

TRAINING MODULE

WILDLIFE AND CRIMINAL LAW

STRENGTHENING LEGAL MECHANISMS TO COMBAT ILLICIT WILDLIFE TRADE

EXERCISE 1

Mock Trial

- **Nature of the Exercise**
 - Knowledge-reinforcing exercise
 - Group exercise
 - Discussion forum

- **Purpose of the Exercise**
 - To enhance understanding of the various charges available for prosecution in addition to charges under wildlife legislation, as well as suitable sentences and additional orders available on conviction.
 - To promote awareness of the relationship between transnational organised crime and wildlife crime.
 - To develop skills in advancing legal arguments in wildlife related offences and/or awareness of appropriate sentences and additional orders on conviction.

- **Structure of the Exercise**
 - Introduction to exercise (15 minutes)
 - Mock trial (about 2 hours):
 - Phase 1: Preparation before trial (30 minutes)
 - Phase 2: Trial (50 minutes)
 - Phase 3: Sentencing (if conviction is decided, 40 minutes)
 - Discussion (about 45 minutes)

- **Resources**
 - Annex A: Scenario
 - Annex B: Instructions for prosecutors
 - Annex C: Instructions for magistrates/judges
 - Annex D: Instructions for the defence

INSTRUCTIONS FOR THE EDUCATOR

- **Structure of the Exercise:**

- Total recommended duration: 3h00
- Introduction to exercise (15 minutes)
- Phase 1: Preparation before trial (30 minutes)
- Phase 2: Trial (50 minutes)
- Phase 3: Sentencing (if conviction is decided, 40 minutes)
- Discussion on the trial (15 minutes)
- Plenary discussion (30 minutes)

- **Organisation of the exercise:**

- The Educator can arrange the room so that it looks like a criminal court
 - Divide the participants into 4 balanced groups:
 - One group of prosecutors
 - One group of magistrates/judges
 - Two groups of defence lawyers:
 - one group to defend Mr Jones
 - one group to defend Mr Smith
 - Provide each group:
 - a copy of the narrative (Annex A), and
 - a copy of the questions corresponding to their role (Annex B for prosecutors, Annex C for magistrates/judges or Annex D for defence lawyers)
 - Give a brief introduction to the exercise (15 minutes)
 - Facilitate the exercise, which is divided into 3 phases:
 - **PHASE 1:** Preparation before trial: the accused persons have been arrested. Prosecutors will think about appropriate charges they will bring against Mr Jones and Mr Smith. The two accused persons decided to be represented in this case so the attorneys will start gathering elements to build their defence statement.

[30 minutes]
 - **PHASE 2:** Trial: the prosecutors and defence attorneys will present their statement before the court. The magistrates/judges will then retire to deliberate on the case.

[50 minutes]
 - **PHASE 3:** Sentencing: if the magistrates/judges decided to convict the accused persons, the prosecutors and defence attorney will argue on the existence of mitigating and aggravating circumstances to the case.

[40 minutes]
- Total: 2h00
- Facilitate a brief discussion on the trial (15 minutes)
 - Facilitate a plenary discussion on wildlife crime and its legal and judicial responses (30 minutes)

- **Facilitation of the mock trial:**

- The participants are now divided in small groups
- The Educator will facilitate the exercise and rotate him/herself equitably between the groups with a view to answering queries and stimulating discussion during the small group preparation work
- The Educator can facilitate the mock trial or ask the magistrates/judges to appoint a President of the formation of the court.

- **PHASE 1:** Preparation before trial

- Small group work: The accused persons, Mr Jones and Mr Smith, have been arrested. The prosecutors need to decide which charges to bring against each of them while the defence lawyers will familiarise themselves with the facts of the case and gather elements to defend their client.

[10 minutes]

- Prosecutors announce the charges brought against the accused persons.

[5 minutes]

- Small group work: The prosecutors and defence lawyers will think about elements they need to prove and evidence they need to bring to the court to support their case. They will then elaborate their accusation/defence statement. The magistrates/judges will think about the elements they will need to identify during the trial for the offences to be constituted.

[15 minutes]

Total: 30 minutes

- **PHASE 2:** Trial

- Presentation:

- Each prosecutor present one of the charges brought against the accused person(s);
- One or several representative(s) from the group of defence lawyers for Mr Jones present(s) the defence statement to the court;
- One or several representatives from the group of defence lawyers for Mr Smith present(s) the defence statement to the court.

[3 x 10 minutes]

- Deliberation: After cross-examining the parties' statements and evidence, the magistrates/judges retire to deliberate.

[10 minutes]

- Verdict: The President of the formation will read to the court their verdict on conviction/acquittal of the accused person(s).

[10 minutes]

Total: 50 minutes

- **PHASE 3:** Sentencing (if one or both of the accused persons were found guilty by the magistrates/judges)

- Group work: The prosecution and defence lawyers will respectively argue in favor of severe or lenient penalties and associated orders.

The judges will think about which minimum and maximum penalty and which orders exist for the offences.

[10 minutes]

- Presentation: One representative of the prosecutors and one representation from each group of defence lawyers will present mitigating and aggravating circumstances to the case.

[3 x 5 minutes]

- Deliberation: The magistrates/judges will retire to decide on an appropriate penalty for each accused person they found guilty.

[5 minutes]

- Opinion: The President of the formation will read to the court the magistrates/judges' opinion.

[10 minutes]

Total: 40 minutes

GRAND TOTAL: 2H30

ANNEX A - SCENARIO

During a routine inspection customs officials in Hong Kong Harbour note that the contents of a container, shipped from Dar-es-Salaam, Tanzania, consists of old, seemingly worthless furniture. The waybill describes the contents simply as "furniture". This looks suspicious, and they measure the inside of the container, only to find that the inside is half a meter shorter than the outside length of the container. They find a hidden compartment in the back of the container, in which they find 7 rhino horns, apparently destined for Vietnam. The combined weight of the rhino horns is 13.5 kg.

The Tanzanian authorities send over a team of investigators to Hong Kong, who obtains statements from the custom officials and brings back the rhino horn to Tanzania, where an expert confirms that it is the horns of Black Rhino ("*Diceros bicornus*"). The only information they can obtain on the sender of the container is that it was sent by a certain Mr Johnny Jones, whose address was provided as the Polana Hotel in Dar-es-Salaam. A visit to the Polana Hotel reveals that there was indeed such a person staying there at the time of the sending of the container, but that he is a South African citizen who has returned to South Africa in the mean time.

In a further joint investigation with the South African authorities forensic examination shows that the seven rhino horns originates from four rhino that were killed in the Kruger National Park (South Africa) in four separate incidents over a period of three months before the consignment was exported from Dar-es-Salaam. Ballistic tests show that all four rhino were killed with the same firearm. The South African authorities arrest Mr Johnny Jones at his home in Johannesburg and eventually he is extradited to Tanzania.

In a seemingly unrelated incident the Tanzanian authorities arrest a Tanzanian citizen, Mr Sammy Smith, while he is trying to sell a rhino horn to an authorised undercover policeman. On searching his house, they find a high calibre firearm, and take samples from his luxury vehicle's boot of a substance that appears to be blood. Further ballistic tests show that this firearm was used in the killing of the four rhino of which the horns were exported to Hong Kong, and that samples of the blood found in the vehicle's boot corresponds to the DNA of three of the killed rhino. The firearm as well as the luxury vehicle is seized by the Tanzanian authorities.

After obtaining the necessary authorisations both the bank accounts of Mr Jones and Mr Smith are obtained. It does not show any transactions between Mr Jones and Mr Smith, but four instances of huge amounts of money that was transferred from the account of Mr Jones to the bank account of a certain Mrs Angelina Anderson. The

amounts, in each case, were transferred a few days after the individual shooting of the four rhino.

A warrant is obtained to search Mrs Anderson's house in Dar-es-Salaam and during the search the police confiscate Mrs Anderson's personal computer. In her e-mails they find communication with both Mr Jones as well as Mr Smith. The e-mails refers to meetings to discuss "the transaction" and also refers to a price per kilogram, corresponding to the black market price of rhino horn. After obtaining the necessary authorisation to obtain Mrs Anderson's bank accounts, it shows the four payments made into her account by Mr Jones, as well as four payments made to Mr Smith by Mrs Anderson shortly after.

Mrs Anderson enters into a plea and sentence agreement with the State, in terms of which she pleads guilty to all charges and agrees to testify against Mr Jones and Mr Smith. In her testimony she confirms that she acted as "facilitator" of these transactions and bought the rhino horn from Mr Smith and sold it to Mr Jones. All these transactions took place in Dar-es-Salaam. Four of such transactions took place over a period of three months - in three cases there were two horns involved, and in one case only one horn.

For the purpose of the exercise, accept that -

- there were no permits or authorisations for any of the activities performed by the accused.
- all evidence was obtained in a legally defensive manner and is therefore admissible in court.
- the value of rhino horn and poaching figures provided are accurate for 2014/2015.
- both the accused are around 40 years old, have no previous convictions, are not married and do not have any children;
- both the accused have their own businesses and derives a generous income from their respective businesses;
- the current black market value of rhino horn is USD 60 000/kg;
- poaching of rhino (both black and white rhino) in Kruger National Park escalated to more than 800 rhino's in the previous year;
- a forensic investigation shows that Mr Smith made a profit of USD112 000 from the sale of the rhino horn and that Mr Jones was paid a deposit of USD 300 000 USD (50% of the selling price) by the Vietnamese buyers, while he paid Mrs Anderson USD 224 000 for the horns.

ANNEX B – INSTRUCTIONS FOR PROSECUTORS

The accused persons, Mr Jones and Mr Smith, have been arrested. You need to decide which charges to bring against each of them and argue your case to convince the judges of the guiltiness of the suspects. If this trial results in a conviction, you will need to present your statement on sentencing.

PHASE 1: PREPARATION BEFORE TRIAL

- 1) Based on the above scenario what charges will you bring against Mr Jones and Mr Smith? It is not necessary to refer to specific provisions in an Act, and charges can simply be formulated as e.g. "illegal hunting of rhino" or "corruption".

[Group work: 10 minutes / Presentation: 5 minutes]

- 2) The prosecutors must argue their case on each count in front of the magistrates/judges:
 - a. For each charge, what elements do you need to prove?
 - b. What evidence will you need to bring?
 - c. Which evidence do you have against the accused person?

[Group work: 15 minutes]

PHASE 2: TRIAL

- 3) Each charge will be presented to the court by a different prosecutor from the group.

[Presentation: 10 minutes]

After cross-examining the statements and evidence of both the prosecutors and defence attorneys, the judges will decide whether they find the accused persons guilty as charged. If they convict them, you will need to present argument to the magistrates/judges during the sentencing phase.

PHASE 3: SENTENCING

- 4) If the case results in conviction, prosecutors must argue in aggravation of sentence as well as additional orders available on conviction:
 - a. Which are the minimum and maximum penalties attached to each charge?
 - b. Which aggravating factors can be brought against each accused person?
 - c. If the law provide for an option, would you argue for imprisonment and fine alternatively or concurrently? Is there alternative penalties?

[Group work: 10 minutes / Presentation: 5 minutes]

ANNEX C – INSTRUCTIONS FOR MAGISTRATES/JUDGES

You have an upcoming case seemingly related to wildlife crime. Using the facts already reported to you, start preparing the case.

PHASE 1: PREPARATION BEFORE TRIAL

1) The prosecutors are collecting relevant elements to decide which are the most appropriate charges against Mr Smith and Mr Jones. You can start to think about the case:

- a. What charges could be brought against Mr Jones and Mr Smith?
- b. Which court will have jurisdiction to try the case?

[Group work: 10 minutes]

2) The prosecutors informed the magistrates/judges and attorneys of the charges against the accused persons.

- a. For each charge, which elements will need to be identified?
- b. What evidence will you need to look at?

[Group work: 15 minutes]

PHASE 2: TRIAL

3) The prosecutors as well as the attorneys will present their case to you.

[Presentation: 3 x 10 minutes]

After those statements, you will retire to deliberate in order to decide whether the accused persons are convicted. The prosecutors, defence attorneys and accused persons will be expecting your verdict.

[Deliberation: 10 minutes / Verdict: 10 minutes]

PHASE 3: SENTENCING

4) If the case results in conviction, you must then decide on an appropriate sentence. You will hear the prosecutors and defence attorney on aggravating and mitigating circumstances as well as adaptation of the penalty. While prosecutors and defence lawyers are preparing their statement, you can think about the minimum and maximum penalties which apply to the case and the associated orders which could apply.

[Group work: 10 minutes / Presentation: 3 x 5 minutes
Deliberation: 5 minutes / Opinion: 10 minutes]

ANNEX D – INSTRUCTIONS FOR DEFENCE LAWYERS

Your client has been arrested. He is at the police station and is suspected of having participated to the procurement of rhino horns and their shipment to Asia. After having learnt about the facts of the case, start preparing the defence of your client.

PHASE 1: PREPARATION BEFORE TRIAL

- 1) Based on the above scenario:
 - a. Which charges are likely to be brought by the prosecution against your client?
 - b. Which elements can you use to defend your client?

[Group work: 10 minutes]

- 2) After hearing the charges brought by the prosecution against your client, build a defence statement:
 - a. Which are the elements that will need to be proven to convict your client?
 - b. What elements can you cast doubt into?
 - c. What is the standard of proof for those offences?
 - d. Are there procedural errors you can exploit?

[Group work: 15 minutes]

PHASE 2: TRIAL

- 3) The prosecutors will argue their case before the court. You will then have 10 minutes to present your defence statement to the judges.

[Presentation: 10 minutes]

After cross-examining the statements and evidence of both the prosecutors and defence attorneys, the judges will decide whether they find the accused persons guilty as charged. If they convict them, you will need to present mitigating circumstances to the magistrates/judges during the sentencing phase.

PHASE 3: SENTENCING

- 4) If the case results in conviction, you will need to plead to obtain a lenient sentence for your client:
 - a. Which are the minimum and maximum penalties attached to each charge?
 - b. Which mitigating circumstances can you bring?
 - c. Could you argue alternative penalties to avoid an imprisonment penalty or a fine to your client?

[Group work: 10 minutes / Presentation: 5 minutes]