the United Nations convention against organized crimes of 2000, also known as the Palermo convention defines a crime as transnational if

Continuation

- The crime is committed in more than one state
- The crime is committed in one state but a substantial part of its preparation, planning direction or control takes place in another state
- The crime is committed in one state, but involves an organized criminal group that engages in criminal activities in more than one state or,
- The crime is committed in one state but has substantial effects in another state.

- It is trite that wildlife crimes have become transnational in nature as they involve parties from different states as well as the movement of illegal wildlife across continents. In the process, other offences are likely to be committed, the most common ones being money laundering and corruption.

2.1 DEPARTMENT IN CHARGE OF DEALING IN WILDLIFE CASES

- The department in charge of investigating and arresting perpetrators in wildlife cases is the Department of National Parks and Wildlife under Ministry of Tourism.

2.2 UNITS IN THE DEPARTMENT OF NATIONAL PARKS AND WILDLIFE

- Among other units, the department has two important units whose role is to combat poaching and investigate any suspect who is dealing in unlawful wildlife products
- It has the anti - poaching unit &
- investigations unit.

- They investigate wildlife cases. When satisfied that a person has committed an offence against the above mentioned act, the docket of case is prepared, and forwarded to National Prosecutions Authority for possible court proceedings.

2.3 DOCKET OF CASE BEFORE NATIONAL PROSECUTIONS AUTHORITY

- Once the docket is brought to NPA for further action, prosecutors peruse the docket and if the case is worth prosecuting (according to the evidence at hand), it's then taken to court for justice to be served.

3. LAW APPLICABLE IN PROSECUTING NATIONALS AND NON NATIONALS

- Laws that Zambia use to prosecute both its nationals and non nationals who commit wildlife crimes is the wildlife Act Number 14 of 2015 of the laws of Zambia. The jurisdiction of this act allows for the prosecution of an offence which happens outside Zambian jurisdiction and protects the state from becoming a haven for money laundering activities.

3.1 CASE LAW ON JURISDICTION

- We had one case of the Chinese nationals (jointly charged) with Zambian Nationals (**The People Vs Van Qian, Huang Qingzon, He Qingmao, Lovemore Kamwendo and Obert Simwajata**) who were purported to have come from Mozambique and had pieces of rhino horns. However the killing of the rhinos was done in an unknown country but they were apprehended in Zambia with rhino horns while trying to transit across Zambia..

- The apprehension was done right at the Zambia – Mozambique boarder on the Zambian side. The accused persons were charged and arrested ‘(according to our Act)’ with Unlawful Possession of Prescribed Trophy c/s 86 of Act number 14 of the Laws of Zambia. They where convicted and sentenced to 5 years imprisonment with hard labour

4.0 REGIONAL ACTS THAT HELP IN PROSECUTING TRANSNATIONAL CASES

MUTUAL LEGAL ASSISTANCE ACT NUMBER 98

- Zambia has the mutual legal assistance Act Number 98 of the Laws of Zambia that allow the investigators to investigate matters in other countries. Section 3(1) of the Act provides for loaning of exhibits by states. This application is made through the Attorney General where an item that has been produced as an exhibit in a court of law is sought to be used in proceedings in the requesting state.

- All in all the Mutual Legal Assistant Act number 98 of the Laws of Zambia helps Zambia in the prosecution of transnational cases and gathering of evidence or the moving of exhibits from one country to another. Section 7 of the Mutual Legal Assistance Act provides for the formulation of administrative agreements within which Mutual Legal Assistance can be sought where there is no treaty

4.2 and 4.3

- **Malawi Zambia Transfrontier Conservation Area (TFCA)** - this is the first TFCA with cross- border wildlife sanctuary, joint radio communication system and joint patrols
- Lusaka Agreement on Cooperative Enforcement Operations directed at illegal trade in wild fauna and flora which avenues are likely to provide quick access to information

5.0 CHALLENGES IN PROSECUTING WILDLIFE CRIMES/other crimes

- Lack of resources and insufficient political will in prosecuting of wildlife crimes.
- Overlap in terms of the functions of multiple organizations. This leads to disorganization in that cases are investigated by one authority and prosecuted by another authority.
- Lack of sensitization, the communities as well as all other stakeholders involved in the process thus the weight of the wildlife crimes is not considered or felt.
- A weak legal framework also brings about low penalties for the crimes. Custodial sentences are a discretion of the magistrate . i.e in cases like illegal hunting in the Game Management Areas, unlawful entry in the National Parks, illegal possession of government trophy etc

- The focus of prosecutions on foot soldiers as opposed to the major enablers of the crimes. The foot soldiers can be replaced at any time
- Lenient bail regulations in dealing with wildlife offenses.
- Corruption
- Different laws and penalties with neighboring states. Perpetrators will find refuge in other states that have weak laws.
- Lack of thoroughly investigations by the Department of National Parks and Wildlife
- Most of our departments i.e. (police/ wildlife officers) investigators lack knowledge on the law of evidence
- The Wildlife Act does not provide for forfeiture of proceeds of crime
- Language barrier

0.6. SOLUTIONS:

- Strengthening governance will and capacity of law enforcement agencies through joint trainings
- Raising awareness amongst stakeholders through the Department of Wildlife
- departments/ entities to develop a less formal and quicker way of sharing information which will aid in the effective prosecution of matters. One way of achieving this is to develop Memoranda of understanding/ treaties between institutions / states outlining ways of sharing information and transfer of exhibits
- Empowering strengthening, monitoring and oversight authorities (including the communities, civil societies etc.)

- International cooperation
- Judiciary should train linguists interpreters.
- Train and teach investigations officers on the Anti-money Laundering Act so that they familiarize themselves with the Act
- The Department of National parks and Wildlife Investigators to be trained in Forfeiture of Proceeds of Crime Act. The best move in prosecuting wildlife crime would be the forfeiture of assets or the restraint of assets.

Thank you

Conserve wildlife