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On the case: Identifying corruption by reviewing wildlife crime court cases in southern Africa

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Key takeaways

» Corruption is a key enabler of the illegal wildlife trade and its effects are not widely understood, and so reviewing past cases can offer a way to explore this relationship.

» While red flags of potential corruption were identified, the review of closed wildlife crime court cases alone was not sufficient to identify confirmed instances of corruption.

» To obtain useable information, court case reviews must be complemented with additional information obtained from press articles, relevant experts, and members of the criminal justice system. Specifically, these consultations can help ascertain the barriers that prevent the identification, investigation, and charging of corruption offences in wildlife crime court cases.

» Where feasible and appropriate, practitioners should consider partnering with relevant government agencies to ensure access to court records, and to feed back to those agencies any suspicions of corrupt practices worthy of further investigation.

Corruption, wildlife crime[1], and court cases

Corruption is one of the most important facilitators of the illegal wildlife trade (IWT), and its effects can be seen in every stage of the IWT chain (WWF 2015; Zain 2020). IWT often involves sophisticated, well-funded, and organized criminal groups that can operate particularly successfully by involving officials in corruption. Those officials facilitate the IWT by abusing their entrusted power, either due to pressure or to privately gain from the crime. Catching and prosecuting lower-level poachers or dealers, without targeting higher-level individuals, is therefore likely to have minimal impact against IWT (Prinsloo et al. 2021; Moneron et al. 2020). Thoroughly investigating corruption in a wildlife crime court case, on the other hand, can potentially identify higher-level individuals for investigation, arrest, conviction, and appropriate sentencing, disrupting organized criminal groups to a greater extent (UNODC 2020).

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[1] Wildlife crime refers to biodiversity and poaching related criminal offences as described by law, thus distinguished from IWT, which includes the poaching or other taking of protected or managed species and the illegal trade in wildlife and their related parts and products (UNODC 2016).

For agencies and organizations addressing IWT, reviewing historical cases can be useful for establishing a baseline of knowledge on court performance that can inform the design of interventions to build the capacity of investigators, prosecutors, and the judiciary (Jayanathan 2017). To target the higher-level organizers and financiers of IWT, investigators and prosecutors require knowledge and skills in identifying corruption, investigating connections to wildlife crimes, and developing and presenting dockets (official law enforcement records) with admissible and sound evidence. TRAFFIC is supporting members of the criminal justice system through interventions to build such capacity.

Court case data collection, analysis, and monitoring also have the potential to inform interventions at the finer scale (court case level). This information can be used to identify missed opportunities for possible investigation of corrupt practices. In general, wildlife crime court cases can reveal the following information:

» the suspects involved, their nationalities and their occupations;

» bail applications and pleas;

» the officials involved in progressing the case (such as police officer, investigating officer, prosecutor, and magistrate);

» details of the wildlife crime event (hereafter referred to as "event") revealed during the trial;

» the offences committed, and the charges laid;

» details of the wildlife species and products involved; and

» the case's outcome and sentences, including the relevant fines, penalties, and prison terms imposed.

This practice note draws lessons from two applications of the court case review method, namely: (1) to identify missed opportunities to identify corruption in specific cases, and (2) to identify barriers for the investigation and charging of corrupt practices. Although focused on identifying potential corruption

Key concepts

In the context of this practice note:

A **wildlife crime event** involves the commission of criminal acts in contravention of domestic wildlife protection legislation such as unlawful hunting and, unlawful possession of wildlife products.

The **judiciary** is the branch of government endowed with the authority to interpret and apply the law, adjudicate legal disputes, and otherwise administer justice. This includes judges and magistrates.

The **criminal justice system** is the network of government agencies, such as the police, courts, and the corrections system, intended to manage accused and convicted criminals.

Practitioners refer to any individuals interested in better understanding wildlife crime and more specifically corruption. Examples include researchers from wildlife NGOs, private legal firms, law enforcement, expert facilitators for interventions, and academics.

through examining court cases, the approach is similar to techniques used to identify financial crime as demonstrated in research conducted by TRAFFIC, World Wildlife Fund (WWF), and the Royal United Services Institute (RUSI) (Reid and Keatinge 2020) in Box 1.

Corruption can be present in wildlife crime court cases in two main ways: (1) corruption may have directly facilitated the crime and (2) corruption can subvert the law enforcement and judicial proceedings. This practice note focuses mainly on the former, namely where corrupt practices facilitate the wildlife crime. See Outhwaite et al. (in prep) which provides a review of court case monitoring as a method for identifying corruption during judicial proceedings.

The cases

For this practice note, TRAFFIC utilized closed wildlife crime court case records (referred to as 'records' hereafter) identified from its internal database of illegal wildlife trade incidents (records of identifiable, specific events). Through the Combating Wildlife Crime in the Namibia and Kavango Zambezi Area Project (CWCP), TRAFFIC physically scanned court case records directly from courts in Botswana, Namibia, and Zambia. The records were examined for the presence of corruption-related charges and/or any "red flag" indicators of potential corruption. The red flag indicators used in this analysis included:

» events involving any officials (e.g., police, army, investigation unit, magistrate);

» police/military uniforms used;

» permits authorized illegally;

» events involving a wildlife ranger;

» reference to a bribe;

» an individual is arrested at their place of work (i.e., lodge worker arrested in connection with poaching at the lodge); and

» open-source media reports citing that corruption was involved.

A total of 146 records were reviewed because they met the following criteria: (1) the record was from Botswana, Namibia, and Zambia; and (2) the cases contained charges of wildlife crime offences. None of these contained formal charges of corruption offences, but five were flagged by TRAFFIC as suspected of involving corruption (Table 1). All five records mentioned the involvement of former or current public officials, suspected of either facilitating the crime or as a target for attempted bribery. Four involved high-value wildlife products (elephant ivory and rhino horn), while one involved an unlawfully hunted buffalo.

Table 1. Details of court case records flagged for indicators of potential corruption

Year	Country	Details	Species/Product	Red Flag Indicator
2013	Zambia	Three suspects found in illegal possession of a prescribed trophy[2] without a certificate of ownership as required by the Zambian Wildlife Act of 2015	Elephant ivory (19 kg)	One accused was a serving police officer
2014	Namibia	Three suspects found in illegal possession of controlled wildlife products	14 rhino horns and one leopard skin	A bribe was offered to a Chief Inspector to remove an accused off the charge sheet
2018	Botswana	Two suspects arrested and charged for hunting buffalo in a game reserve without a license	One buffalo unlawfully hunted	One accused was a Water Affairs Department employee and used the department's vehicle
2018	Namibia	Eight suspects arrested and charged with hunting of specially protected game, possession of a controlled wildlife product, and possession of a firearm without a license	Four elephants unlawfully hunted inside a national park	One accused was a former police officer
2018	Zambia	Five suspects found in illegal possession of a prescribed trophy without a certificate of ownership as required by the Zambian Wildlife Act of 2015	Two rhino horn pieces (7 kg)	Two of the accused were local magistrates; Ministry of Tourism spokesperson said, "We strongly suspect that this was an inside job involving one of our officers"

Court records are generally stored in paper format and consist of testimonies and evidence reports and can consist of tens of hundreds of pages. The problem associated with only having paper records is that some documents can become misplaced or are indecipherable thus limiting their usefulness. To overcome this shortcoming during this research, TRAFFIC decided to broaden its search to include all IWT incidents reported, including open-source news articles for the three countries, contained in TRAFFIC's Wildlife Trade Information System (WiTIS) database. Of the 805 incidents detected in this manner, only 16 (including the original five) contained indications of corruption, although no official corruption charges had been laid. Only one out of 16 included what might be considered corruption amongst high-level officials (a Minister of Defense and an army commander). This incident had been identified through news channels in which it was reported that officers investigating the case had been intimidated and most reassigned to other places of work.

From this wider search, those suspected of involvement in corruption in the 16 incidents appear to typically be lower-level officials. According to Nakpodia and Adegbite (2018), this is unsurprising as higher-level officials are reportedly better connected politically and can avoid investigations, highlighting the difficulty of investigating corruption at higher levels. Nonetheless, no examples of corruption-specific charges against suspected officials at any rank were found, even in the wider search.

Given that TRAFFIC only obtains a portion of the wildlife crime court cases and open-source media reports, specifically those that were present at the time of the data collection, these results are not necessarily representative of all countries and wildlife crime corruption events. However, the findings produced by the analysis of the sample are still relevant and worth further exploration, as described below.

Barriers to identifying, investigating, and charging corruption

"The nature of corruption itself is like a secret type of crime, so by its very nature it is difficult to detect." – former magistrate

Reviewing court case records with a corruption lens in isolation did not yield much, due to the absence of corruption charges and lack of information in the records. If corruption offences are not charged, any practitioner would find it difficult to identify and interpret details on corruption involved in the event.

To gain more perspective on the nature of corruption challenges in IWT cases, the authors interviewed seven experts in the legal field, including a private criminal lawyer, legal assistants from an NGO, and government officials from Namibia and Zambia.[3] Based on these discussions, the following barriers to identifying and charging corruption, potentially explaining the absence of charges, were identified.

1. The legal definition of corruption

Definitions of corruption did not always cover all the practices encountered in the case or were imprecise and open to interpretations. Different people might therefore interpret different practices as "corrupt," and a seemingly corrupt practice may or may not be an offence as defined by law. Existing legal definitions for the three countries can be found in Box 2.

In an IWT case, proving corruption to a legally defined standard requires strong evidence that is often not easy or possible to collect and present in court. For example, in one of the Zambian cases, two magistrates from a lower court were convicted of the unlawful possession of two rhino horns. This case was flagged in TRAFFIC's database because the two suspects were public officials. However, just because they are employed by the state does not

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[2] "Prescribed trophy" means any ivory or rhinoceros horn or any other trophy prescribed by regulations made under section eighty-six (Prescribed trophies) of the Zambian Wildlife Act of 2015.

mean that an abuse of office or power was involved in the crime. In accordance with Zambia's definition, evidence is needed to show that the suspects abused their position in office or powers for the advantage or benefit for themselves or another person. The offenders were not charged with corruption offences.

In another case, a Namibian legal expert believed corruption must have facilitated certain wildlife crimes, for example, events involving high volumes of illegal wildlife products and where products crossed international borders. The expert believed that a public official had to have some level of involvement in facilitating these large-scale trans-boundary crimes (also highlighted in Zain 2020).

2. The absence of timely evidence

Many criminal justice systems in southern Africa are overburdened with increasing caseloads and low capacity for officials to process them. For example, the Oxpecker Centre for Investigative Journalism cites an example of this seen in Namibia especially as it relates to cases involving rhino poaching. The reality is that many officials have no option but to prioritize some cases over others. Many officials may also have to prioritize charges considering legal time constraints, for example, a person arrested without a warrant should be brought before a magistrate's court as soon as possible and cannot be detained in custody without being charged with an offence for a period longer than 24 hours in Zambia[5] and 48 hours in Namibia[6] and Botswana.[7] Officials may decide to proceed with charges for which evidence is already present, such as those of the unlawful possession of wildlife products, as opposed to including

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[3] Details of interviewees are confidential to protect their identities.

[4] "For the purposes of this Part, "valuable consideration" means (a) any gift, benefit, loan, fee, reward or commission consisting of money or of any valuable security or of other property or interest in property of any description; (b) any office, employment or contract; (c) any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part; (d) any other service or favour including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted; (e) the exercise or forbearance from the exercise of any right or any power or duty; and (£) any offer, undertaking or promise whether conditional or unconditional, of any valuable consideration within the meaning of the provisions of any of the proceeding paragraphs."

[5] Section 33 of Zambia's Criminal Procedure Code Act (Chapter 88).

[6] Section 50 of Namibia's Criminal Procedure Act 51 of 1977.

[7] Section 36 of Botswana's Criminal Procedure and Evidence Act, 1939 (as of 2005).

charges based on suspected corruption. This issue has been noted for financial investigations of IWT cases in West Africa (e.g., Reid and Williams 2021), with the authors describing the need to refer cases to investigative judges so that proceedings can be suspended to allow time for appropriate investigations.

3. Organizational silos

Investigating and charging corruption may rely on capacities or authorities that are siloed between agencies. For example, in Zambia, for any cases where charges of corruption might need to be filed, the Anti-Corruption Commission (ACC) should be involved, as the ACC must be involved not only in the charging but also in the investigation of the case. The Department of National Parks and Wildlife (DNPW) are limited to investigating and charging crimes as defined under the Zambia Wildlife Act of 2015. Given this, DNPW investigating officers are required to contact the ACC as soon as they suspect or have evidence of corruption. While this process is meant to encourage communication and collaboration between departments, one legal assistant noted cases where the respective ACC officials were unknown to DNPW investigators and not readily available in the time needed. The ACC will often prioritize cases deemed of greater public interest or having a higher level of severity/seriousness, such as murder or sexual offences. However, court monitors acknowledged that these collaborations have sometimes worked for non-wildlife crime cases, with corruption charges laid and further investigations taking place.

4. Corruption in court proceedings

This practice note focused on cases where corruption may have facilitated the crime. However, legal experts also mentioned corruption in court proceedings. Court officials and members of the criminal justice system themselves might be bribed or threatened to influence court proceedings and outcomes, and this might lead to the absence or withdrawal of charges. Corrupt practices may manifest as deliberately misplaced or missing court documents, a lack of

response upon request of further information from officials, lengthy court delays, or blatant political involvement or interference (see Outhwaite et al., in press, for a focus on court corruption). For example, in a Namibian case, a Chief Inspector disclosed in court to being offered a bribe. The purpose of the bribe was to remove an accused from the charge sheet.

Lessons learned

Reviewing wildlife crime court case records with a corruption lens had many limitations, one of the main weaknesses being that the reasons for the absence of corruption charges were not stipulated. As such, barriers against charging and investigating corruption could not be identified.

The following lessons may help guide future practitioners that intend to review wildlife crime court case records with a corruption lens. These lessons include:

Additional background information is key

Reviewing wildlife crime court case records in isolation can only tell part of the story. Additional context and knowledge from the legal experts helped to ensure that any consequences of covert corruption were described correctly. Information obtained from offender surveys or other law enforcement officials might also provide additional background information. As well, many of the factors limiting the investigation of corruption (described in the previous section) are unlikely to be identified in the record alone. Therefore, further, deeper research into the criminal justice system and its processes will be needed.

Understand the realities for the members of the criminal justice system

Investigating and charging corrupt acts are difficult, particularly when placed alongside additional pressures such as court case backlogs and legal time constraints. Understanding these additional pressures can identify where support/training will be most effective.

Indicators of potential corruption are not the same as proof of actual corruption

The presence of red flags does not confirm that a corrupt act occurred and should be treated carefully. Understanding the background and looking for multiple red flags can assist in determining what level of concern and scrutiny is required.

An absence of indicators of potential corruption does not mean actual corruption was absent

The activity focused on cases where a red flag was present. However, the lack of a red flag in a case does not necessarily mean that the crime has not been facilitated by corruption.

Recommendations

If case reviews are being considered as part of a strategy to identify how corruption may affect IWT or weaknesses in identifying corruption by authorities, practitioners should consider the following:

1. Partnering with a government agency

A good working relationship and partnership with at least one relevant government agency, either the national prosecution authority or the judiciary, can improve access to information. Permission to access multiple court case records is often needed. The results of any case review should be fed back to relevant agencies, highlighting how corruption manifested and if there were reasonable suspicions of the presence of corrupt practices worthy of further investigation. This will also help practitioners understand the realities for members of the justice system and recognize where red flags (see below) result from potential corruption or just a simple lack of capacity.

2. Working with NGOs

Involving experts from different backgrounds can provide new perspectives and help improve one's understanding of the case. Although we primarily sought input from legal experts, perspectives from members of a wildlife crime NGO offered further insights into the case in Zambia involving local magistrates. Collaboration with NGOs may be especially needed where corruption in the court system itself is suspected. Some NGOs may have collected court case records already in which case it is recommended to partner with them to avoid duplicating data collection efforts, which otherwise will consume a large amount of time, especially if physically scanning cases still needs to take place.

3. Storing Records in an Internal Database

Information from records must be extracted into filterable fields (such as date and country of event) and its analysis may be time-consuming especially when red flags are not easily identifiable. A well-designed database for upload, storage, selection, and download is important for practitioners to be able to swiftly identify possible cases for review based on set criteria. The individuals managing the database need to be trained in data entry and extraction. They also need to be cognizant of corruption matters or have detailed instructions to ensure they can assign red flags to cases correctly and in a standardized format.

4. Expertise

Practitioners did not require significant legal expertise to conduct this activity. However, a basic understanding of the countries' laws and court proceedings helped ensure that discussions with experts were efficient and productive.

5. Red Flags

A list of red flag indicators of potentially corrupt practices can help find possible missed opportunities for charging corruption. TRAFFIC recommends creating a list of red flags comprising potentially corrupt practices as informed by the local context, relevant legislation, and research. All practitioners involved in the data entry of wildlife crime court cases must be aware of these red flags (see list of red flags under "the cases" section). Additional red flags as revealed by the experts include the following:

» events involving a large quantity of a commodity;

» events where the commodity has crossed international borders; and

» a note attached to the court document cites corruption.

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[5] This commission was dissolved in August 2021.

It should be emphasized, however, that the presence of a red flag does not necessarily indicate that a corrupt act has occurred. Indicators of potential corruption are not the same as proof of actual corruption; rather, they are useful for identifying where additional scrutiny is required.

6. Complementary Activities

The practice of reviewing case records should be complemented by other activities that may provide further information regarding how the crime transpired. For this practice note, additional knowledge from the legal experts and interviewees helped us understand the contexts behind cases. Open-source news articles, as well, could provide additional information to court case records. Another example is case reconstruction or back-casting (where a crime is reconstructed using the available sources of information, in this situation court case records). Such techniques might identify specific points where corruption needed to occur for the offence to have been committed.

Concluding remarks

Reviewing wildlife crime court cases with a corruption lens will be challenging in the absence of corruption charges. Engaging with experts from the criminal justice system improved the authors' understanding of why corruption was not being investigated or charged. Identifying these barriers will inform practitioners in their efforts to support members of the criminal justice system in overcoming these challenges. The views of these members on and experiences with corruption in events are crucial towards better understanding this complicated issue and developing court case guidance.

Acknowledgements

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