Module 1

Concepts and Elements of Wildlife Crime
Overview of this module

- Introduction
- International and Regional Dimension
- Elements of Criminal Liability
- Wildlife Offences
- Relationship with Other Crimes
INTRODUCTION

Defining wildlife crime
Compliance approaches
Importance
Motivation ... and implications
Defining wildlife crime

What is wildlife crime?

- Conduct
- Criminalised
- Wildlife
- exploitation
- possession
- trade
- import and export
Compliance approaches

Compliance
- adherence to legal requirement
  - Voluntary compliance
  - State incentives

Enforcement
- response to non-compliance
  - Administrative
  - Civil
  - Criminal
Importance of addressing wildlife crime

Why is wildlife crime important?

**Practical reasons**
- Economical and medical
- Scientific and ecological
- Aesthetic and recreational

**Moral and ethical reasons**

**Protection of human rights**

**Rule of law**
Importance of addressing wildlife crime

Purpose of prosecution?

- Punishment
- Prevention
- Incarceration
- Taking away the means
- Deterrence
“Wildlife crime is in essence a crime of greed”

Motivation for committing wildlife crimes and implications for criminal enforcement

Practical consequences
- highly organised crime syndicates
- multinational
- deliberate and intentional acts

Practical Solutions
- Specialised investigation and prosecution
- International cooperation
- Appropriate sentencing
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THE INTERNATIONAL AND REGIONAL DIMENSION

Relevance
International vs. National
MEAs
Regional agreements
Crime-related agreements
International cooperation
Relevance of international law

“Environmental crime often involves harm of a global nature, for the manifestations of environmental crime can be realized far beyond the crime site in both space and time. The crimes themselves may be done at an international level. Thus, international co-operation and consistent enforcement everywhere are necessary to combat environmental crime”

Advocacy Memorandum: Arguments for Prosecutors of Environmental Crime, Interpol
Role of International Law

International Law and National Law

self-implementing
- automatically enforceable in national courts

non-self-implementing
- requires implementing legislation

Obligations on countries

- harmonize offences and penalties
- measures for international cooperation
Multilateral Environmental Agreements

Convention on Biological Diversity (CBD)

Convention on the Protection of World Cultural and Natural Heritage (World Heritage Convention)

Wildlife related International Agreements


Convention on the Conservation of Migratory Species of Wild Animals (Bonn Convention or CMS)
Convention on the International Trade of Endangered Species

Appendix I
- no commercial trade
  - African Elephant

Appendix II
- limited commercial trade
  - export + import permit
  - Hippopotamus

Appendix III
- export permit + certificate of origin
  - Civet
“95.- (1) Any trade in violation of CITES provisions is prohibited under this Act and all specimens illegally traded shall be confiscated.”

_Tanzania, Wildlife Conservation Act 2009_
Regional Environmental Agreements

Regional agreements

African Convention on the Conservation of Nature and Natural Resources

Bern Convention on the Conservation of European Wildlife

Noumea Convention
Agreements on Aspects of Crime

Global agreements on aspects of crime

UN Convention against Transnational Organized Crime (UNTOC)

UN Convention Against Corruption (UNCC)

Regional agreements on aspects of crime

Co-operation agreements
International assistance in combatting wildlife crime

Informal methods
- person-to-person
- not admissible in court

Formal methods
- agency-to-agency
- mutual assistance treaty

INTERPOL
Regional and international initiatives and networks

- ASEAN-WEN
- SAWEN
- Lusaka Agreement
- CAWEN
- ICCWC (CITES, INTERPOL, UNODC, World Bank, World Customs Organisation)
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ASPECTS AND ELEMENTS OF CRIMINAL LIABILITY

What is criminal law?
Criminal liability
Liability of corporations
Criminal law

provides...

- elements of criminal offences
- extension/limitation of liability
- general defences
- burden of proof
- penalties
- criminal procedure

jurisdiction

witnesses

evidence
Criminal law

found in...

- single statute
- set of laws
- delegated legislation/regulations
- case law
Criminal liability

wrongful conduct

- voluntary
- act or omission
- legally recognized crime
- unlawful (not justified)

culpable mental state (*mens rea*)

- intention
- negligence/recklessness
- strict liability
Criminal liability

proving *mens rea*

subjective

infer from factual circumstances

knowledge of law

*ignorantia juris non excusat*

expected to know?
Liability of corporations

Why prosecute corporations?

Offences motivated by financial gains

Corporations ordered to pay fines

Change corporate behaviour and culture
“Any person who is or was a director of a firm at the time of the commission by that firm of an offence ... shall himself or herself be guilty of the said offence and liable on conviction to the penalty specified in the relevant law... if the offence in question resulted from the failure of the director to take all reasonable steps that were necessary under the circumstances to prevent the commission of the offence: Provided that proof of the said offence by the firm shall constitute prima facie evidence that the director is guilty under this subsection”. [emphasis added]
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WILDLIFE OFFENCES

- Introduction
- Illegal exploitation
- Protected areas
- Illegal possession
- Illegal trade
- Illegal export/import
- Inchoate offences
Introduction

Domestic wildlife law covers:

- Ownership over wildlife
- Designation of government departments
- Protected areas
- Licensing systems for hunting, trade, possession, etc.
- Trade in wildlife or wildlife products
- Importing/exporting of wildlife products
- Species-specific provisions
- Offences for violations
Offences related to illegal exploitation of wildlife

**typical offences**

- hunting, killing, catching, gathering without permit
- hunting, killing, catching, gathering of protected species
- hunting, killing, catching, gathering in a protected area
- illegal methods of hunting, killing, catching, gathering
- hunting, killing, catching, gathering out of season
Offences related to illegal exploitation of wildlife

No person shall hunt any wild animal specified in Schedule I, II, III and IV except as provided under section 11 and section 12...

“hunting”, with its grammatical variations and cognate expressions, includes,
(a) capturing, killing, poisoning, snaring, and trapping of any wild animal and every attempt to do so ...
(c) injuring or destroying or taking any part of the body of such animal, or in the case of wild birds and reptiles, damaging the eggs of such birds and reptiles, or disturbing the eggs or nests of such birds or reptiles.

Section 9 of the Indian Wildlife Protection Act, 1972
(1) A person may not carry out a restricted activity involving a specimen of a listed threatened or protected species without a permit issued in terms of this Act.

"restricted activity", in relation to a specimen of a listed threatened or protected species, means-

(i) hunting, catching, capturing or killing any living specimen of a listed threatened or protected species by any means, method or device whatsoever, including searching, pursuing, driving, lying in wait, luring, alluring, discharging a missile or injuring with intent to hunt, catch, capture or kill any such specimen;
(ii) gathering, collecting or plucking any specimen of a listed threatened or protected species;
(iii) picking parts of, or cutting, chopping off, uprooting, damaging or destroying, any specimen of a listed threatened or protected species.

"listed threatened or protected species" means a species listed as such by the Minister in the Government Gazette;

South African National Environmental Management: Biodiversity Act 10 of 2004
Offences related to illegal exploitation of wildlife

Art. 65. The use of the following means and methods shall be prohibited at hunting:
1. fire arms ...
2. traps, loops, nets, glues and pits (ditches), if they are applied for non selective hunting;
3. poisonous or anaesthetic substances, as well as baits with such substances;
4. (amend. SG 79/02) electric sound reproducing devices and artificial sources of light, as well as facilities for lighting the target;
5. mirrors and other blinding subjects;
6. electric appliances, able to kill or stun;
7. live animals, used as bait;
8. explosives, gas or smoke;
9. appliances for night shooting ...
10. motor vehicles;
11. aviation means;

Offences relating to protected areas

**typical offences**

- Hunting within a protected area
- Entry into a protected area
- Possession of firearms/prohibited gear within a protected area
- Disturbance of habitat within a protected area
Offences relating to protected areas

Subject to subsection(2), no person shall, in any wildlife area
(a) hunt or fish,
(b) be in possession of any firearm, slingshot, bow and arrow, shot other than non-toxic shot or any instrument that can be used for the purpose of hunting

...hunt means to chase, pursue, worry, follow after or on the trail of, stalk or lie in wait for the purpose of taking animals, and includes molesting, trapping, attempting to trap or shooting at animals, whether or not the animal is then or subsequently captured, killed or injured...

Section 3 of the Canadian Wildlife Area Regulations (C.R.C., c. 1609)
Offences relating to the illegal possession of wildlife and wildlife products

**typical offences**

- keeping, possession and control
- illegal processing
- illegal transport
Any person who keeps or is found in possession of a wildlife trophy ...or manufactures any item from a trophy without a permit issued under this Act....commits an offence...

where "trophy" means "any wild species alive or dead and any bone, claw, egg, feather, hoof, skin, tooth, tusk or other durable portion whatsoever of that animal whether processed, added to or changed by the work of man or not, which is recognizable as such"

section 95 of the Kenyan Wildlife Conservation and Management Act 47 of 2013
Offences relating to the illegal possession of wildlife and wildlife products

No person shall transport game or game meat unless he is the holder of a permit, written authority, or written permission granted and issued in terms of this Ordinance....

Any person who contravenes or fails to comply with any provision of this Ordinance...shall be guilty of an offence

where "game" means "specially protected game, protected game, hunttable game, hunttable game birds and exotic game"

section 48(1)(a), read with section 86 of the Namibian Nature Conservation Ordinance, 1975
Proving possession

- Physical possession ("corpus")
- Intention to possess ("animus")

Result: POSSESSION
Offences relating to illegal trade of wildlife and wildlife products

Typical offences

- selling
- offering for sale
- supplying
- buying
- bartering
- trading
Offences relating to illegal trade of wildlife and wildlife products

Any person who sells, buys, transfers, transports, accepts ....any trophy in contravention of any of the provisions of this Part....commits an offence ....

where "trophy" means "any wild species alive or dead and any bone, claw, egg, feather, hoof, skin, tooth, tusk or other durable portion whatsoever of that animal whether processed, added to or changed by the work of man or not, which is recognizable as such"

section 80(1) & (4), 81(1) and 84(1) of the Tanzanian Wildlife Conservation Act 2009
Offences relating to illegal export and import of wildlife or wildlife products

**typical offences**

- import/export without permit or certificate
- import/export of protected species
- import/export of illegally sourced product
- abuse of or failure to comply with licensing system
Subject to subsection (2) no person shall, except with a permit issued by the authorised officer and subject to such conditions including the payment of such fees as may be prescribed-

(c) export from Mauritius or import into Mauritius any prescribed species of wildlife or any product thereof,

(d) assist in, or facilitate, the export from Mauritius or import into Mauritius of any prescribed species of wildlife or any product thereof unless he has ascertained that a permit has been issued by the authorised officer in respect of such export or import.

Section 17(1) of the Wildlife and National Parks Act 1993 of Mauritius
“Lacey Act” Provision

It is unlawful for any person . . . (2) to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce—(A) any fish or wildlife taken, possessed, transported, or sold in violation of any law or regulation of any State or in violation of any foreign law.

US Lacey Act
Inchoate and ancillary offences

inchoate offences

Attempt
Conspiracy
Incitement
Aiding and abetting
Procuring

why prosecute inchoate offences?

Organizer/leader of criminal activity may not be the one holding the gun...
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Relationship with other crimes

Introduction
Commercial crime
Organized crime
Introduction

Wildlife

- Protected areas
- Firearms and ammunition
- Customs and excise
- Narcotics
- Health
- Commercial and organised
Relationship with commercial crimes

relevant commercial offences

Forgery
Fraud
Money laundering
Tax evasion
Corruption
Relationship with organized crimes

relevant organized crime offences

- participation in an organized criminal group ("racketeering")

- active part
- knowing contribution

transnational
Relationship with organized crimes

why charge under organized crime offence?

- criminalize person not holding gun
- emphasis on criminal enterprise, not specific incident
- responsibility on all members of syndicate
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CONCLUSION

Why a criminal law approach?

What makes criminal law effective?
Why criminal law?

- Effective investigation/prosecution
- Criminal sanctions
  - Deterrent value
- Liability for damages
  - Loss of proceeds
  - Removing the incentive to commit such crimes
- Powers of enforcement officers and investigators
  - Successful prosecutions
  - Break up organised syndicates
What makes criminal law effective?

**strong legislation**
- provides powers to enforce/investigate
- creates offences covering all transgressions
- provides for adequate penalties

**effective detection, enforcement, investigation**

**prosecutors have awareness, knowledge, expertise**

**appropriate and public sentences**
Thank You!