



**السيدة DANIA BRUWER ممثلة مديرة المتابعات القضائية
بجمهورية جنوب إفريقيا**

"الممارسات الفضلى في مكافحة الجرائم البيئية"

GOOD PRACTICES IN DEALING WITH ENVIRONMENTAL CRIMES IN SOUTH AFRICA

NATIONAL PROSECUTING AUTHORITY

PRESENTATION TO THE 17TH AFRICA PROSECUTORS ASSOCIATION CONFERENCE

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South Africa



OUTLINE OF PRESENTATION

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3. Utilising racketeering (POCA Act)
4. Enhanced focus on money laundering
5. Effective use of cell phone downloads
6. Adding of conspiracy charges
7. Leading of evidence in aggravation
8. Impact of wildlife crime and the way forward

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Strategic Interventions

- May 2023: Cabinet approved the **National Integrated Strategy to Combat Wildlife Trafficking (NISWCT)**
- Recognises that wildlife trafficking is not purely a conservation and environmental management problem but also a sophisticated form of serious transnational organised crime that is a threat to national security
- Aims to ensure effective investigation, prosecution and adjudication of wildlife trafficking, as a form of transnational organised crime.
- Requires Law Enforcement Agencies (LEAs) to consolidate investigations, improve intelligence initiatives and cooperation to combat IWT.
- Appropriately charge offenders, establish dedicated prosecution and court capacity to focus on wildlife trafficking.

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Coordination between LEAs and NPA

- **National Biodiversity Investigators forum (NBIF)** – all 3 LEA agencies and NPA Nodal point attend. Discuss cases, linkages, challenges and make decisions on formulation of investigating teams to address organised crime both on a Provincial level and Transnational level: Initiate project investigations.
- **Director of Public Prosecutions Working Group (DPP EWG)** - Each office in the 9 Provinces is presented in this group, who serves as nodal points for LEAs; guide investigations and conduct prosecutions from project driven/major investigations.
- **WhatsApp Groups** share real-time information on arrests, identification of accused, outstanding cases and even tracking of suspected vehicles/accused with the DPP EWG to make them aware of cases being brought to court. The DPP EWG WhatsApp Group share case law, challenges, discuss centralisation and inform about accused which have been arrested and cases already enrolled in provinces.

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Utilising racketeering – POCA Act

- Goal is to shift focus as prosecutors from the prosecution of events, the individual acts of illegal activities/crime, to a focus on prosecution of participation in an organization.
- Address organised crime of Provincial groups by centralising the cases to address their criminal activities holistically.
- Guide investigations from LEAs that historically have not done these investigations.
- RSA has 10 enrolled POCA cases linked to rhino/abalone/plant species – includes two cases on illegal export through containers by shipping them to the East, inclusive of front companies, customs and fraud.
- Use POCA on large criminal groups who committed a large number of offences AND to have impact where poaching is not addressed through normal prosecutions
- 2 cases in relation to plants where the poaching in a particular Province is out of control – with only approximately 10 predicate charges

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Case: S v Sauls & Others

- Kingpin convicted on participating in an enterprise (POCA); Corruption X16; Money Laundering X2; Contravention of S44(2) of MLRA - Landing, selling, receiving or possession of Abalone X12; Contravention of Reg 36(1) (b) - Transporting Abalone X10, Money laundering X 2. Sentence: 18 years effective imprisonment.
- DAFF Officials and poachers convicted and sentenced - Accused 1, 2 and 3: 7 years direct. Accused 4 and 5: 4 years direct imprisonment
- The prosecution related to corrupt officials at the time employed by the former Department of Agriculture, Forestry and Fisheries, from whom the accused bought seized abalone being a well-known abalone smuggler. In addition, he supplied cash for the purchase of the abalone as well as to bribe officials. The accused was found in possession of dried abalone (162,6 kg) with an approximate value of R2 324 894.00 abalone in a storage facility.

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Enhanced Focus on Money Laundering

- The value of money laundering charges and how these investigations can uncover a whole network of criminal activity is underestimated.
- NRA rated environmental crime, inclusive of IWT as a high risk for generating proceeds.
- FATF Grey listing forced LEAs and NPA to expand the focus from predicate crimes to include ML
- Established a public-private partnership through the FIC – SAMLIT IWT which provides a secure platform for financial institutions/investigators and prosecutors to discuss/request financial information/financial flows and to fast track the investigations.
- Training for all LEAs and prosecutors, to raise awareness and to improve their money laundering and FIC process knowledge.

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Case: S v M Lekhuleni & 16 others

- During investigation of a murder case, subsequent search and seizure operations were conducted, whereby certain individuals were arrested and found in possession of rhino horns.
- A proactive money laundering investigation was conducted after the NPA's Asset Forfeiture Unit established that the 3 cars on the premises were registered in 3rd parties' names.
- Mr. Lekhuleni is a municipal worker, employed as a waste collector with a salary of R10 000. He used 25 bank accounts to launder the monies emanating from rhino poaching and the selling of rhino horns to the value of R10 million, with R 2,8 million paid to family members of the SA National Parks/SA Police officials.
- **Impact:** In the section of the National Park where the Rangers worked, no poaching incidents since their arrest in 2023.

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Effective Use of Cell phone Downloads

Case: S v D. Lohde and M. Drescher

- Two German nationals were arrested in an undercover operation. Through social media established that Accused were soliciting persons to trade in reptiles. Convicted in one Province on 4 charges ranged from dealing, possession, transport and attempt to export and both were sentenced to pay a fine of R 850 000, suspended on condition that they pay R450 000.00 for conservation purposes.
- Their electronic devices were legally seized and downloaded and analysed. WhatsApp chats, voice notes and photos between Lohde and a RSA was found regarding a 2019 parcel seized at Airport Mail Centre, with 6 Sungazer Lizards.
- They were re-arrested; Accused 1 was sentenced to 6 years imprisonment or R150 000 fine and Accused 2 to 2 years imprisonment or R50 000 fine. They were deported.

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Effective Use of Cell phone Downloads

Case: S v GS van der Westhuizen & 1 other

- Through analysis of Lohde's phone, Accused 1 could be linked with the parcel in 2019 and to a further 2 illegal exports of another 12 Sungazer lizards to Germany and Mexico.
- The WhatsApp communication indicated that Accused 1 received payment through PayPal. Aided by USA Fish and Wildlife Service's attaché, the DFFE Investigator engaged PayPal, who provided the name of Accused 2 as the receiver of the payment from Lohde. The accused received R90 929,32 cumulatively over three months, as per financial flows.
- **Accused 1** convicted on 3 charges relating to illegal export of 18 Sungazer Lizards, their transportation, and making a false declaration in terms of the Customs and Excise Act. Sentenced to fine of R 1 million of which half was suspended
- **Accused 2:** was convicted on 1 count in terms of section 4(b) and 3 counts of section 6 of POCA. Sentenced to 5 years imprisonment (suspended due to personal circumstances) ¹⁰

Adding of Conspiracy Charges

Case: S v Chittiyo & 6 others

- The accused were convicted on one count of conspiracy of theft of rhino horns, unlawful possession of a firearm and ammunition and sentenced: Accused 1: 20 years imprisonment, Accused 2 & 4: 16 years; Accused 5 – 18 & Accused 6: 19 years imprisonment.
- The accused were found travelling in 2 vehicles. In one vehicle a rifle, silencer and ammunition were found wrapped in black refuse bags; they did not have licenses. Ballistic testing established that the rifle had fired the bullets recovered from the illegally hunted and dehorned carcasses of one rhino. Axes, knives, overalls and 10 cellphones were found in both vehicles and R12 350.00 cash.
- SAPS testified on the modus operandi of poachers, how rhinos are killed, dehorned and the 7 poaching incidents, relating to 11 rhinos which were dehorned. Through cell phone tower plotting, the cell phones were plotted near the scene at the time the rhinos were killed.

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Leading of Aggravating Evidence

- **S v Lucia Nxumalo:** Accused arrested at the Airport on her way to Malaysia. Scanners identified that her suitcases contained 12 rhino horns. She was removed from the airplane. DFFE Investigator testified that the activities of a courier cannot be evaluated in isolation, that the horns were linked through DNA to 3 crime scenes, that this was part of organised crime value chain and the human impact of these crimes. The accused was convicted of possession of rhino horns and sentenced to 5 years direct imprisonment.
- **S v Leavemore Tapfumaneyi & B Hondo:** During a police operation the accused was arrested trying to sell a pangolin. The state lead evidence of a Professor who testified about the impact of the offence on the Pangolin population, the modus operandi used by the poachers, the condition under which these animals are kept by the poachers, the crime statistics relevant to this species. The accused was convicted of possession of a pangolin, cruelty to animals and illegal immigration and sentenced to 10 years imprisonment.

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Impact of Wildlife Crime

- Wildlife trafficking, including illegal fishing and logging, is one of the most lucrative criminal activities in the world. It has been estimated that it amounts to between \$69-199 billion per year.
- In 2019, the IPBES estimated that around 1 million animal species and plant species are now threatened with extinction, overexploitation, inclusive through wildlife trafficking being one of the main drivers.
- The 2024 UNODC Wildlife Crime Report notes that virtually all the seizures reported for Africa (19 per cent) were made in the sub-Saharan subregion.
- In terms of global trade flows, a majority of seizures between 2015–2021 were made up of shipments from sub-Saharan Africa and South Asia, based on seizures where the shipping origin was specified.

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The Way Forward

- To formulate an understanding of the different countries' legislative frameworks and how/which species are regulated.
- To have a portal where case law and best practice can be shared.
- A list of official focal points to be contacted for assistance not limited to legal issues, but also to facilitate contact between LEAs.
- To fast track and liaise before and during Mutual Legal Assistance (MLA) requests.
- To share experience and challenges in dealing with transnational organised crime specifically in relation to money laundering and unregulated CITES species.
- To formulate a consolidated Africa response to international reports that would reflect the current challenges and best practices.
- A united approach in participating in the call from the CCPCJ regarding proposals to strengthening the international legal framework for international cooperation to prevent and combat illicit trafficking in wildlife and to support such efforts.