



Wildlife Crime and the Law

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by [Helge Denker](#)

Page no: 1



BUSTED ... Five suspects in possession of four elephant tusks were successfully apprehended by the police in the Zambezi region who have made successful arrests after receiving a tip-off from a community member about their whereabouts. Photo: Contributed/File

“THEY just get out on bail and do it again” – this is a widespread public sentiment regarding crime in Namibia, and wildlife crime in particular.

There are many misconceptions about law enforcement and the judiciary. Bail is just one of them. At the end of 2019, the number of suspects out on bail amounted to less than 20% for all crimes related to high-value wildlife (pangolin, elephant rhinos).

The law is designed to protect the fundamental rights and values of society. These include the protection of the country's biodiversity and the right to a healthy environment. They also include the right to human dignity, the right to personal liberty, and the presumption of innocence until proven guilty – all of which are entrenched in the Namibian Constitution.

Importantly, the trial – not the arrest – of an accused is the central component of ensuring the fundamental values of society are protected. Arrests are often celebrated as a victory (and the granting of bail is often seen as a failure), yet an arrest is only one of the means of ensuring that a person accused of a crime will stand trial for the charges being faced.

A suspect does not need to be arrested to stand trial. The suspect can also be served with a court summons, ordering him or her to appear in court. In situations where a summons is deemed ineffective, the suspect is arrested and charged with the crime.

Depending on the circumstances of the crime, the suspect may then be remanded in custody until the trial is held, or released on bail.

Bail is not specifically covered in the Namibian Constitution, but is governed by the Criminal Procedure Act. In this country an arrested suspect has the right to apply for bail, but the onus is on the applicant. Bail consists of two aspects: a bail amount that must be paid, and a set of bail conditions that must be adhered to.

Many people see bail as a form of punishment directly related to the crime. It is not. Both the bail amount and the related conditions are intended to ensure that the accused will not attempt to evade justice, but will stand trial. If an accused absconds, the bail amount is forfeited to the state and a new warrant of arrest is issued. The accused becomes a fugitive from the law.

The higher the risk of absconding, the higher the bail amount and the stricter the bail conditions will be. Both will be directly linked to the personal circumstances of the accused. A person with significant financial means facing a serious charge, and thus the likelihood of a lengthy prison sentence, might consider running from justice.

A foreign national may attempt to skip the country. All such factors are considered. Bail conditions usually include travel restrictions and the need to report to a police station at regular intervals.

A member of a rural community who has taken to poaching to feed his family and escape poverty may not have the financial means to pay a high bail amount, but may also not pose a significant risk of absconding. A wealthy international businessman acting as a wildlife crime kingpin is in a completely different position.

Other strong arguments for opposing bail are the risks of an accused interfering with ongoing investigations, or committing new crimes. Wildlife crime always consists of a network of poachers, dealers and abettors. A suspect released on bail may well jeopardise the identification and arrest of other suspects – or get involved in further crimes.

Investigators need to provide valid reasons for opposing bail to prosecutors, who in turn present these during bail applications. Proactive collaboration between investigators and prosecutors are thus important.

While complex investigations may take a long time, it is in the interest of justice – for the accused and the state – to finalise cases as soon as possible. If a case is simple and all investigations have been completed, it can even go straight to trial without a bail process.

This should be the aim of prosecutors during all straightforward cases, to address the challenge of processing the high number of wildlife crime cases in Namibia.

Over 440 wildlife crime cases were registered during 2019. About 40% of these were related to the three main high-value targets. At the end of 2019, 72% of suspects accused of crimes related to high-value species were in custody awaiting trial, 8% had been convicted and 15% were out on bail. The remainder had been acquitted, or the charges had been

withdrawn. Less than 1% of all accused had managed to abscond.

The statistics clearly show that the percentage of suspects out on bail is actually small, and that very few abscond. Conversely, the number of finalised cases is also low. Wildlife crime is obviously placing an additional burden on the Namibian judicial system, which is already faced with a great variety of challenges. Many of Namibia's prisons are perpetually overcrowded, sometimes exceeding their designed capacity by over 80%.

Improvements can undoubtedly be made to the judicial system. Yet crime is a societal issue. Judicial refinements will only be effective in the long term if they go hand in hand with broader reforms. The granting or refusal of bail is an important, but very small aspect of Namibia's justice system.

** Helge Denker is a Namibian freelance writer-naturalist based in Windhoek. He also compiles information on conservation issues and the environment for various applications. He currently works with the Ministry of Environment, Forestry and Tourism's intelligence and investigation unit and the Police Protected Resources Division on wildlife crime cases.*