



National and Regional Legal Frameworks to control the Illegal Wildlife Trade in Sub Saharan Africa

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Question

How are national and regional legal frameworks (including economic and financial system interventions) currently used to control and restrict the illegal wildlife trade (excluding fish or forestry products) in Sub Saharan Africa?

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The K4D helpdesk service provides brief summaries of current research, evidence, and lessons learned. Helpdesk reports are not rigorous or systematic reviews; they are intended to provide an introduction to the most important evidence related to a research question. They draw on a rapid desk-based review of published literature and consultation with subject specialists.

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1. Overview

Although Sub Saharan countries may have signed up to Multi-lateral Environment Agreements and regional frameworks and these are theoretically part of the country's law, their importance is rarely considered at the national level. Therefore, there exists a large disconnect between international, regional and local legal regimes. A consistent theme in the reviews is that significant work needs to be done in each country in order to effectively tackle the illegal wildlife trade (IWT), and weaknesses exist in the principal legislation. These include loopholes, variations on provincial implementation of national laws, inadequate penalties, and in some cases, extremely antiquated legislation or legislation which is contrary to the country's obligations under CITES. Substantial differences exist across Sub Saharan African countries in terms of the severity of penalties for violating local wildlife law. Countries with particularly stringent fines and/or lengthy jail sentences of four years or more for a wide variety of wildlife offences include South Africa, Zimbabwe, Namibia and Zambia. Some countries have recently amended or updated their principal legislation.

Key findings:

- There are a number of regional initiatives and frameworks aimed at coordinating countries' tackling of the IWT, but these are not fully utilised.
- The response from Sub Saharan African countries to the IWT crisis has largely been uncoordinated with each individual country preferring to tackle the issue in-country rather than cooperating as a network of states that face a common problem.
- The Protocol on Wildlife Conservation and Law Enforcement to the SADC Treaty represents one of the most advanced efforts towards regional harmonisation of wildlife legislation. This is further emphasised with the adoption of the SADC Law Enforcement and Anti-Poaching Strategy in February 2017. However, as with many international and regional frameworks, decisions do not always translate into actions on the ground.
- Many countries have robust legislation in place that is theoretically capable of combatting wildlife crime, but poor implementation. In other countries, the state of principal legislation differs greatly, with some being ineffective because important provisions must be implemented through separate regulations, and in others, the lack of uniformity between regional and national legislation is an issue.
- There is great variation in offences and penalties used by Sub Saharan African countries. Legislation needs to include mandatory minimum penalties for poaching, as this removes the discretion of the courts to give light penalties.
- It is important that a country makes use of ancillary legislation dealing with finance, money laundering and tax, as well as those dealing with environmental protection.

Efforts have been made to ensure the completeness of the research, however, given the restriction of 5 days, some existing legal instruments may be missing, because they were not identified or not accessible. Also, due to the limitations, the various legal frameworks are described relatively lightly, but wherever possible the reader is pointed to additional resources where further information can be found. The review for National Legal Frameworks has focussed on Botswana, Kenya, South Africa, Tanzania and Zimbabwe. Key papers for further reading and which cover other Sub Saharan African countries have been highlighted in the National Legal Framework section. It is recommended that these are read for a more complete picture.

2. Global and Regional Frameworks

Global Instruments

Wildlife management has long been regulated at the international level. The failure of national regulations and international agreements, along with the rise in the illegal wildlife trade (IWT) of threatened species, instigated the 1973 drafting of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Members have adopted CITES policies at the national level through a licensing system that subjects certain wildlife to varying degrees of controls (Pires and Moreto, 2016). Another key global agreement to wildlife is the Convention on the Conservation of Migratory Species of Wild Animals (CMS), a species-based agreement focusing on the immediate protection of certain species included in lists, differentiating according to the degree of threat. The CMS aims to conserve terrestrial, marine, and avian migratory species throughout their ranges, requiring cooperation among “range states” host to migratory species regularly crossing international boundaries (Selier et al, 2016). Many other international legal instruments are of relevance to wildlife, including the Convention on Biological Diversity (CBD) and the World Heritage Convention. The Convention against Corruption and Convention against Transnational Organised Crime are also pertinent to the IWT. Table 1 (next page) provides information on which wildlife-related international agreements Sub Saharan countries have ratified (showing the date of entry into force of each agreement, where appropriate), however, this report does not go into further detail on these international treaties. Sub Saharan African countries are also part of regional groupings and agreements to improve enforcement co-operation of IWT, more detail is given on these in this section. Despite these commitments and the availability of existing channels to facilitate co-operation, lack of effective international and regional co-operation remains a critical challenge in the IWT (EIA, 2016).

International Consortium on Combating Wildlife Crime (ICCWC)

International enforcement collaboration through the International Consortium on Combating Wildlife Crime (ICCWC), which includes CITES, United Nations Office on Drugs and Crimes (UNODC), INTERPOL, the World Bank and World Customs Organisation (WCO), together with increased collaboration amongst agencies, such as with UNEP, and with countries, has created a more effective structure to provide support to countries in the fields of policing, customs, prosecution and the judiciary (Nellemann et al, 2014). Improved sharing of intelligence among agencies has also enabled INTERPOL to support countries in larger and more effective police operations, leading to larger seizures of illegal timber and wildlife products. For example, in 2013 Operation Wildcat in East Africa involved wildlife enforcement officers, forest authorities, park rangers, police and customs officers from five countries – Mozambique, South Africa, Swaziland, Tanzania and Zimbabwe. The operation resulted in 240 kg of elephant ivory, 20 kg of rhino horns, 637 firearms, and 44 vehicles being seized and 660 arrests (Nellemann et al, 2014).

In mid-2012, members of ICCWC developed the Wildlife and Forest Crime Analytic Toolkit¹. The Toolkit provides countries with a technical resource to undertake a national assessment of the main issues relating to wildlife and forest offences and to analyse preventive and criminal justice responses at the national level. The Toolkit is designed to assist government officials in forestry

¹ See <https://cites.org/eng/prog/iccwc.php/Tools>

Table 1: Entry into Force of International Treaties relating to IWT for a selection of Sub Saharan African countries

	Convention on Biological Diversity (CBD, Rio de Janeiro, 1992)	Convention concerning the Protection of the World Cultural and Natural Heritage (WHC, Paris, 1972)	Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES, Washington , 1973)	Convention on the Conservation of Migratory Species of Wild Animals (CMS, Bonn, 1979)	United Nations Convention Against Corruption (UNCAC, New York, 2003)	United Nations Convention against Transnational Organized Crime (UNTOC, New York, 2003)
Angola	1998	1992	2013	2006	2006	2013
Botswana	1996	1999	1978		2011	2003
Cameroon	1995	1983	1981	1983	2006	2006
Central African Republic	1995	1981	1980		2007	2004
Congo	1996	1988	1983	2000	2006	
Congo (Democratic Republic)	1995	1975	1976	1990	2010	2005
Gabon	1997	1987	1989	2008	2007	2005
Kenya	1994	1991	1979	1999	2005	2004
Lesotho	1995	2004	2003		2005	2003
Malawi	1994	1982	1982		2008	2005
Mozambique	1995	1983	1981	2009	2008	2006
Namibia	1997	2000	1991		2005	2003
Rwanda	1996	2001	1981	2005	2007	2003
South Africa	1996	1997	1975	1991	2005	2004
Swaziland	1995	2006	1997	2013	2012	2012
Tanzania	1996	1977	1980	1999	2005	2006
Uganda	1993	1988	1991	2000	2005	2005
Zambia	1993	1984	1981		2008	2005
Zimbabwe	1995	1982	1981	2012	2007	2008

Source: <https://www.ecolex.org/> (accessed 28/06/2017) and <https://www.unodc.org/unodc/en/treaties/CAC/signatories.html> (accessed 30/06/2017)

and wildlife administration, Customs, and other relevant enforcement agencies in conducting a comprehensive analysis of possible means and measures to protect wildlife and forest and monitor products thereof, and thus identify technical assistance needs. A number of Sub Saharan African countries have requested a mission to implement the ICCWC Toolkit: Angola is at the Toolkit request stage; Toolkit implementation is at the planning stage in DRC, Kenya and Senegal; Toolkit implementation is in process in Congo, Madagascar and Mozambique; Toolkit implementation is complete in Botswana, Gabon and Tanzania (ICCWC, 2017).

The ICCWC has also developed the ICCWC Indicator Framework for wildlife and forest crime to enable Parties to measure and monitor the effectiveness of their own law enforcement responses. This complements the ICCWC Wildlife and Forest Crime Analytic Toolkit and is intended to provide a standardised approach to measure the effectiveness of national law enforcement responses and will enable a Party to independently monitor performance over time. Designed to be completed as a self-assessment by national enforcement authorities, the ICCWC Indicator Framework consists of 50 performance measures that cover the major components of a law enforcement response to IWT².

A number of regional Wildlife Enforcement Networks (WEN) are being developed in Africa as per recommended by the ICCWC. WENs aim to improve collaboration and communication among participating member states in all issues of wildlife crime, fostering effective multi-agency cooperation. There are two regional enforcement networks in Sub Saharan Africa, both still under development: Horn of Africa WEN - Kenya, Uganda, Djibouti, Eritrea, Ethiopia, Somalia, South Sudan, Sudan; and WEN Southern Africa - Angola, Botswana, Malawi, Mozambique, Namibia, South Africa, Swaziland, Zambia, Zimbabwe (EIA, 2016; Galster and Ebyai, 2016).

African Convention on the Conservation of Nature and Natural Resources (1968, revised 2003)

The African Convention on the Conservation of Nature and Natural Resources (the Algiers Convention) was adopted by the Assembly of the African Union in 1968. The main objective of the Convention is to encourage individual and joint action for the conservation, utilisation and development of soil, water, flora and fauna, for the present and future welfare of humankind (SADC, 2015). Parties to the Algiers Convention must cooperate and refrain from making parochial decisions that may have adverse impacts on shared wildlife resources (Selier et al, 2016). The Algiers Convention will be superseded by the (revised) African Convention on Conservation of Nature and Natural Resources³, which was adopted in Maputo in 2003 (the Maputo Convention), but has not yet entered into force. The new text revises the Algiers Convention into a more comprehensive and modern regional treaty on environment and natural resources conservation, taking into account modern international developments in approaches to the management of biological diversity and natural resources (SADC, 2015). The Maputo Convention encourages Parties to cooperate bilaterally or sub-regionally to eliminate illegal trade in species through the conclusion of agreements such as the Lusaka Agreement on Co-operative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora (IUCN, 2004).

² Ibid

³ Available at https://www.au.int/web/sites/default/files/treaties/7782-file-african_convention_conservation_nature_natural_resources.pdf

The Lusaka Agreement on Co-operative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora (1994)

The Lusaka Agreement on Co-operative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora was adopted in September 1994 in Lusaka, Zambia, and came into force in December 1996. Currently, there are Seven Parties to the Agreement: The Republics of Congo, Kenya, Liberia, Tanzania, Uganda, Zambia and the Kingdom of Lesotho. Republics of South Africa, Ethiopia and the Kingdom of Swaziland are signatories, and it is open for accession to all African states.⁴ The aim is to foster cooperation among states to reduce and ultimately eliminate wildlife crime in Africa. The treaty creates a permanent inter-governmental task force for cooperative cross-border wildlife enforcement, the Lusaka Agreement Task Force (LATF). Under the agreement each party allows this multi-national body to investigate violations of wildlife laws, and undertake intelligence and joint wildlife-related investigations and enforcement actions across its borders, in collaboration with national agencies (Galster and Ebyai, 2016). LATF was launched in June 1999, with its headquarters located in Nairobi, Kenya, while national focal points are dotted throughout Africa. National bureaus are mainly wildlife and forestry authorities cooperating with one another and working closely with LATF, police, customs, and other international organisations. LATF coordinate Operation COBRA, a global wildlife law enforcement operation that creates opportunities for collaboration and intelligence-sharing among countries in Africa, Asia, Europe, and the USA – Kenya has been a key player in this effort (Weru, 2016). In May 2016, the LATF signed a Memorandum of Understanding with the UNODC Global Programme for Combatting Wildlife and Forest Crime on bilateral cooperation in combating wildlife and forest crime in Africa. The MOU will facilitate collaboration, and is a culmination of an on-going relationship between LATF and the UNODC.⁵

The Arusha Declaration on Regional Conservation and Combating Wildlife/Environmental Crime (November 2014)

African countries of the East African Community (EAC) and the South African Development Community (SADC) signed the Arusha Declaration on Regional Conservation and Combating Wildlife/Environmental Crime, calling for a comprehensive list of activities to strengthen trans-border collaboration on combating wildlife/environmental crimes and advancing conservation work. The signatories included Burundi, Kenya, Mozambique, South Sudan, Tanzania, Malawi, Uganda, and Zambia. The member states agreed to implement 20 measures to address the problems of wildlife crimes (The Republic of Burundi et al, 2014). These measures include:

- Collaborating in combating illegal off-take;
- Combating the unsustainable utilisation of wildlife;
- Addressing the illegal trafficking of wildlife and other natural resources across the region;
- Sharing, developing and improving databases and protocols for intelligence sharing and joint investigations;
- Developing protocols for the joint training and patrolling of wildlife and environmental law enforcement agencies where appropriate;

⁴ Available at http://lusakaagreement.org/?page_id=24

⁵ See <https://www.unodc.org/easternfrica/en/mou-with-latf-on-wildlife-and-forest-crime.html>

- Working towards the strengthening of the Lusaka Agreement and other regional protocols already in place;
- Coordinating the harmonisation of wildlife and environmental crime enforcement and penalties, with particular reference to elevating certain wildlife and environmental crimes to the level of serious crimes.

No further information on progress is available.

SADC Protocol (2003)

SADC countries have undertaken a meaningful process towards harmonisation of wildlife legislation by adopting the Protocol on Wildlife Conservation and Law Enforcement to the SADC Treaty (Cirelli and Morgera, 2010). The Protocol is a legally binding instrument, which entered into force in 2003 and has been ratified by Botswana, Lesotho, Malawi, Mauritius, Mozambique, Namibia, South Africa, Tanzania and Zambia (with Angola and Zimbabwe being signatories only). The Protocol recognises states' sovereign rights to manage their wildlife resources, with a corresponding responsibility to sustainably use and conserve these resources. The "primary objective" of the Protocol is to establish, within the framework of the respective national laws of each party, common approaches to the conservation and sustainable use of wildlife resources and to assist with the effective enforcement of laws governing those resources (Selier et al, 2016). In signing the Protocol, Member States agree to policy, administrative, and legal measures for promoting conservation and sustainable wildlife practices within their jurisdictions. Member States agree to collaborate with one another on common approaches for achieving the goals of international agreements on wildlife. The Protocol advocates Member States harmonise legal instruments for wildlife, establish management programmes for wildlife, and create a regional database of wildlife status and management.⁶

The institutional mechanisms to implement the Protocol include the Wildlife Sector Coordinating Committee and the Technical Committee, with the former acting as the Secretariat responsible for implementing the Protocol at the regional level. The Technical Committee consists of the Directors of the various wildlife agencies who, in terms of the Protocol, are required to meet annually "...to co-ordinate development of policy guidelines for common regional approaches to the conservation and sustainable use of wildlife resources." These committees report back to the Committee of Ministers who is responsible for adopting regional wildlife policies and development strategies, and taking into consideration and approving any recommendations to amend or adopt policies and strategies (SADC, 2015). As part of the protocol a number of Transfrontier Conservation Areas (TFCA) have been developed between SADC members. TFCAs are defined as a component of a large ecological region that straddles the boundaries of two or more countries encompassing one or more protected areas as well as multiple resource use areas.⁷ For example, the Great Limpopo Transfrontier Park between Mozambique, South Africa and Zimbabwe was created in 2002 with the signing of a treaty. Mozambique and South Africa are seeking increasing ways to work together on management issues. Park structures allow for enhanced communication channels between the two countries, and a bilateral draft cooperation agreement on rhino and elephant protection. Joint operations plans and cross-border patrol protocols have also begun to be implemented (SADC, Undated).

⁶ Available at http://www.sadc.int/files/4813/7042/6186/Wildlife_Conservation.pdf

⁷ See <http://www.sadc.int/themes/natural-resources/transfrontier-conservation-areas/>

SADC Law Enforcement and Anti-Poaching Strategy (2017)

In February 2017, the Joint Extra Ordinary Meeting of the Ministers of Environment and Natural Resources and of the Organ on Defence, Peace and Security Cooperation of SADC adopted the SADC Law Enforcement and Anti-poaching Strategy (LEAP). The LEAP Strategy aims at reducing the level of poaching and illegal trade in wildlife fauna and flora and enhance law enforcement capacity in the SADC Region by 2021 focusing on: enhancement of legislation and judicial processes; minimisation of wildlife crime and illegal trade; improvement and strengthening of field protection; integration of people and nature in natural resources management; and ensuring sustainable trade and use of natural resources.⁸ In order to effectively implement the LEAP strategy, Ministers approved the establishment of the Regional Wildlife Crime Prevention and Coordination Unit (WCPCU), that will be supported by the National Wildlife Crime Prevention Task forces comprising of Police, Wildlife, Customs, Defence, Immigration, Intelligence and Judiciary officials in each Member State.⁹ The meeting was attended by Angola, Botswana, Democratic Republic of Congo, Lesotho, Malawi, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe. Results are not yet obvious, given its recent adoption and establishment.

East Africa Community

Article 116 of the EAC Treaty (signed 1999, amended 2006) stipulates that Partner States undertake to develop a collective and coordinated policy for conservation and sustainable use of wildlife and other tourist sites in the six-nation bloc. It calls on Partner States to, among others, harmonise policies for conservation of wildlife within and outside protected areas, and co-ordinate efforts in controlling and monitoring encroachment and poaching¹⁰.

The East African Legislative Assembly passed a key report on poaching in the region in August 2016, and urged EAC Partner States to reform wildlife laws and put in place initiatives that promote upkeep of communities that neighbour the wildlife conservancy areas (East Africa Legislative Assembly, 2016). The Oversight report on poaching presented to the House by the Chair of the Agriculture, Tourism and Natural Resources Committee further urges Partner States to develop/improve wildlife conservation strategies and protection measures through patrols, joint cross border operations, surveillance and information sharing.¹¹ No regional framework to review these initiatives has been put in place yet.

3. National Legal Frameworks

General

There has been increased investment of law enforcement in Sub Saharan Africa in recent years. Emslie et al (2016) highlight: that law enforcement staff are being deployed at increased densities; greater use of dogs, technology and aerial support in some areas; and fenced

⁸ Available at

http://www.gaborone.diplo.de/contentblob/4715602/Daten/6225475/SADC_LEAP_FINAL.pdf

⁹ See <http://www.sadc.int/news-events/news/ministers-environment-and-natural-resources-and-organ-defence-peace-and-security-adopt-sadc-law-enforcement-and-anti-poaching-st/>

¹⁰ Available at http://www.eac.int/sites/default/files/docs/treaty_eac_amended-2006_1999.pdf

¹¹ Available at http://www.eala.org/uploads/Scan_20160819.pdf

sanctuaries, Intensive Protection Zones (e.g. Kruger) and extensive semi-natural captive breeding operations (allowing for more concentrated law enforcement effort) are becoming more common. Since 2013, Kenya and Zambia have increased penalties for rhino trade crime, and similar moves are underway in Malawi and Mozambique. Namibia, South Africa, Swaziland, Tanzania and Zimbabwe already have deterrent penalties for rhino crimes. Judicial outreach on illegal wildlife crime to magistrates and prosecutors continues in Kenya, Zimbabwe and South Africa. Dedicated prosecutors continue to be used for most rhino cases in South Africa with high conviction rates (e.g. 89% from April 2015 to January 2016, with over half receiving custodial sentences) in cases making it to court (Emslie et al, 2016). Namibia recently passed into law the Nature Conservation Amendment Act, which significantly increases penalties for wildlife crime, raising fines for rhino and elephant poachers from the current maximum of NAD 200,000 to NAD 25 million, and increases the fines for illegal possession of protected species to NAD 10 million from the current NAD 20,000 and imprisonment of five to ten years.¹² However, many of these programmes and efforts strongly suffer from under-funding. There is also a need for collaboration and coordination amongst agencies within countries. Wildlife agencies tend to dominate meetings on tackling the IWT, consequently there is insufficient presence and input from other enforcement agencies, namely police, customs, immigration and security agencies, and especially finance ministries and those dealing with economic crime, which are often neglected from these meetings (SADC, 2015).

CITES and UNEP have agreed to collaborate to strengthen national legislation for the implementation of CITES. The CITES National Legislation Project (NLP) is the Convention's primary mechanism for encouraging and assisting Parties' legislative efforts. The project identifies those Parties whose domestic measures do not provide them with the authority to: designate at least one Management Authority and one Scientific Authority; prohibit trade in specimens in violation of the Convention; penalise such trade; or confiscate specimens illegally traded or possessed. The CITES Standing Committee has identified countries in the African region that require attention as a priority under the National Legislation Project, namely Algeria, Comoros, Djibouti, Guinea-Bissau, Kenya, Liberia, Mauritania, Mozambique, Rwanda, Somalia and Tanzania (UNEP and CITES, 2017). The results from the review are not publically available.

Below are highlights from national legal frameworks to combat the IWT for five key Sub Saharan African countries that cover a range of approaches and geopolitical examples. These draw strongly from three key reviews, and it is strongly recommended that these are read for greater detail and more Sub Saharan country reviews (including Mozambique).

- DLA Piper (2015) *Empty Threat 2015: Does the Law Combat Illegal Wildlife Trade?*, review commissioned by The Royal Foundation on behalf of the United for Wildlife partnership.
- EIA (2016) *Time for Action: End the Criminality and Corruption Fuelling Wildlife Crime*, Environmental Investigation Agency.
- Jayanathan, S. (2016) *Stopping poaching and wildlife trafficking through strengthened laws and improved application: Phase 1: An analysis of Criminal Justice Interventions across African Range States and Proposals for Action*, Stop Ivory and the International Conservation Caucus Foundation (ICCF) Group.

¹² <http://www.internationalconservation.org/namibian-president-signs-caucus-backed-bill-into-law>

Botswana

Botswana is seen as bucking the trend regarding elephant poaching due in part to a relatively sparse population, low levels of government corruption and political stability. However, poaching is seen as rising and in terms of criminal justice handling of such cases, there is an urgent need to address failings in the system in order to avoid being caught out if and when the poaching crisis migrates from South Africa and other bordering countries into Botswana (Jayanathan, 2016).

Overview of the legal framework in Botswana:

The Wildlife Conservation and National Parks Act (1992) is the main piece of principal legislation concerning wild animals in Botswana. Numerous regulations have been adopted under the Act. Some are more general in their contents, such as those concerning hunting and licensing, while others are more specific, limiting the taking of specific species or declaring or regulating single protected areas (Cirelli and Morgera, 2010). Under this Act, the following penalties are stipulated: seven years imprisonment and fine of BWP10,000 (USD 950) for hunting or capture of a protected species and for importing, exporting, re-exporting or transporting through Botswana any wildlife item without a permit and five years' imprisonment and a fine of BWP5,000 for selling or processing unlawfully obtained wildlife items. Stronger penalties are stipulated for cases relating to rhinos or elephants (EIA, 2016). The Wildlife Conservation and National Parks Act provides for the designation of a Director of Wildlife and National Parks. The Director acts also as the CITES Management Authority and Scientific Authority. Regarding enforcement, "wildlife officers" in charge of the implementation of the Act are officers of the Department of Wildlife and National Parks (DWNP) (Cirelli and Morgera, 2010). Other laws that apply to wildlife offences in Botswana include: Wildlife Conservation and National Parks (Lions) (Killing Restriction) Order (22nd April, 2005); Wildlife Conservation and National Parks (Cheetahs) (Killing Suspension) Order (22nd April, 2005); Wildlife Conservation and National Parks (Hunting and Licensing) Regulations (Section 92) (10th August, 2001); Wildlife Conservation (Possession and Ownership of Elephant Tusks or Ivory) Regulations (Section 92) (15th March, 1999); National Parks And Game Reserves Regulations (Under Section 92) (2000) (Mauck, 2013). Botswana's wildlife laws provide for forfeiture of proceeds of wildlife offences and any items involved in wildlife offences.

Legal deterrents (EIA, 2016):

- The existing law in Botswana is being reviewed and amended (no completion date has been given) (Jayanathan, 2016). The review seeks to address the issue of penalties, harmonise existing functions within the DWNP and empower it to conduct investigations under the law.
- According to a recent study, the DWNP does not have powers of prosecution; issues have been raised regarding cooperation and coordination between the DWNP and the ODPP (the central prosecuting authority in Botswana) and there are no formal protocols for cooperation in place (Jayanathan, 2016). The Ministry of Environment is trying to address this. The study also highlights the need for increased awareness-raising initiatives among prosecutors and the judiciary, particularly regarding penalty guidelines and use of ancillary legislation which could be utilised for stronger sentences.
- The Proceeds of Serious Crime Act 1990 does not include environmental crime as a predicate offence. There appears to be little concrete evidence regarding the

implementation and effectiveness of Botswana's court handling practices in wildlife crimes and use of ancillary legislation for such crimes (Jayanathan, 2016).

- Botswana has no centralised database recording prosecutions and court cases relating to wildlife crime.

Investments in enforcement and eradicating demand (EIA, 2016):

- In 2015, it was reported that Botswana's Financial Intelligence Agency, responsible for collation, analysis and dissemination of information relating to suspicious financial activity, was fully operational and working in collaboration with DWNP and other agencies (EIA, 2016).
- The DWNP has established a Tourism Intelligence Unit dedicated to combatting wildlife crime (EIA, 2016).
- A National Anti-Poaching Task Team exists to improve collaboration between enforcement agencies and devise a joint mechanism for combating wildlife crime.
- The budget for DWNP has reportedly been increased in order to hire additional personnel, build capacity among law enforcement and procure anti-poaching equipment. In August 2016, Minister of Environment, Wildlife and Tourism Tshekedi Khama announced that the annual budget for the Department's Anti-Poaching Unit had been increased to BWP130m, from BWP32m when he joined in 2012 (EIA, 2016). However, in April 2017, it was reported that DWNP's anti-poaching operations had been hit by Botswana's austerity measures, which have resulted in a reduction of the Ministry's 2017 budget from BWP213 million to BWP165 million.¹³
- Botswana has applied the ICCWC Wildlife and Forest Crime Analytic Toolkit to identify gaps and actions required to strengthen the criminal justice response to wildlife crime. Publically available information is not available on the recommendations and progress made in implementing the recommendations.
- Botswana has centralised its stockpile of ivory obtained as a result of natural mortality and has managed activities such as problem animal control (PAC) and seizures. It also has in place a system for conducting an inventory of its ivory stockpile on a routine basis and to separate illegal ivory obtained from seizures and that obtained from other sources.
- Botswana is a member of the Elephant Protection Initiative (EPI), which includes a commitment to engage with the private sector and private citizens, close domestic ivory markets and commit to a minimum of a 10-year moratorium on all international ivory trade (EIA, 2016).
- Botswana prohibits domestic and international trade in any wildlife without a permit, as well as the manufacture of, or trade in, wildlife items imported or obtained illegally.

Kenya

Overview of the legal framework:

The Wildlife (Conservation and Management) Act of 1976 was Kenya's first comprehensive legal framework for conservation and the protection of wildlife. This law identified the primary goal of wildlife conservation as the optimization of returns from wildlife, defined broadly to include

¹³ <http://travel.iafrica.com/bulletinboard/1048127.html>

aesthetic, cultural, scientific and economic gains, and placed the government as the sole custodian of wildlife (Weru, 2016). Driven by the poaching crisis of the 1970s and 1980s, it was amended in 1989 to establish the Kenyan Wildlife Service (KWS). Following the adoption of the new Constitution of Kenya in 2010, the Government of Kenya reviewed the Wildlife Act and enacted the new Wildlife Conservation and Management Act (WCMA) in 2013, which provides for stiffer penalties in response to resurgent, increasingly sophisticated poaching threats. The WCMA of 2013 upholds and strengthens the mandate of the KWS to protect, conserve for sustainable use and management of wildlife in Kenya. The WCMA's toughened stance on conservation also cuts across all the three pillars of Kenya's economic blue print, Vision 2030, namely; tourism, environment and security. Notable changes in the WCMA of 2013 include; higher recognition of the role of community and private conservancies in managing wildlife and more stringent minimum penalties for wildlife crimes (e.g. a fine of KES 20 million / USD 206,028 as at June 11, 2015, and/ or life imprisonment for the killing of threatened or endangered species). This is a significant improvement from previous iterations of the Wildlife Act, which treated wildlife crime lightly, offering the option of fines as low as KES 10,000 (USD 103 as at June 11, 2015) for possession of ivory (Weru, 2016). Community conservancies, in which local communities take the lead in protecting and conserving wildlife, have also been recognized by the Government of Kenya as a highly successful model for protecting Kenya's natural resources outside of formal protected areas. KWS is the primary government agency responsible for the protection of wildlife on the ground and the enforcement of wildlife regulations. Other key laws dealing with IWT related matters include: The Prevention of Organised Crime Act; The Proceeds of Crime and Anti-Money Laundering Act; The Evidence Act; The Criminal Procedure Code; Environmental Management and Coordination Act; and The EAC Customs Act (Weru, 2016).

Legal deterrents (EIA, 2016):

- Kenya has achieved tremendous improvements in prosecuting wildlife crime with limited resources. Prosecutions of wildlife poaching and trafficking have improved significantly over recent years.
- WCMA provides for severe penalties for wildlife crime, resulting in an increase in deterrent sentencing for wildlife crime. However, this has also led to an increase in 'not guilty' pleas due to high minimum penalties under the WCMA. In order to address this concern, the WCMA is being amended and a pilot to address delay in the courts was launched in December 2015. A plea bargaining policy developed within the Office of the Director of Public Prosecutions (ODPP) requires national roll-out, although with high minimum penalties its effectiveness is questionable.
- The WCMA still lacks the subsidiary regulations necessary to put it into action. Important issues still need to be addressed, such as clarification of incentives for landowners to keep wildlife on their land and procedures for compensation claims following human-wildlife conflict (Weru, 2016).
- Section 92 of the WCMA dealing with endangered species has been drafted in a way that has caused ambiguity in charging decisions and conflicting High Court decisions upon appeal (Weru, 2016).
- There is a lack of understanding amongst agencies as to the legislative framework that now governs prosecutions and powers of investigation that has led to 'turf wars' between agencies regarding investigations and prosecutions.
- A report by Wildlife Direct on progress made in wildlife trials in 2014-15, since the enactment of the WCMA, is 'cautiously optimistic' about progress made. The report in

particular notes improved management of case records and the denial of bail in a number of wildlife crime cases. However, the proportion of convicted persons given jail sentences without the option of a fine remained very low at 6% in 2015 (EIA, 2015).

- A 2014 amendment to the Evidence Act has enabled admission of electronic and digital evidence, including photographs of wildlife items or carcasses. However, sensitisation of police and KWS investigating officers on such forms of evidence is needed (Weru, 2016).
- The lack of sentencing guidelines for wildlife crime has resulted in inconsistency in sentencing nationwide despite high minimum penalties. This creates uncertainty for both the prosecution and the defence in entering into any meaningful discussions on plea and alternative charges.
- In June 2016, the world's first airport court became operational at Nairobi's Jomo Kenyatta International Airport (JKIA), in order to efficiently and quickly handle drugs and wildlife trafficking cases. In its first month, of the 10 cases related to ivory trafficking heard by the court, nine resulted in convictions.
- A dedicated Wildlife Crime Prosecution Unit (WCPU) prosecutes wildlife cases across the country, with a specialised WCPU prosecutor in all courts. The WCPU, with the British High Commission and Space for Giants, developed a 'Points to Prove' guide for building a strong evidential case against those accused of wildlife and related crimes which includes procedures or inter-agency co-operation. Further prosecutorial capacity is being developed within KWS (EIA, 2016).
- Kenya is party to several Multilateral Environmental Agreements which automatically become part of Kenya law; however their provisions and requirements are rarely considered in wildlife enforcement and prosecution (Weru, 2016)
- Corruption remains a major impediment to effective sentencing in Kenya and manifests itself in various forms, including lost court room files and missing exhibits. However, efforts are being made to address corruption in Kenya.

Investments in enforcement and eradicating demand (EIA, 2016):

- Improved national multi-agency co-operation to tackle wildlife crime; for example, through deploying representatives from the National Police Service as liaison officers at Kenya's Wildlife Management Authority.
- Strengthened anti-poaching capacity through establishment of an inter-agency anti-poaching unit in 2013, hiring of more than 500 new KWS rangers, allocation of Ksh300m (c. USD 2,959,000) for training of additional wardens, setting up a new encrypted radio system for use in national parks and planning for the launch of anti-poaching drones in all national parks.
- Providing training for customs officers in permit systems and identification of wildlife items; and for wildlife enforcement in detection of ivory, crime scene management and preparation of documents for prosecutors.
- Building forensics capacity to assist in prosecutions by establishing a new USD 100m wildlife forensics laboratory in Nairobi, the first of its kind in East Africa, providing a regional hub for analysing DNA samples from seized wildlife specimens.
- Use of canine units to detect ivory and other wildlife products at Nairobi's JKIA and Mombasa Port. The JKIA unit arrests on average two people per week for ivory offences.

- As part of the UNODC-WCO Container Control Programme, establishing a multi-agency Joint Port Control Unit in Mombasa Port to facilitate sharing of information in real time to profile, target and examine containers being used to smuggle wildlife products.
- Kenya is a signatory to the EPI.
- Kenya destroyed 105 tonnes of ivory and 1.3 tonnes of rhino horn from its Government stockpile in a public burn on 30 April 2016. This followed a 21-day amnesty during which Kenyans could hand in illegal wildlife items in their possession.

South Africa

Overview of the legal framework:

Its principal legislation, the National Environmental Management: Biodiversity Act, Act 10 of 2004 (NEMBA) sets forth the general framework for wildlife protection in the country and creates a list of Threatened or Protected Species. Historically, South African provinces regulated nature conservation individually, but since 2004, wildlife management has been regulated at the national level by the NEMBA. In July of 2007, South Africa implemented by the Threatened or Protected Species (TOPS) Regulations under NEMBA, which provide a national standard for protecting threatened or protected species in South Africa, including both black and white rhinos, and also place stricter controls on trophy hunting and other activities causing harm to threatened or protected species (DLA Piper, 2015). Norms and standards were further introduced in 2009 and 2012 to provide added protection of rhinos in particular. South Africa also has a wide range of ancillary legislation, combatting corruption, organised crime, customs violations, and regulating illegal firearms (DLA Piper, 2015). A more specific legal regime for wildlife is established at the Provincial level and a National Environmental Management Protected Areas Act (2003) is in place to regulate protected areas (Cirelli and Morgera, 2010). While a member of CITES since 1975, South Africa did not implement its CITES Regulations until March 2010, but now has an impressive suite of wildlife legislation that is considered to meet requirements for implementation (DLA Piper, 2015). The Department of Environmental Affairs (DEA) has been the de facto lead agency in developing and driving the country's strategic and policy responses to rhino poaching and organised wildlife crime.

Legal deterrents (EIA, 2016):

- All of the above laws set forth stringent penalties, including fines and/or imprisonment, for activities such as the illegal hunting, killing, import, export, possession of a threatened or protected species, or related offences concerning false documentation and permits. Over the last few years the severity of penalty fines for wildlife crimes has increased sharply, largely through amendments to relevant legislation. Fines under the TOPS Regulations now reach a maximum of ZAR ten million (USD 833,333), while other wildlife crime offences can carry jail sentences of five years, or ten years in the case of repeat offenders (DLA Piper, 2015).
- An increase in the number of convictions and stronger sentences has been noted in recent years. Prosecutors have become increasingly adept at levelling all available charges, making South Africa one of the few countries in Africa with a demonstrated record of prosecuting wildlife criminals under its ancillary legislation.
- Although successful prosecutions still significantly lag behind the number of arrests, the number of convictions and the severity of sentences have increased substantially over

the past five years, with some penalties ranging from 20 to 30 years imprisonment (DLA Piper, 2015).

- Following on from cases in which organised criminal syndicates hired Vietnamese and Czech nationals with no hunting experience to legally hunt rhino to procure rhino horn – known as ‘pseudo-hunting’ – South Africa stopped issuing hunting permits to nationals of these countries.
- Corruption is an obstacle in effective enforcement relating to wildlife crime, infecting various levels of government from local police, park rangers, to other Government officers sharing in the profits of the illegal trade (Jayanathan, 2016). While various anti-corruption bodies exist, according to a report published by the Global Initiative in 2016, there is no effective anti-corruption strategy within the police and the DEA is also lacking a specific anti-corruption programme.
- NEMBA 2004 provides the broad framework for wildlife protection in South Africa, but each of the nine provinces in the country has the autonomy to implement the national law with their own legislation. According to a 2016 study, substantial differences exist between provincial wildlife laws thereby creating numerous loopholes which undermine effective law enforcement (Jayanathan, 2016). Significant discrepancies also exist in prosecutorial capacity of different provinces.
- Under NEMBA, the import, export, possession, and breeding or trade of any species listed as a threatened or endangered species, or the products thereof, is allowed as long as a permit is issued for this purpose. This list includes rhinos, elephants, pangolins, lions and leopards.
- Arrests relating to rhino poaching have increased, with 317 made nationwide in 2015 compared to 258 in 2014.
- November 2015, in a law suit filed by two game breeders, a High Court ruling invalidated South Africa’s domestic moratorium on trade in rhino horn. The DEA filed an appeal in the Constitutional Court challenging the High Court decision, however in April 2017 the Constitutional Court held up the decision and set aside the 2009 moratorium. In June 2017 the DEA clarified that the commercial international trade in rhino horn remains prohibited. The domestic trade is subject to the issuance of the relevant permits in terms of the NEMBA, its regulations and applicable provincial legislation.
- With the lifting of the Moratorium, the Department has developed an electronic database to capture extensive details on all individual rhino horns in private and government-owned stockpiles and all newly acquired horns. An audit of government stockpiles is being carried out and through this, the DEA intends to ensure that every horn is tagged with a micro-chip, that DNA testing has been conducted on the horn, and that all horn is measured, weighed, marked and captured on the national database.¹⁴

Investments in enforcement and eradicating demand (EIA, 2016):

- At ZAR5.9bn (approx USD 438.5m), the budget for the Department of Environmental Affairs (DEA) represents less than 1% of total Government expenditure in the financial year 2015–16. Provincial and federal wildlife enforcement agencies are under-funded, with provinces such as Limpopo and Mpumalanga particularly lacking in resources.

¹⁴ See DEA statement at <https://www.environment.gov.za/mediarelease/deaclarifiesrhinohorntrade>

- Investment since 2014 has included training of at least 1,047 border officials in wildlife trade issues and the deployment of canine units. In addition, wildlife enforcement in South Africa receives considerable support from NGOs, particularly through the provision of anti-poaching equipment.
- The multi-agency National Wildlife Crime Reaction Unit (NWCRU) was established within the DEA in 2010 to facilitate information-sharing and coordinate enforcement responses between provinces. However, it has been reported that the functioning of this unit has been hindered due to lack of resources and co-operation from provincial authorities and police.
- The Environmental Management Inspectorate under the DEA plays a key role in wildlife enforcement and can conduct seizures, inspections and arrests, but does not have a prosecutorial mandate.
- Training and awareness-raising programmes aimed at prosecutors and judiciary have included training conducted by the DEA for almost 400 magistrates and prosecutors in 2015.
- The South African Police Service's Directorate of Priority Crime Investigations (informally known as the 'Hawks') has an Endangered Species Section dedicated to gathering intelligence relating to poaching or trade in protected species. In 2015, the Police Service and the National Prosecuting Authority received Certificates of Commendation from the CITES Secretary-General in recognition of joint enforcement operations targeting rhino horn trafficking.
- The National Prosecuting Authority has specialised prosecutors dedicated to prosecuting rhino crimes. Specialist investigative techniques are used in wildlife crime cases. Wildlife DNA is routinely collected at crime scenes and analysed at the University of Pretoria Veterinary Genetics Laboratory, and has been used in successful prosecutions. The laboratory also houses a database of rhino DNA profiles from across southern Africa, including from stockpiles of seized horns.
- South Africa's Financial Intelligence Centre has been involved in investigations into wildlife crime, including the tracing of funds to a key rhino horn trader and subsequent seizure of ZAR190,000 (approximately USD14,120).
- South Africa has signed MoUs with China, Vietnam, Cambodia, Mozambique and Laos focusing on cooperation around wildlife management and enforcement and capacity-building. Similar agreements are proposed with Thailand, Kenya, Botswana and Tanzania.

Tanzania

Overview of the legal framework:

Tanzania is a "Union" between Tanganyica and Zanzibar, and pursuant to its Constitution the environment is a subject reserved to the respective legislative authorities of the two federated states. The main piece of legislation of Tanganyica regarding wildlife is the Wildlife Conservation Act (2009). This Act has replaced the Act of 1974, which was implemented through a number of regulations concerning game reserves, game controlled areas, national game, hunting, closed seasons, suitable weapons, capture of animals, commercial game photography, registration of trophies and dealing in trophies, President's licences, authorised officers' identity cards, compounding of offences, and the Wildlife Protection Fund. They were adopted mainly in the

1970s and remain in force to the extent that they do not conflict with the new principal act (Cirelli and Morgera, 2010). The Environmental Management Act, 2004 provides the framework for sustainable management of the environment and natural resources, expressly considering fauna among “environmental resources”, but without addressing wildlife issues specifically. The Act outlines principles and addresses impact and risk assessments, prevention and control of pollution, waste management, environmental quality standards, public participation and enforcement. The Wildlife Conservation Act envisages the creation of an autonomous Authority similar to those which already exist for National Parks (Tanzania National Parks Authority (TANAPA) and the Ngorongoro Conservation Area Authority (NCAA), for wildlife living outside these areas. A “para-military” “Wildlife Protection Unit” is in place for enforcement purposes. The Act includes among its objectives the involvement of traditional communities as well as of the private sector. The same Act provides for the continuation of the Wildlife Protection Fund established under the previous legislation, including among its objectives the development of communities living adjacent to protected wildlife areas. The Wildlife Conservation Act provides for the creation of wildlife management areas for the specific purpose of community-based wildlife management within village land. Benefit sharing must comply with guidelines which may be issued by the government and be in line with mechanisms of equitable distribution of costs and benefits.

Legal Deterrents (EIA, 2016):

- Although Tanzania’s Wildlife Conservation Act 2009 provides for a minimum of five years imprisonment or a fine for illegal wildlife trade, the equivalent legislation in the autonomous region of Zanzibar stipulates a maximum penalty of six months imprisonment or a fine of USD 185 equivalent. Zanzibar law only applies to native species, therefore excluding the majority of CITES-listed species, including elephants and rhinos. Efforts are reportedly underway to address this major legislative loophole. There is a need to improve enforcement co-operation between mainland Tanzania and Zanzibar.
- In conjunction with NGOs, a programme was launched in May 2016 by the Tanzania Judiciary Training Department and the Tanzania Wildlife Division to improve awareness of wildlife crime among the judiciary. A study conducted by TRAFFIC revealed that the vast majority of the judiciary have received no training on wildlife crime. Furthermore, chronic delays in the court system mean that even the best investigations and prosecutions stand a significant chance of derailing due to the persistent culture of adjournments; a case of ivory smuggling through Zanzibar is in its third year and has yet to start hearing evidence.
- Amendments to Tanzania’s Wildlife Conservation Act 2009 are awaiting submission to parliament. The process has been delayed since 2013.
- According to a recent study, there appears to be confusion among prosecutors and judges themselves regarding the applicable legislative framework (Jayanathan, 2016). The situation is likely exacerbated by the lack of clarity on the status of existing laws and the undue delay in adopting amendments. Access to laws has been cited as a problem within the judiciary and the prosecution, with no central database of enacted laws available.
- While charges have been brought for corruption in at least one case related to ivory trafficking, it is unclear whether relevant ancillary legislation such as anti-money laundering laws are being applied in wildlife trafficking cases.

- There are approximately 40 prosecutors within TANAPA; the Office of The Director of Public Prosecutions has no specialist prosecutors for poaching although 6 work closely with NCTSIU (and that number is expanding) and so presumably are developing some specialist expertise (Jayanathan, 2016).
- Corruption remains a significant challenge in Tanzania.

Investments in enforcement and eradicating demand (EIA, 2016):

- The Tanzanian Wildlife Authority (TAWA) was conceptualised in 2014 for wildlife conservation in areas outside national parks and was reported to have become fully operational in July 2016.
- Government investment since 2014 has included the hiring and training additional wildlife rangers. In addition, several capacity-building initiatives have been implemented with the support of NGOs and foreign governments.
- Canine units have been deployed at key border crossings since January 2016 and, as of June 2016, have led to 26 wildlife seizures, including ivory and pangolin scales.
- Tanzania has not conducted DNA analysis on any of the four large-scale ivory seizures (≥500kg) made since 2010, as per CITES recommendations.
- With the launch in June 2015 of the Multi-Agency Task Team (MATT) led by the Tanzania police force and encompassing the Tanzania Forest Services, the Wildlife Division, Fisheries Division and the Tanzania Intelligence and Security Services, there is clearly an intention to build further inter-agency cooperation and dialogue but concrete deliverables are not currently known (Jayanathan, 2016).
- There appear to be duplication of efforts between the two multi-agency units responsible for combatting wildlife trafficking, namely the National and Transnational Serious Crimes Investigation Unit (NTSCIU), and the MATT. The NTSCIU has made 803 arrests in relation to ivory in 2015, of which 233 led to convictions.
- Efforts to improve international collaboration have included the adoption of an MoU with China, but despite this agreement there does not appear to be strong enforcement cooperation between the two countries. A bilateral agreement was adopted with Mozambique to coordinate management and anti-poaching activities across the Selous-Niassa ecosystem.
- While Tanzania has participated in INTERPOL operations since 2014, there is insufficient evidence available as to whether other proactive regional and international enforcement operations have taken place outside the INTERPOL framework.
- Applying the ICCWC Wildlife and Forest Crime Analytic Toolkit is a positive step but progress made in implementing recommendations is not yet publicly available.
- Tanzania is a co-founder and signatory to the EPI. However, Tanzania actively supports proposals from other countries to enable international legal trade under the CITES framework.
- Based on information provided by the Government in December 2012, Tanzania has stockpiled approximately 137 tonnes of ivory. Tanzania has reportedly conducted an inventory of its ivory stockpile with assistance from the NGO Stop Ivory; however the inventory results have not been made publicly available and it is unclear whether the inventory included all Government-held ivory. Investigations by Tanzania's Auditor

General has documented mismanagement of the ivory stockpile and missing tusks from the stockpile.

Zimbabwe

Overview of the legal framework

The Environmental Management Act (1975, amended in 2001) sets out the general legal framework for environmental matters, addressing environmental institutions, planning, standards and impact assessment. The main legislation for the management of wildlife is the Parks and Wildlife Act (PWA) (Cirelli and Morgera, 2010). The Act confers privileges on owners or occupiers of alienated land as custodians of wildlife. It gives the Appropriate Authority over wildlife to Rural District Councils for communal lands on behalf of local communities (Chibememe et al, 2014). The Communal Land Act (1982) provides for the classification of land in Zimbabwe as Communal Land, and for the alteration of such classification, and seeks to alter and regulate the occupation and use of Communal Land. The National Environment Policy and Strategies of 2009 (NEP) seeks to harmonise all environment-related sectoral policies, and is critical in providing guidance to relevant legal instruments (Chibememe et al, 2014). Zimbabwe has enacted detailed legislation, namely the Parks and Wildlife Act 22/2001, implementing its obligations under CITES and providing for a relatively comprehensive series of offences and penalties governing illegal trade in wildlife.

Legal Deterrents (DLA Piper, 2015):

- Further amendments to the enhanced penalty regime under the PWA in 2011 greatly increased the severity and effectiveness of penalties for poaching. In particular, severe mandatory minimum custodial sentences of twenty years apply to offences involving rhinoceros or other “Specially Protected Animals”, and to illegal trade in ivory. Courts may also impose custodial sentences ranging from one to three years for less serious wildlife offences.
- The PWA provides for the possibility of fines for all wildlife offences and for severe mandatory compensatory payments for offences resulting in the death of an animal.
- Fines for poaching (illegal hunting) under the PWA range from USD 400¹⁵ to USD 500¹⁶ for less serious poaching. Penalties are greater for ivory and trophies from rhinoceros or other specifically protected animals, and include a fine up to USD 5,000¹⁷ (the highest level in Zimbabwe’s standard level of fines) (Mauck, 2013). The standard scale of fines in the Criminal Law code increased in March 2017, with the amendment of the Finance Act¹⁸.

¹⁵ Level seven of the Standard Scale of Fines, see

https://www.unodc.org/res/cld/document/zwe/2006/criminal_law_codification_and_reform_act_html/criminal_law_codification_and_reform_act.pdf

¹⁶ Level eight of the Standard Scale of Fines, see

https://www.unodc.org/res/cld/document/zwe/2006/criminal_law_codification_and_reform_act_html/criminal_law_codification_and_reform_act.pdf

¹⁷ Level fourteen of the Standard Scale of Fines, see

https://www.unodc.org/res/cld/document/zwe/2006/criminal_law_codification_and_reform_act_html/criminal_law_codification_and_reform_act.pdf

¹⁸ See

http://www.veritaszim.net/sites/veritas_d/files/Finance%20Act%2C%202017%20%5BAct%20of%202017%5D.pdf

- The compensatory payments are intended to act as re-imbusement to a landholder for animals poached on that landholder's property. The level of the compensatory payment depends on the species of animals involved and ranges from USD 100 for several species of birds up to USD 120,000 for illegally killing a rhinoceros.
- Compensatory payments system can be applied upon conviction in addition to any criminal penalty imposed, and can be pursued as civil claims against poachers who have managed to evade criminal charges. Moreover, even if individual citizens cannot afford the more severe compensatory payments, such as those that apply to the illegal killing of rhinoceros, these provisions can be used to strip poachers of all assets.
- Even if the highest monetary penalties are applied, they may not be an inadequate deterrent given the considerable profits that are available internationally in the illegal wildlife trade. Compensatory payments are often overlooked by magistrates, even though the PWA provides for their mandatory application upon conviction.
- Unclear whether the custodial sentences provided for under the PWA provide an adequate deterrent to wildlife crime in Zimbabwe. The custodial sentences available are generally lower than the custodial penalties that apply to other less severe crimes in Zimbabwe and, more importantly, there are suggestions that these sentences are inconsistently applied and frequently circumvented by repeat offenders.
- Potential for offenders to avoid mandatory custodial sentences for offences involving “Specially Protected Animals” and ivory if they are able to convince the court that there are “special circumstances” justifying the imposition of a lesser penalty. The fairly wide discretion afforded to courts to avoid imposing mandatory custodial sentences can undermine the deterrent effect of these penalties.
- Money laundering laws, which include provisions of search and seizure, apply to wildlife crime in Zimbabwe.
- Corruption remains a significant barrier to any lasting legislative attempts to address the illegal wildlife trade in Zimbabwe. Zimbabwe has a reasonably developed regulatory framework to address corruption-related offences, including bribery, money laundering and counter-terrorism financing and the proceeds of crime. Zimbabwe has also established an independent anti-corruption agency to combat corruption in Zimbabwe. However, these measures have had little effect to date in reducing corruption.

Investments in enforcement and eradicating demand (DLA Piper, 2015):

- The Zimbabwe Parks and Wildlife Management Authority (ZPWMA), the country's sole legal authority responsible for the protection and conservation of wildlife, lacks the funds and equipment to effectively police Zimbabwe's extensive network of national parks and reserves.
- There have been allegations that the ZPWMA has been forced to raise funds by permitting sport hunting in the country's national parks, even though this is strictly prohibited under the PWA. Wildlife protection and enforcement functions are being performed increasingly by non-government organisations, private sector conservation entities and individuals (DLA Piper, 2015).
- Allegations within the wildlife conservation industry in Zimbabwe that rivalries between different law enforcement agencies and private sector agencies involved in wildlife protection are hampering enforcement efforts.

- Wildlife-related crimes primarily are dealt with by local magistrates, whom are given special jurisdiction and enhanced sentencing powers under the PWA. However, Magistrates Courts' decisions are unreported, and there is no publicly accessible database of criminal offences or prosecutions in these courts. Moreover, under the adverse economic climate in Zimbabwe, which has reduced formal employment and forced many Zimbabweans to resort to criminal activities for sustenance, magistrates may see poaching (particularly bushmeat poaching) as crimes of need. This could lead to the imposition of lighter penalties, which do not serve to deter the escalating poaching crisis in the country.

4. References

Chibememe, G., M. Dhliwayo, G. Edson, S. Mtisi, M. Never and K.O. Laiza (2014) *Review of National Laws & Policies that Support or Undermine Indigenous Peoples and Local Communities: Zimbabwe*, A Report for Natural Justice. <http://naturaljustice.org/wp-content/uploads/2015/09/Zimbabwe-Legal-Review.pdf>

DLA Piper (2015) *Empty Threat 2015: Does the Law Combat Illegal Wildlife Trade?*, review commissioned by The Royal Foundation on behalf of the United for Wildlife partnership. <https://www.dlapiper.com/~media/Files/News/2015/05/IllegalWildlifeTradeReport2015.pdf>

East Africa Legislative Assembly (2016) *Assembly Passes Key Report on Poaching, Urges Governments to Reform Laws, get tough*. East African Legislative Assembly, Arusha, Tanzania: (23 August 2016) <http://www.eala.org/index.php/media/view/assembly-passes-key-report-on-poaching-urges-governments-to-reform-laws-get>

EIA (2016) *Time for Action: End the Criminality and Corruption Fuelling Wildlife Crime*, Environmental Investigation Agency. <https://eia-international.org/wp-content/uploads/EIA-Time-for-Action-FINAL-1.pdf>

Emslie, R.H., T. Milliken, B. Talukdar, S. Ellis, K. Adcock and M.H. Knight (2016) *African and Asian Rhinoceroses – Status, Conservation and Trade*, A report from the IUCN Species Survival Commission (IUCN, SSC) Africa and Asian Rhino Specialist Groups and TRAFFIC to the CITES Secretariat pursuant to Resolution Conf. 9.14 (Rev. COP15). <https://cites.org/sites/default/files/eng/cop/17/WorkingDocs/E-CoP17-68-A5.pdf>

Galster, S. and B. Ebay (2016) 'A Regional Approach to Strengthening Africa's Wildlife Enforcement Framework', *Frontline Review*, No. 2016/01, Freeland.org. http://lusakaagreement.org/wp-content/uploads/2016/03/Frontline-Review_A-Regional-Approach-to-Strengthening-Africas-Wildlife-Enforcement-Framework.pdf

ICCWC (2017) *Implementation of the ICCWC Wildlife and Forest Crime Analytic Toolkit – Summary of progress*, Prepared by the CITES Secretariat and UNODC, updated as of 30 May 2017. https://cites.org/sites/default/files/eng/prog/iccwc/ICCWC_Toolkit_implementation_table_rev30May17-web.pdf

IUCN (2004) *An Introduction to the African Convention on the Conservation of Nature and Natural Resources*, IUCN, Gland, Switzerland and Cambridge, UK. <https://portals.iucn.org/library/sites/library/files/documents/EPLP-056.pdf>

Jayanathan, S. (2016) *Stopping poaching and wildlife trafficking through strengthened laws and improved application: Phase 1: An analysis of Criminal Justice Interventions across African Range States and Proposals for Action*, Stop Ivory and the International Conservation Caucus Foundation (ICCF) Group.

http://www.internationalconservation.org/publications/ICCF_StopIvory_Report.pdf

Mauck, G. (2013) *Wildlife Legislation in Sub-Saharan Africa: Criminal Offences*, Research project commissioned by the Conservation Action Trust (CAT). <https://conservationaction.co.za/wp-content/uploads/2013/11/Wildlife-Legislation-in-SS-Africa-Nov-13.pdf>

Nellemann, C., R. Henriksen, P. Raxter, N. Ash and E. Mrema (Eds) (2014) *The Environmental Crime Crisis – Threats to Sustainable Development from Illegal Exploitation and Trade in Wildlife and Forest Resources*, A UNEP Rapid Response Assessment. United Nations Environment Programme and GRID-Arendal, Nairobi and Arendal, www.grida.no.

Pires, S.F. and W.D. Moreto (2016) *The Illegal Wildlife Trade*, Oxford Handbooks Online. DOI: 10.1093/oxfordhb/9780199935383.013.161

<http://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199935383.001.0001/oxfordhb-9780199935383-e-161>

SADC (2015) *Law Enforcement and Anti-Poaching Strategy 2016 – 2021*, Final, August 2015. http://www.gaborone.diplo.de/contentblob/4715602/Daten/6225475/SADC_LEAP_FINAL.pdf

SADC (Undated) *SADC TFCA Fact File*. SADC.

http://www.sadc.int/files/2514/2122/3333/SADC_TFCA_Fact_Sheetsv_final.pdf

Selier, S. A.J., R. Slotow, A. Blackmore and A. Trouwborst (2016) 'The Legal Challenges of Transboundary Wildlife Management at the Population Level: The Case of a Trilateral Elephant Population in Southern Africa', *Journal of International Wildlife Law & Policy*, 19(2).

<http://www.tandfonline.com/doi/full/10.1080/13880292.2016.1167460?src=recsys#>

The Republic of Burundi, The Republic of Kenya, The Republic of Malawi, The Republic of Mozambique, The Republic of South Sudan, The United Republic of Tanzania, The Republic of Uganda and The Republic of Zambia (2014) *The Arusha Declaration on Regional Conservation and Combating Wildlife/Environmental Crime*.

http://internationalconservation.org/publications/Arusha_Declaration_Regional_Conservation_Combating_Wildlife_Environmental_Crime.pdf

UNEP and CITES (2017) *Strengthening national legal frameworks for the effective implementation of CITES and for combating illegal trade in wildlife*, Workshop For Selected African CITES Parties, Draft Concept Note, UN Environment Sub-regional Office, Abidjan, Côte d'Ivoire, 13 – 14 February 2017.

<https://wedocs.unep.org/bitstream/handle/20.500.11822/14311/Agenda%20-%20Illegal%20Wildlife%20Trade-Abidjan.pdf?sequence=1&isAllowed=y>

Weru, S. (2016) *Wildlife protection and trafficking assessment in Kenya: Drivers and trends of transnational wildlife crime in Kenya and its role as a transit point for trafficked species in East Africa*. TRAFFIC.

http://www.trafficj.org/publication/16_Wildlife_Protection_and_Trafficking_Assessment_Kenya.pdf

Key websites

- ECOLEX: <https://www.ecolex.org/>
- FAOLEX Database: <http://www.fao.org/faolex/en/>

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