

Penalties For Poaching

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SINCE 2012, after more than two decades of low numbers of poaching incidents involving elephant and rhino, Namibia has experienced an alarming increase in the poaching of these two species.

The Ministry of Environment and Tourism recently reported that a total of 245 elephants were poached between 2014 and 2017, while a total of 241 rhino were poached between 2012 and 2017.

The increase in wildlife crime is not restricted to Namibia. In 2016, the Great Elephant Census estimated that about 27 000 wild elephants are poached every year in Africa, primarily for their ivory. The census also reports that about 352 000 elephants are left in Africa – which means the elephant population will soon be decimated if poaching continues at the current rate.

According to the World Wildlife Fund, approximately 4 800 black rhino and 20 000 white rhino are left in Africa. Over the past few years, poachers killed the last wild rhinos in one of our regional neighbours, Mozambique.

International crime syndicate networks fuel the demand for illegal wildlife products destined mainly for the East Asian black market. Wildlife crime now ranks amongst trafficking in drugs, arms and human beings in terms of profitability. Not only is wildlife crime an economic crime, it also exploits local people for personal gain. According to Global Financial Integrity, the annual retail value of the illegal global wildlife trade ranges between US\$5 billion (N\$66 billion) and \$23 billion (N\$300 billion).

Per kilo, the retail revenues for ivory or rhino horn can be equal to or greater than the equivalent amount of cocaine or heroin, yet the legal penalties for poaching were up to now considerably more lenient than the punishments for dealing in such drugs. In developing countries, wildlife trafficking robs local communities of much-needed revenue streams and has negative impacts on the environment, security, and the rule of law – while little of the profit goes into the domestic economy.

One of the actions taken by the Namibian authorities to deal with the increase in poaching was to amend the penalty provisions under the Nature Conservation Ordinance 4 of 1975. These amendments, which came into force in June this year, substantially increase the penalties for the illegal hunting of elephant or rhino, from a maximum fine of N\$200 000 to a maximum fine of N\$25 million. The potential imprisonment which can be imposed along with the fine has been increased from 20 to 25 years.

The penalties for illegal hunting of any other "specially protected game" (which includes zebra, giraffe, klipspringer, impala and hippo) have been increased from a maximum fine of N\$20 000 to a maximum fine of N\$10 million, with the maximum potential imprisonment being raised from 5 years to 10 years. These penalties apply only for first convictions. In the case of subsequent convictions for hunting elephant, rhino or specially protected game, the maximum fine goes up to N\$50 million, and can be combined with imprisonment for up to 40 years.

The penalties for illegal hunting of "protected game" have also been increased, to somewhat lesser levels. This category of game covers a wide range of animals, including eland, blue wildebeest, steenbok, dik-dik, duiker and many other bucks. It also includes the big cats (lion, leopard and cheetah) as well as many reptiles (such as pythons, crocodiles and tortoises) and scaly anteaters, better known as pangolins.

The third category of game is "hunnable game". Here also, the penalties for illegal hunting have been increased. This category includes bushpig, buffalo, oryx, kudu, springbok and warthog.

Increased penalties have also been set for illegal hunting at night.

Another important new provision provides that a foreign national convicted of any offence under the ordinance will be automatically declared a prohibited immigrant and deported.

The Nature Conservation Ordinance does not deal with offences for the possession and trade of controlled wildlife products. These are covered by the Controlled Wildlife Products and Trade Act 9 of 2008, which still contains penalties widely viewed as being woefully inadequate in light of the value of the illegal trade in animal products such as elephant tusks, rhino horn and pangolin scales.

However, these penalties are currently under review, with a view to similarly bring them in line with the current international situation, and the dire threat to Namibia's protected species.

While the increase in penalties has raised a few eyebrows, out of fears that they might unfairly discriminate against poor Namibians, it needs to be kept in mind that the amendments merely set maximum penalties. Magistrates still have discretion when sentencing offenders to impose a penalty which is appropriate in light of all the circumstances, from a very small fine up to the maximum amount.

Of course, anyone can avoid the threat of punishment entirely by refusing to take part in the destruction of Namibia's most emblematic wildlife species.

International conventions have been put in place to protect threatened animals, but they can be effective only if the nations which are parties – like Namibia – make wildlife crime a serious crime in their own national legislation.

Wildlife crime robs the nation and future generations of their natural heritage. The recent law reforms should help to prevent that tragic outcome.

** ProBono is a monthly column by the Legal Assistance Centre designed to inform the public about Namibian law on various topics. You can request information on a specific legal topic by sending an SMS to 081-600-0098. Note that we will not be able to give advice on specific cases in this column, only general legal information.*