



# WILDLIFE CRIME IN ZIMBABWE

**POINTS TO PROVE: A GUIDE FOR PROSECUTORS AND INVESTIGATORS ON CASE BUILDING, INCLUDING SAMPLE CHARGES, GUIDANCE ON THE 'DECISION TO CHARGE' AND SENTENCING GUIDELINES**



# WILDLIFE CRIME IN ZIMBABWE

POINTS TO PROVE: A GUIDE FOR PROSECUTORS AND INVESTIGATORS  
ON CASE BUILDING, INCLUDING SAMPLE CHARGES, GUIDANCE ON THE  
'DECISION TO CHARGE' AND SENTENCING GUIDELINES

DEVELOPED WITH SUPPORT FROM:



Zimbabwe Parks and  
Wildlife Management Authority



SPACE FOR  
**GIANTS**  
[www.spaceforgiants.org](http://www.spaceforgiants.org)



# CONTENTS

## NPA FOREWORD

### 1. INTRODUCTION

### 2. OFFENCES RELATED TO HUNTING UNDER THE PARKS AND WILDLIFE ACT AND RELEVANT LEGISLATION

### 3. RELEVANT HUNTING OFFENCES UNDER THE TRAPPING OF ANIMALS ACT CHAPTER 20:21

### 4. POSSIBLE OFFENCES UNDER THE PREVENTION OF CRUELTY TO ANIMALS ACT CHAPTER 19:09

### 5. OFFENCES RELATING TO TROPHIES AND BUSHMEAT

- Raw Ivory
- Manufactured Ivory
- General Manufacturing offences under the PWA
- Failure to surrender a Trophy
- Bushmeat offences under the PWA
- Purchase offences under the PWA

### 6. OFFENCES RELATING TO FISH AND AQUATIC PLANTS UNDER THE PWA

### 7. POSSIBLE OFFENCES UNDER THE ENVIRONMENTAL MANAGEMENT ACT CHAPTER 20:27 i.e POISONING

### 8. OFFENCES RELATING TO PLANTS UNDER THE PWA AND UNDER THE FOREST ACT CHAPTER 19:05

### 9. RELEVANT FIREARM OFFENCES

### 10. OFFENCES UNDER THE MONEY LAUNDERING AND PROCEEDS OF CRIME ACT CHAPTER 9:24

### 11. MISCELLANEOUS OFFENCES

**12. THE DECISION TO CHARGE**

**13. STANDARD OPERATING PROCEDURES ON INVESTIGATION AND PROSECUTION OF WILDLIFE CRIMES**

**14. GROUNDS FOR OPPOSITION OF BAIL**

**15. GUIDANCE ON EXPERT EVIDENCE**

**16. SENTENCING GUIDANCE**

**ANNEX 1 - LEVEL OF FINES**

**ANNEX 2 - STATUTORY INSTRUMENTS 56 AND 57 OF 2012**

**ANNEX 3 - CHARGE SHEET SPECIMEN**

**ANNEX 4 - LIST OF SPECCIALY PROTECTED ANIMALS**



Telephone: 263-4-780950, 780933

Fax: 263-4-773247

Email: npa@npa.gov.zw



The National Prosecuting Authority  
Corner House Building  
Cnr Leopold Takawira St and  
Samora Machel Ave  
P Bag 7714  
Causeway  
Harare

27 February 2019

## **RE: FOREWORD FROM THE NATIONAL PROSECUTING AUTHORITY**

Wildlife crime continues to be a scourge against our natural heritage of which Zimbabwe is rightfully proud. As the criminal elements involved in committing crimes against our natural resources continue to devise new means of violating our laws, we, as the entities responsible for protection of our wildlife and natural resources must continue to evolve in our efforts to meet the challenge. With increasing global concern about the state of the world's natural resources, the National Prosecution Authority takes the issue of wildlife and environmental crime extremely seriously.

This document, for the first time designed by criminal trial lawyers for criminal trial lawyers, explicitly sets out the standards that all prosecutors apply to all criminal cases, and identifies the relevant 'points to prove' to meet the high threshold demanded regarding the decision on whether or not to charge. Clearly articulated herein, the decision to charge is one that must be treated with the utmost gravity and attention to detail. All prosecutors are required to apply this test impartially, objectively and independently and only in doing so can we ensure that the right people are prosecuted for offences that properly reflect the criminality involved.

Accordingly this toolkit identifies alternative legislation that would apply to some wildlife offences, such as legislation applicable to money laundering, firearms and corruption. Further, this toolkit offers guidance on issues that have posed difficulties to prosecutors and the judiciary alike – issues such as bail, expert evidence, exhibit handling, inter-agency cooperation, identification evidence and sentencing. Finally, ancillary powers are clearly set out herein, ancillary powers that enable the forfeiture of the proceeds of illicit activity, a tool that must be utilized more and more if cartels are to be truly deterred from offending in Zimbabwe.

My particular thanks go to our prosecutors and investigators and the parks and wildlife authority who were involved in developing this toolkit. I also wish to acknowledge our partners who supported the development of this

bespoke and practical tool, *Speak out for Animals, Space for Giants*, the European Commission and the United Nations Office of Drugs and Crime.

Accordingly, I am proud to issue this toolkit and commend it to all prosecutors, investigators and judiciary involved in the handling of wildlife crime in the hope that it will enhance the response of our national authorities to the threats posed by criminals who would see our natural heritage destroyed.



# THE DECISION TO CHARGE

The foundations required for a decision to charge is applicable to all agencies with powers of prosecution: it is the bedrock of any prosecution and it is essential that all agencies holding this important power should apply the same standard, consistently and transparently.

The decision to charge is based on two types of tests. One is the “Full Code Test” usually applied where the investigation is complete or where the prosecutor is satisfied that all the key elements of the offence are established through the evidence collected thus far. The second is the “Threshold Test” where there is insufficient evidence to establish all of the necessary ‘points to prove’ but circumstances justifies the making of an immediate charging decision.

**IT IS ESSENTIAL THAT INVESTIGATORS UNDERSTAND THIS TEST AND APPLY IT TO THEIR INVESTIGATIONS PRIOR TO SEEKING A CHARGING DECISION.**

**IT IS ALSO ESSENTIAL THAT PROSECUTORS RECORD THE REASONS FOR THEIR DECISION TO CHARGE AND KEEP THE CASE UNDER CONTINUOUS REVIEW.**

The ‘points to prove’ approach contained herein can assist prosecutors in writing their review decisions. For full guidance on making the decision to charge, see further into this Guidance.

# OFFENCES RELATED TO HUNTING UNDER THE PARKS AND WILDLIFE ACT AND OTHER RELEVANT LEGISLATION

Always consider if immigration offences are applicable.

<p><b>s24 Prohibited actions relating to plants, fish or animals in a national park e.g. hunting.</b></p> <p>Penalty found in s24(2) is a fine not exceeding level 7- AND/OR Max 2-years imprisonment</p> <p>For any specially protected animals under the 6th Schedule refer to s45</p>	
POINTS TO PROVE	ANCILLARY POWERS
<p>Date and location and identity of the accused</p> <p>That the location is within a national park – See Schedule 1: Chizarira, Gonarezhou, Matusadona, Chimanimani, Mana Pools, Kazuma Pan, Hwange, Victoria Falls (A and B), Zambezi, Rhodes Nyanga and Rhodes Matapos</p> <p>Identify the animal/fish species/plant or nest, subject to the charge</p> <p>That the accused, whilst in a national park,</p> <ol style="list-style-type: none"> <li>Picked a plant, or</li> <li>Hunted an animal or destroyed a nest, or</li> <li>Sold an animal or part of an animal which had been hunted or died or had been removed from a national park, or</li> <li>Sold a fish that had been caught in that national park, or</li> <li>Sold a plant picked from that national park.</li> </ol> <p>OR The accused conveyed into that national park a weapon, explosive or a prescribed article</p> <p>OR The accused conveyed or allowed into the national park, an animal including a domestic or domesticated animal</p> <p>OR the accused fished in the waters of that national park. And in all cases, the accused acted without a permit or in breach of any regulations prescribed to govern that activity. – see presumptions under s97 in ‘notes’ below.</p>	<p>s106 Parks and Wildlife Act: Upon conviction, anything used in commission of the offence will be forfeited to the State. This can include tents, vehicles, aircrafts, boats or vehicles. There is explicit reference to s24 offences.</p> <p>s62 of the CPEA: Upon conviction, forfeiture or any article, weapon, instrument used in the commission of the offence.</p> <p>s62(2) CPEA: – even if found ‘not guilty’, anything ‘intrinsically unlawful’ may be forfeited to the State.</p> <p>s104 Parks and Wildlife Act – payment of any amount to compensate for the loss of an animal, plant or fish. The Minister shall issue a schedule of amounts to be imposed - <b>S.I 56 OF 2012 (Parks and Wildlife [Payment for Hunting of Animals and Fish]</b></p>



**Evidence:** *likely to include but not limited to:* Eyewitness evidence; a statement from the department of national parks confirming the status of the area as a national park (Geo-location) a statement from the arresting officer including interview and evidence of first response from the accused. This should also include the actual exhibit of the plant, fish, nest or animal in issue and photographic evidence of the same. See sections 98 and 101 for powers of stop, search, inspection, arrest and detention.

Not all aspects of this offence require the accused's presence within the national park – for offences of sale, it is a matter of linking the species to a particular national park, not the accused. Evidence as to any representations made by the accused regarding any sale should be addressed in witness statements. Consider obtaining geo-location data /cell site evidence mined from the suspect's phone. Expert evidence as to the nature of the species may also be required. There is also need for evidence that the accused lacked a permit or reference be made of an applicable presumption under s.97 of the Act.

**Notes:** The presumptions under s.97 are very helpful. In particular:

97(1) Possession of any animal, fish, meat, trophy of a freshly killed animal – presumption that the person had hunted or caught such animal or fish.

97(5) Possession of a freshly picked 'specially protected indigenous plant' – presume he acquired it in contravention of the Act.

97(7) The burden of proving authority to do any of the acts specified under section 24 shall be upon the accused.

97(10) The presence of any live animal or fish in a fixed place of business shall be presumed to have been acquired for the purposes of sale.

97(11) Where the accused person is found NEAR a national park, the prosecution can assume the offence to have been committed inside that national park.

Hunt means (a) to kill, injure, shoot at or capture (b) with intent to kill, injure, shoot at or capture, to willingly disturb or molest by any method; or (c) with intent to kill, injure, shoot at or capture, to lie in wait for, follow or search for

To pick includes to: cut, take, gather, pluck, uproot, break, remove, damage or destroy

<b>CHARGE COUNT ONE</b>	<b>CONTRAVENTION OF SECTION 24 (1) OF THE PARKS AND WILDLIFE ACT CHAPTER [20:14]</b> picking a plant,/ fishing/hunting/destroying a nest/removing/selling [delete as appropriate] any animal/plant in a National Park, without authority
<b>PARTICULARS OF OFFENCE</b>	<p><b>[Name of the accused(s)]</b> on or about the <b>[date]</b>, whilst in a national park, namely <b>[identify the relevant park]</b></p> <p>a) picked a plant namely <b>[identify plant species and quantity]</b> therein, without lawful authority.</p> <p>b) hunted wildlife namely <b>[identify species/quantity]</b> therein, without lawful authority;</p> <p>c) destroyed the nest of a wildlife species therein, without authority</p> <p>d) fished in the waters of that national park without authority.</p> <p><b>[Delete a) b) c) or d) as appropriate].</b></p>

<b>CHARGE COUNT ONE</b>	<b>CONTRAVENTION OF SECTION 24 (1) OF THE PARKS AND WILDLIFE ACT CHAPTER [20:14]</b> Removing/ selling [delete as appropriate] any animal/plant/ fish [delete as appropriate] originating from a national park.
<b>PARTICULARS OF OFFENCE</b>	<b>[Name of the accused(s)]</b> on or about the <b>[date]</b> , engaged in the sale of a) an animal or part of animal without authority b) fish that had been caught within a national park c) plants that had been picked in a national park. <b>[Delete a) b) or c) as appropriate]</b>

  

<b>CHARGE COUNT ONE</b>	<b>CONTRAVENTION OF SECTION 24 (1) OF THE PARKS AND WILDLIFE ACT CHAPTER [20:14]</b> Introducing or conveying prohibited items into a national park.
<b>PARTICULARS OF OFFENCE</b>	<b>[Name of the accused(s)]</b> on or about the <b>[date]</b> , without authority, conveyed into a national park, namely <b>[identify the park]</b> , weapons /explosives/domestic animals/domesticated animals, <b>[delete as appropriate and identify the explosives/ weapon or animals and the quantity if relevant]</b>

## FOR RHINOS, PANGOLINS AND SPECIALLY PROTECTED ANIMALS & THEIR TROPHIES.

### **s45 Hunting/Possession/Sale of specially protected animals or their trophies/meat without a permit.**

If its a specially protected animal under the 6th Schedule the penalty is found in s 45(2)  
- a fine not exceeding level 8 AND/OR MAX 3years imprisonment.

If its a Rhinoceros or any trophy of rhinoceros OR Ivory as listed in s128(1)(a & b)  
the penalty is found in s128(1)(b)(i & ii) - Mandatory sentence of 9 years.

For repeat offenders its 11 years

- See the case of Mhango and Others v The State HMA 33-19, CA 23 & 26/18, MSVP894-96/17 at page 5 and 6.

POINTS TO PROVE	ANCILLARY POWERS
<p>Date and location</p> <p>Identity of the accused</p> <p>Identify the species and quantity</p> <p>Confirmation that the species is a 'specially protected animal' under Schedule 6 of the Act.</p> <p>The accused either:</p> <ol style="list-style-type: none"> <li>Hunted that animal OR</li> <li>Had that live animal in his possession OR</li> <li>Had in his possession the trophy or meat of that animal OR</li> <li>Was engaged in the sale or disposal of that animal or trophy or meat of that animal</li> </ol> <p>The absence of a permit issued under s46 of the Act.</p>	<p>s106 Parks and Wildlife Act: Upon conviction, anything used in commission of the offence will be forfeited to the State. This can include tents, vehicles, aircrafts, boats or vehicles. There is explicit reference to s24 offences.</p> <p>s62 of the CPEA: Upon conviction, forfeiture or any article, weapon, instrument used in the commission of the offence.</p> <p>s62(2) CPEA: – even if found 'not guilty', anything 'intrinsically unlawful' may be forfeited to the State.</p> <p>s104 Parks and Wildlife Act – payment of any amount to compensate for the loss of an animal, plant or fish. The Minister shall issue a schedule of amounts to be imposed - <b>S.I 56 OF 2012 (Parks and Wildlife [Payment for Hunting of Animals and Fish]</b></p>
<p><b>Evidence:</b> <i>likely to include but not limited to:</i> Eyewitness evidence; a statement from the arresting officer; confirmation from the Parks Authority that the species is a specially protected species – this may require expert evidence particularly where it is just the 'meat' recovered. The animal or animal product in issue should also be produced as an exhibit, as well as photographic evidence of the same. Identification/ date/time evidence relating to the accused should also be produced either in form of a witness statement or photographic or video evidence. Evidence of possession may relate to actual or constructive possession. Direct evidence of hunting or circumstantial evidence may be necessary to prove accused's intention to hunt the specially protected animal or sale of the animal products where not actually caught in the act e.g. evidence of a hide or weaponry. However, see the presumptions under s97 (below). See also s98 and s101 on powers of authorized officers.</p>	

**Notes:** Elephants are not ‘specially protected animals’ though they do fall under the ‘special penalty’ provisions of s128 as so do attract a penalty of 9 years as well. Accordingly, for killing an elephant, refer back to section 24, section 38 and other provisions for simple ‘hunting’ but where the accused is found in possession of the tusks, consider regulatory offences under s82 of the Parks and Wildlife (General) Regulations 1990.

‘Hunt’ means (a) to kill, injure, shoot at or capture (b) with intent to kill, injure, shoot at or capture, to willingly disturb or molest by any method; or (c) with intent to kill, injure, shoot at or capture, to lie in wait for, follow or search for.

**Useful presumptions:**

97(1) Possession of any animal, fish, meat, trophy of a freshly killed animal – presumption that the person had hunted or caught such animal or fish.

97(7) The burden of proving authority to do any of the acts specified shall be upon the accused

97(9) there is a presumption that the flesh of a species found is the flesh of the species alleged in the charge. i.e. in this case, a specially protected species e.g. rhino.

97(2) anyone in possession of rhino or ivory shall be presumed to have NOT registered it unless they prove to the contrary.

<b>CHARGE COUNT ONE</b>	<b>CONTRAVENTION OF SECTION 45 OF THE PARKS AND WILDLIFE ACT CHAPTER [20:14] as read with s128 OF THE PARKS AND WILDLIFE ACT: Unlawful Hunting /Possession/Sale or disposal [Delete as appropriate] of Specially Protected Animal Species/Product/Trophy [Delete as appropriate]</b>
<b>PARTICULARS OF OFFENCE</b>	<b>[Name of the accused(s)]</b> on or about the <b>[date]</b> , and at <b>[location]</b> , without a permit, (a) hunted (b) possessed or (c) sold or (d) disposed of <b>[delete as appropriate]</b> a specially protected species/trophy/meat of an animal, namely <b>[identify the species]</b> AND that animal was a specially protected species listed under Schedule 6 of the Act,

## HUNTING PROTECTED ANIMALS AND AND PICKING OF PROTECTED PLANTS

<p><b>s77(5) a) Hunting a Protected Animal or Picking a Protected Indigenous Plant without a license</b>  <b>b) Hunting any animal or picking a plant in contravention of a notice</b>  For any specially protected animals under the 6th Schedule refer to s45.</p>	
POINTS TO PROVE	ANCILLARY POWERS
<p>Date and location and Identity of the accused</p> <p>The Accused hunted a ‘protected animal or protected indigenous plant’ and</p> <p>At the time of doing so, he had no lawful authority</p> <p>OR</p> <p>A Ministerial Notice had been issued in accordance with section 77(1) of this Act i.e within a statutory instrument, and</p> <p>The accused hunted an animal or picked a plant in contravention of that notice.</p>	<p>s106 Parks and Wildlife Act: Upon conviction, anything used in commission of the offence will be forfeited to the State. This can include tents, vehicles, aircrafts, boats or vehicles. There is explicit reference to s24 offences.</p> <p>s62 of the CPEA: Upon conviction, forfeiture or any article, weapon, instrument used in the commission of the offence.</p> <p>s62(2) CPEA: – even if found ‘not guilty’, anything ‘intrinsically unlawful’ may be forfeited to the State.</p> <p>s104 Parks and Wildlife Act – payment of any amount to compensate for the loss of an animal, plant or fish. The Minister shall issue a schedule of amounts to be imposed - <b>S.I 56 OF 2012 (Parks and Wildlife [Payment for Hunting of Animals and Fish]</b></p>
<p><b>Evidence:</b> <i>likely to include but not limited to:</i> Eye witness statement, Statement from the arresting officer. Recovered exhibits of plant/animal and or photographic evidence. Proof of issue of a Ministerial notice (properly exhibited) and that it was properly published/served in accordance with sub-sections 4(a) and b) ie. newspaper publications or actual service upon the appropriate authority. Confirmation from the Parks Authority or by reference to Statutory Instrument, Notice or other that the animal was a ‘protected species’.</p>	
<p><b>Notes:</b> ‘Protected animal’ means an animal declared to be a protected animal on land in terms of subparagraph (i) or paragraph (a) of subsection (1) of s77  ‘Protected indigenous plant’ means an indigenous plant declared to be a protected indigenous plant on land in terms of subparagraph (i) of paragraph (a) of subsection (1) of Section 77  Hunt means <b>(a)</b> to kill, injure, shoot at or capture <b>(b)</b> with intent to kill, injure, shoot at or capture, to willingly disturb or molest by ant method; or (c) with intent to kill, injure, shoot at or capture, to lie in wait for, follow or search for.  Pick includes cut, take, gather, pluck, uproot, break, remove, damage or destroy;  If the accused person is in possession of a permit, check the conditions of the permit.</p>	



<b>CHARGE COUNT ONE</b>	<b>CONTRAVENTION OF SECTION 77(5)(a) OF THE PARKS AND WILDLIFE ACT CHAPTER [20:14]</b> Unlawful hunting /picking of a protected indigenous animal /plant/ permitting a person to hunt a protected indigenous animal/pick an indigenous plant <b>[delete as appropriate]</b>
<b>PARTICULARS OF OFFENCE</b>	<b>Name of the accused(s)]</b> on or about the <b>[date]</b> , at <b>[identify location]</b> , therein a. hunted a protected indigenous animal, namely <b>[insert species and quantity]</b> b. picked a protected indigenous plant, namely <b>[insert species and quantity if relevant]</b> . c. authorized another to hunt a protected indigenous animal/pick an protected indigenous plant <b>[delete a) b) or c) as appropriate]</b>
<b>CHARGE COUNT ONE</b>	<b>CONTRAVENTION OF SECTION 77(5)(b) OF THE PARKS AND WILDLIFE ACT CHAPTER [20:14]</b> Unlawful hunting of an indigenous animal /picking of an indigenous plant/ permitting a person to hunt an indigenous animal/pick an indigenous plant <b>[delete as appropriate]</b> in contravention of a Notice issued by the Minister
<b>PARTICULARS OF OFFENCE</b>	<b>[Name of the accused(s)]</b> on or about the <b>[date]</b> , at <b>[identify location]</b> in contravention of a Notice issued by the Minister under Statutory Instrument No <b>[insert number]</b> , therein a. hunted an indigenous animal, namely <b>[insert species and quantity]</b> b. picked an indigenous plant, namely <b>[insert species and quantity if relevant]</b> . c. authorized another to hunt an indigenous animal/pick and indigenous plant <b>[delete a) b) or c) as appropriate]</b>

## SAFARI AREAS — ILLEGAL HUNTING

<p><b>s38 Hunting in and removal of animals or any animal part from a safari area and sale of animals or any animal part without a permit</b>            Penalty found in s38 (2) is a fine not exceeding Level 7 AND/OR Max 2 years imprisonment.            For any specially protected animals under the 6th Schedule refer to s45.</p>	
POINTS TO PROVE	ANCILLARY POWERS
<p>Identity of the accused</p> <p>Date and location</p> <p>That the location constituted a 'safari area' as defined in the Act – see Schedule 3 and 4.</p> <p>Identify the species of animal involved and quantity if relevant.</p> <p>That the accused either “</p> <ol style="list-style-type: none"> <li>Hunted that animal therein</li> <li>Removed that animal or part of that animal from the safari area or</li> <li>Engaged in the sale of that animal or part of an animal AND that animal had been hunted or removed from within that safari area.</li> </ol> <p>AND</p> <p>The Accused does not possess a permit</p>	<p>s106 Parks and Wildlife Act: Upon conviction, anything used in commission of the offence will be forfeited to the State. This can include tents, vehicles, aircrafts, boats or vehicles. There is explicit reference to s24 offences.</p> <p>s62 of the CPEA: Upon conviction, forfeiture or any article, weapon, instrument used in the commission of the offence.</p> <p>s62(2) CPEA: – even if found 'not guilty', anything 'intrinsically unlawful' may be forfeited to the State.</p> <p>s104 Parks and Wildlife Act – payment of any amount to compensate for the loss of an animal, plant or fish. The Minister shall issue a schedule of amounts to be imposed - <b>S.I 56 OF 2012 (Parks and Wildlife [Payment for Hunting of Animals and Fish]</b></p>
<p><b>Evidence:</b> <i>likely to include but not limited to:</i> Eyewitness evidence; a statement from the arresting officer; exhibit of the actual animal or animal part in issue; photographic evidence of the animal/animal parts in issue; statement confirming the area is identifiable as a 'safari area' See s.97 of the Act regarding presumptions and burden of proof regarding permits. Circumstantial evidence may be necessary to prove accused's intention to hunt or sale of an animal or animal parts where not actually caught in the act e.g. evidence of a hide or weaponry.</p>	

**Notes:** Hunt' means (a) to kill, injure, shoot at or capture (b) with intent to kill, injure, shoot at or capture, to willingly disturb or molest by any method; or (c) with intent to kill, injure, shoot at or capture, to lie in wait for, follow or search for.

**Useful presumptions under s97**

97(1) Possession of any animal, fish, meat, trophy of a freshly killed animal – presumption that the person had hunted or caught such animal or fish.

97(7) The burden of proving authority to do any of the acts specified shall be upon the accused

97(11) Where the accused person is found NEAR the safari area, the prosecution can assume the offence to have been committed inside that safari area. This may assist where the accused is in possession of animals or animal parts clearly from such a safari area e.g. tagged, but he/she is just outside of it.

<b>CHARGE COUNT ONE</b>	<b>CONTRAVENTION OF SECTION 38 OF THE PARKS AND WILDLIFE ACT CHAPTER [20:14]</b> Unlawful hunting in/ removal of animals/ animal parts from a safari area and/ or sale of animals or animal parts [delete as appropriate].
<b>PARTICULARS OF OFFENCE</b>	<p><b>[Name of the accused(s)]</b> on or about the <b>[date]</b>, and at <b>[location]</b> being a safari area as defined in the Parks and Wildlife Act [20:14]</p> <ol style="list-style-type: none"> <li>hunted an animal, namely <b>[identify the species and number]</b> therein</li> <li>removed from that safari area an animal/animal parts namely <b>[identify the animal or animal parts]</b></li> <li>sold an animal/animal parts, namely <b>[delete as appropriate and identify the species and number of species]</b> without a permit</li> </ol> <p><b>[Delete a) b) or c) as appropriate]</b></p>

## HUNTING OUTSIDE OF NATIONAL PARKS, SANCTUARIES AND SAFARI AREAS

### **s59 Hunting, removal or sale of live animals and animal products without permit on any land other than national parks, sanctuaries or safari areas**

Penalty found in s59(5) is a fine not exceeding Level 6 AND/OR Max 1year imprisonment.  
For any specially protected animals under the 6th Schedule refer to s45.

POINTS TO PROVE	ANCILLARY POWERS
<p>Date and location and Identity of the accused</p> <p>IF the land is a national park, sanctuary or safari area, use OTHER provisions.</p> <p>Identify the animal or animal product</p> <p>That the accused:</p> <ol style="list-style-type: none"> <li>Hunted that animal or</li> <li>Removed that animal or animal product from the land in question or</li> <li>Was engaged in the sale of that animal or animal product without a permit issued under s75</li> </ol>	<p>s106 Parks and Wildlife Act: Upon conviction, anything used in commission of the offence will be forfeited to the State. This can include tents, vehicles, aircrafts, boats or vehicles. There is explicit reference to s24 offences.</p> <p>s62 of the CPEA: Upon conviction, forfeiture or any article, weapon, instrument used in the commission of the offence.</p> <p>s62(2) CPEA: – even if found ‘not guilty’, anything ‘intrinsically unlawful’ may be forfeited to the State.</p> <p>s104 Parks and Wildlife Act – payment of any amount to compensate for the loss of an animal, plant or fish. The Minister shall issue a schedule of amounts to be imposed - <b>S.I 56 OF 2012 (Parks and Wildlife [Payment for Hunting of Animals and Fish]</b></p>
<p><b>Evidence:</b> <i>likely to include but not limited to:</i> Eyewitness evidence relating to hunting/sale or removal of animal; a statement from the arresting officer; expert witness evidence in relation to the nature of any weapon e.g. if a firearm is present, also consider charging under the Firearms Act. Identification evidence and lack of permit is necessary. Exhibit of the animal or animal products in issue and photographic evidence of the same. Circumstantial evidence may be necessary to prove accused’s intention to hunt where not actually caught in the act e.g. evidence of a hide or weaponry. Also note the presumptions under s97.</p>	
<p><b>Notes:</b> This section does not apply to national parks, sanctuary or safari areas.</p> <p><b>Useful presumptions:</b></p> <p>97(1) Possession of any animal, fish, meat, trophy of a freshly killed animal – presumption that the person had hunted or caught such animal or fish.</p> <p>97(7) The burden of proving authority to do any of the acts specified shall be upon the accused.</p> <p>‘Hunt’ means (a) to kill, injure, shoot at or capture (b) with intent to kill, injure, shoot at or capture, to willingly disturb or molest by any method; or (c) with intent to kill, injure, shoot at or capture, to lie in wait for, follow or search for;</p>	

<b>CHARGE COUNT ONE</b>	<b>CONTRAVENTION OF SECTION 59 OF THE PARKS AND WILDLIFE ACT CHAPTER [20:14]</b> Hunting/removal/ sale <b>[delete as appropriate]</b> of live animals / animal products <b>[delete as appropriate]</b> without a permit on any land other than national parks, sanctuaries or safari areas
<b>PARTICULARS OF OFFENCE</b>	<b>[Name of the accused(s)]</b> on or about the <b>[date]</b> , and at <b>[location]</b> , without a permit or lawful authority, a. hunted or b. removed or c. sold an animal/animal product <b>[delete as appropriate]</b> <b>[identify the species and number]</b> .



## HUNTING ON ALIENATED LAND

### **s79 Hunting of an animal on any alienated land contravention of a notice issued by the Natural Resources Board**

Penalty found in s79 (3) is a fine not exceeding Level 3 AND/OR Max 1year imprisonment.  
For any specially protected animals under the 6th Schedule refer to s45.

POINTS TO PROVE	ANCILLARY POWERS
<p>Date and location and Identity of the accused</p> <p>The location constitutes 'alienated land'</p> <p>That land is subject to a notice governing hunting by the Natural Resources Board.</p> <p>Identify the type of species hunted</p> <p>That the accused hunted that species within the period specified in the Notice.</p>	<p>s106 Parks and Wildlife Act: Upon conviction, anything used in commission of the offence will be forfeited to the State. This can include tents, vehicles, aircrafts, boats or vehicles. There is explicit reference to s24 offences.</p> <p>s62 of the CPEA: Upon conviction, forfeiture or any article, weapon, instrument used in the commission of the offence.</p> <p>s62(2) CPEA: – even if found 'not guilty', anything 'intrinsically unlawful' may be forfeited to the State.</p> <p>s104 Parks and Wildlife Act – payment of any amount to compensate for the loss of an animal, plant or fish. The Minister shall issue a schedule of amounts to be imposed - <b>S.I 56 OF 2012 (Parks and Wildlife [Payment for Hunting of Animals and Fish]</b></p>
<p><b>Evidence:</b> <i>likely to include but not limited to:</i> Eye witness statement, statement from the arresting officer and I.O, recovered exhibit and or photographic evidence of the same; Proof of notice from the conservation committee.</p>	
<p><b>Notes:</b> Alienated land means (a)Private land or (b)State Land held in terms of an agreement of purchase or lease or (c)trust land held in terms of an agreement of lease</p> <p><b>Useful presumptions</b></p> <p>97(1) Possession of any animal, fish, meat, trophy of a freshly killed animal – presumption that the person had hunted or caught such animal or fish.</p> <p>97(7) The burden of proving authority to do any of the acts specified shall be upon the accused.</p> <p>'Hunt' means (a) to kill, injure, shoot at or capture (b) with intent to kill, injure, shoot at or capture, to willingly disturb or molest by ant method; or (c) with intent to kill, injure, shoot at or capture, to lie in wait for, follow or search for.</p>	

<b>CHARGE COUNT ONE</b>	<b>CONTRAVENTION OF SECTION 79 OF THE PARKS AND WILDLIFE ACT CHAPTER [20:14]</b> Hunting of an animal on alienated land in contravention of a notice issued by the Natural Resources Board
<b>PARTICULARS OF OFFENCE</b>	<b>[Name of the accused(s)]</b> on or about the <b>[date]</b> , and at <b>[location]</b> that being alienated land, hunted an animal <b>[identify the species and number]</b> therein, in contravention of a Notice issued by the Natural Resources Board

# RELEVANT FIREARM OFFENCES

There are many offences under the Firearms Act that could be considered such as failing to produce a firearm to which a certificate relates, registration offences and offences concerning dealers. However, for the purposes of this guidance, the focus is upon the possession and adaptation of illegal firearms. Accordingly, the key offences applicable in the context of wildlife crime would be as follows:

## FIREARMS ACT CHAPTER 10:09

<b>s24(1) Possession of Automatic Weapons/Ammunition/Weapons fitted with Silencers</b> Penalty is found in s24(2) - a fine not exceeding Level 10 AND/OR Max 5 years imprisonment.	
POINTS TO PROVE	ANCILLARY POWERS
<p>Date and location of the offence and Identity of the accused.</p> <p>Identify the firearm. Is it:</p> <p>(a) any firearm which is so designed or adapted that if pressure is applied to the trigger missiles continue to be discharged until pressure is removed from the trigger or the magazine containing the missiles is empty; OR</p> <p>(d) any firearm or ammunition specified or any firearm or ammunition of a class or type specified by the Minister, by notice in a statutory instrument; or (e) any silencing device for a firearm</p> <p>That the accused was in possession of it.</p> <p>He had no authorization to be in possession of a firearm of that kind.</p>	<p>s31 (1) Forfeiture of the firearm to the state</p> <p>s31(2) cancellation of any firearm certificate.</p> <p>S32(1) : power to search and dispose of firearms and ammunition (with warrant).</p> <p>S32 (2) arrest without warrant</p> <p>S32(3) destruction order or disposal order may be sought from the court upon the application of a police officer</p>
<p><b>Evidence:</b> <i>likely to include but not limited to:</i> Statement of the officer who requested to be furnished with the firearm or ammunition for inspection, statement of the arresting officer, the certificate as an exhibit; Expert evidence as to the nature of the firearm</p>	
<p><b>Notes:</b> Simply being in possession of a silencing device alone can be an offence under this Act – parts may be separated between offenders in the conduct of poaching offence.</p> <p>“firearm” means—</p> <p>(a) any lethal barrelled weapon of any description from which any shot, bullet or any other missile can be discharged or which can be adapted for the discharge of any such shot, bullet or any other missile;</p> <p>(b) the barrel, bolt and chamber or any other essential component part of any such weapon as aforesaid; but does not include any signalling apparatus, other than the type of signalling apparatus known as a Verrey Pistol.</p>	
CHARGE COUNT ONE	CONTRAVENTION OF <b>s24(1) OF THE FIREARMS ACT CHAPTER [10:09]</b> Unlawful possession of a firearm
PARTICULARS OF OFFENCE	<b>[Name of the accused(s)]</b> on or about <b>[date]</b> and at <b>[location]</b> was in possession of a firearm, namely <b>[insert type of firearm or ammunition]</b> without lawful authority.

**s4(1) Possession of any firearm or ammunition without a certificate**

Penalty is found in s24(2) - a fine not exceeding Level 10

AND/OR Max 5 years imprisonment.

POINTS TO PROVE	ANCILLARY POWERS
Date and location of the offence and Identity of the accused.  Identify the firearm or ammunition.  That the accused was in possession of it.  He had no certificate issued under the Firearms Act, authorizing him to be in possession of a firearm of that kind.	s31 (1) Forfeiture of the firearm to the state s31(2) cancellation of any firearm certificate.  S32(1) : power to search and dispose of firearms and ammunition (with warrant).  S32 (2) arrest without warrant  S32(3) destruction order or disposal order may be sought from the court upon the application of a police officer
<b>Evidence:</b> <i>likely to include but not limited to:</i> Statement of the officer who requested to be furnished with the firearm or ammunition for inspection, statement of the arresting officer, the certificate as an exhibit; Expert evidence as to the nature of the firearm or ammunition.	
<b>Notes:</b> s4(5) there is a presumption that the firearm in question was manufactured on or after the 1st January 1990. “firearm” means— (a) any lethal barrelled weapon of any description from which any shot, bullet or any other missile can be discharged or which can be adapted for the discharge of any such shot, bullet or any other missile; (b) the barrel, bolt and chamber or any other essential component part of any such weapon as aforesaid; but does not include any signalling apparatus, other than the type of signalling apparatus known as a Verrey Pistol.	

<b>CHARGE COUNT ONE</b>	<b>CONTRAVENTION OF s24(1) OF THE FIREARMS ACT CHAPTER [10:09]</b> Unlawful possession of a firearm without a certificate.
<b>PARTICULARS OF OFFENCE</b>	<b>[Name of the accused(s)]</b> on or about <b>[date]</b> and at <b>[location]</b> was in possession of a firearm, namely <b>[insert type of firearm or ammunition]</b> without lawful authority.

## FIREARM OFFENCES UNDER THE CRIMINAL LAW (CODIFICATION AND REFORM) ACT CHAPTER 9:23 — DANGEROUS WEAPONS

<p style="text-align: center;"><b>s28 Unlawful Possession of a ‘dangerous weapon’</b>  Penalty is found in s28(1)(e) a fine not exceeding level 12  AND/OR Max 10 years imprisonment</p>	
POINTS TO PROVE	ANCILLARY POWERS
<p>Date and location of the offence and identity of the accused.</p> <p>The weapon is one of the following kind:</p> <ol style="list-style-type: none"> <li>artillery of any kind or any shell or other ammunition therefor; or</li> <li>a flame thrower; or</li> <li>a bomb, grenade or similar missile or device, whether capable of use with a firearm or not, including any fuse, detonator or timing device therefor; or</li> <li>a machine-gun or sub-machine-gun; or</li> <li>any automatic or semi-automatic firearm, other than a pistol, that is or has been in use in the Defence Forces, the Police Force or the armed or police forces of any neighbouring State;</li> </ol> <p>Accused has no lawful authority to possess such a weapon.</p>	<p>s62 of the CPEA: Upon conviction, forfeiture or any article, weapon, instrument used in the commission of the offence.</p> <p>s62(2) CPEA: – even if found ‘not guilty’, anything ‘intrinsically unlawful’ may be forfeited to the State</p>
<p><b>Evidence:</b> <i>likely to include but not limited to:</i> Eyewitness evidence; a statement from the arresting officer including interview and evidence of first response from the accused; ballistic report; The weapon as an exhibit and photographic evidence of the same. Expert report on the type of weapon; There is also need for evidence that the accused lacked authority to be in possession of the subject weapon.</p>	
<b>CHARGE COUNT ONE</b>	<p><b>CONTRAVENTION OF s28 OF THE CRIMINAL LAW (CODIFICATION AND REFORM) ACT CHAPTER 9:23</b></p> <p>Unlawful possession of dangerous weapon</p>
<b>PARTICULARS OF OFFENCE</b>	<p><b>[Name of the accused(s)]</b> on the <b>[date]</b> at <b>[location]</b>, unlawfully possessed a dangerous weapon, namely <b>[identify the weapon]</b></p>

## RELEVANT 'HUNTING' OFFENCES UNDER THE TRAPPING OF ANIMALS ACT [20:21]

<p><b>s5 Unlawful Making, Possession and Use of Class I Traps</b>  <b>s6 Unlawful Making, Possession and Use of Class II Traps</b>  S5 Penalty found in s5- is a fine not exceeding Level 8 AND/OR Max 3years imprisonment  S6 Penalty found in s6- is a fine not exceeding Level 7 AND/OR Max 2years imprisonment</p>	
POINTS TO PROVE	ANCILLARY POWERS
<p>Date and location of offence and Identity of the accused</p> <p>Identify the nature of the trap and specify the 'Class' of trap (see 'Notes' below)</p> <p>The accused was in possession of that trap OR</p> <p>The accused was engaged in the making or use of that trap</p> <p>AND</p> <p>He did so for the purposes of using that trap for trapping an animal.</p>	<p>s17 power of search and inspection</p> <p>s19 order of payment as read with S.I 57 of 2012 (Parks and Wildlife (Payment for Trapping of Animals and Fish)</p> <p>s21 Anything used in commission of the offence SHALL be forfeited to the state.</p>
<p><b>Evidence:</b> <i>likely to include but not limited to:</i> Eye witness statement, statement from the arresting officer, exhibits i.e. the traps; as well as, photographic evidence</p>	
<p><b>Notes:</b>  <b>CLASS I TRAPS I.</b> A snare, the noose of which is in any part made from wire.</p> <ul style="list-style-type: none"> <li>• A snare, the noose of which is in any part made from nylon of a diameter of three millimetres or less provided that a snare incorporating nylon of a diameter of three millimetres or less, may be used if its use is authorized in the Second Schedule.</li> <li>• A poisoned weapon.</li> <li>• A pitfall.</li> <li>• A baited hook.</li> <li>• A whiptrap the noose of which is in any part made from wire or nylon of a diameter of three millimetres or less.</li> <li>• wooden stake or group of wooden stakes fixed in the ground with the sharpened ends exposed close to a gap in a fence.</li> <li>• Two lengths of expanding rubber attached to one or more objects that are fixed in the ground with the opposite ends of the rubber attached to a bar or a pole which is drawn back and released like a catapult.</li> <li>• A powdered irritant spread on the ground.</li> <li>• A wooden board pierced by metal spikes which is laid with the spikes pointing outwards on a pathway used by animals.</li> <li>• A wire strung between fixed supports into which animals are driven by human beings or dogs</li> </ul>	



**SECOND SCHEDULE (Section 3) CLASS II TRAPS**

- A snare, other than a snare described in Items 1 and 2 of the First Schedule and in Item 1 of the Third Schedule.
- A net, used as a trap, other than a net described in Item 2 of the Third A syringe containing a tranquillizing or lethal drug projected by any
- A spring-jaw trap.
- Sheets or sheeting, used as a trap, made from any material which in the exceeds ten square metres.
- A break-back or rodent trap other than a break-back or rodent trap in Item 4 of the Third Schedule.
- A whiptrap other than a whiptrap described in Item 6 of the First Schedule and Item 9 of the Third Schedule.
- A balchatri trap incorporating nylon of a diameter of three millimetres or less.
- 9. An enclosure of brushwood, poles or wire encircling water and having a door operated by a trigger-mechanism.
- A cartridge containing a lethal substance used in conjunction with a bait.
- A poisoned bait.

<b>CHARGE COUNT ONE</b>	<b>CONTRAVENTION OF s5 /s 6 [delete as appropriate] OF THE TRAPPING OF ANIMALS ACT [20:21]</b> Unlawful Making, Possession and Use of Class I Traps / Class II Trap <b>[delete as appropriate]</b>
<b>PARTICULARS OF OFFENCE</b>	<b>[Name of the accused(s)]</b> on or about the <b>[date]</b> , at <b>[location]</b> a. was in possession of b. used or c. made <b>[delete as appropriate]</b> a trap of class 1/class 2 <b>[delete as appropriate]</b> namely <b>[describe the trap using the language of the schedules (see notes above)]</b> without lawful authority

## POSSIBLE OFFENCES UNDER THE PREVENTION OF CRUELTY TO ANIMALS [19:09]

<p><b>s3 Offences of Cruelty, Abandonment etc. towards Animals</b>            Penalty found in s3: First offence: a fine not exceeding \$200 AND/OR            Max 6months imprisonment.            Second or subsequent convictions: Fine not exceeding \$400 AND/OR            Max 1 year imprisonment.</p>	
POINTS TO PROVE	ANCILLARY POWERS
<p>Date and location of offence and Identity of accused person</p> <p>The act of cruelty under s3 namely:</p> <p>(a) cruelly beats, kicks, ill-treats, overrides, overdrives, overloads or <b>tortures any animal</b> or causes any animal so to be used; or</p> <p>(b) drives or uses any animal which is so diseased or so injured or in such a physical condition that it is unfit to do any work; or</p> <p>(c) being the owner, abandons any animal or causes or permits any animal to be abandoned; or</p> <p>(d) by wantonly or unreasonably doing or omitting to do any act or by causing or procuring the commission or omission of any act, causes any unnecessary suffering to any animal; or</p> <p>(e) <b>wantonly or unreasonably does or causes or procures the commission of any act likely to infuriate or terrify any animal;</b> or</p> <p>( f ) being the owner, permits in any manner aforesaid any unnecessary suffering to be caused to any animal or permits such animal to be infuriated or terrified as aforesaid; or</p> <p>(g) <b>cruelly or unnecessarily ties up</b> or confines any animal or causes or permits any animal so to be tied up or confined; or</p> <p>(h) conveys or carries or causes or procures or, being the owner, permits to be conveyed or carried, any animal in such a manner or position as to cause that animal any unnecessary suffering; or</p> <p>(i) causes, procures or assists at the fighting of any animal, or keeps, uses, manages or acts or assists in the management of any premises or place used for the purpose or partly for the purpose of fighting any animal, or permits any premises or place so to be kept, managed or used, or receives or causes or procures any person to receive any money for the admission of any person to such premises or place; or</p> <p>( j ) without any reasonable cause or excuse, administers or causes or procures, or, being the owner, permits the administration of, any poisonous or injurious drug or substance to any animal or, <b>without any reasonable cause or excuse, causes any such poison or substance to be taken by any animal;</b> or</p> <p>(k) subjects or causes or procures, or, being the owner, permits to be subjected, any animal to any operation which is performed without due care and humanity;</p>	<p>s10 Power of police officer or inspector to remove animal for treatment.</p> <p>s10(2) power to seek expenses incurred by the police and including vet fees may be recovered from the owner by civil proceedings.</p> <p>s11 Destruction of an animal without the owner's consent where the officer deems it necessary owing to the condition or suffering of animal. Expenses may be recovered from the owner by civil debt.</p> <p>s12 Power of entry by police or inspector</p> <p>s62 of the CPEA: Upon conviction, forfeiture or any article, weapon, instrument used in the commission of the offence.</p>

**Evidence:** *likely to include but not limited to:* Eye witness statement, statement from the arresting officer, exhibits i.e. the captured animal or the remains of it; photographic evidence; statement of inspector stating the cruel treatment, statement from a veterinary surgeon regarding the state of the animal/impact of any ill treatment/prognosis and suffering.

**Notes:** This Act applies to animals (wild and domesticated) and in selecting charges this should be considered where suffering has been inflicted on an animal in the context of poaching, in addition to charges of hunting etc. e.g. the taking of horn whilst the rhino is alive; possibly for poisoning watering holes with the intention of killing. See EMA offences below.

In terms of this Act, 'animal' means (a) any kind of domestic vertebrate animal (b) any kind of wild vertebrate animal in captivity (c) the young of any animal referred to in paragraph (a) or (b)

<b>CHARGE COUNT ONE</b>	<b>CONTRAVENTION OF SECTION 3 OF THE PREVENTION OF CRUELTY TO ANIMALS ACT CHAPTER [19:09]</b> Committing an act of cruelty towards an animal.
<b>PARTICULARS OF OFFENCE</b>	<b>[Name of the accused(s)]</b> on or about the <b>[date]</b> , and at <b>[location]</b> subjected an animal, namely <b>[identify the species]</b> to cruel treatment namely <b>[specify the type of conduct using the language under s3]</b> .

## POSSIBLE OFFENCES UNDER THE ENVIRONMENTAL MANAGEMENT ACT [20:27] I.E POISONING

<b>s57 Discharging poison/toxic substances into water</b> Penalty found in s57 is a fine not exceeding Level 14 or \$15 million whichever is the greater, AND/OR Max 5 year's imprisonment	
POINTS TO PROVE	ANCILLARY POWERS
Date and location of the offence and identity of the accused  Identify the water body polluted  Identify the poison or pollutant or toxic, noxious or obstructing matter, or radioactive waste.  The accused discharged or dumped that substance into the water or permitted another to so do.  In doing so, he/she breached water pollution control standards.	s57(2)(a) Upon conviction, the court may order the accused to pay the cost of clean up/removal of the waste and the costs of restoration to the damaged environment.  s57(2) (b) Upon conviction, the court may order third party compensation, restitution or restoration. Where wildlife has been killed (e.g. elephants at a watering hole), consider making an application under this section to give voice to the spirit of section 104 of the Parks and Wildlife Act (compensation for loss of animals etc) to the Wildlife Authority.
<b>Evidence:</b> <i>likely to include but not limited to:</i> Eye witness evidence, statement from the arresting officer, exhibits, either photographic evidence, expert witness i.e. officer from EMA about the impact on the environment and potential risks to human life. A statement from the EMA will be vital to establish the last 'point to prove' namely that the dumping breached water control standards.	
<b>Notes:</b> Pollutants means a substance which when released from any process is capable of causing pollution Where this conduct is linked to killing of wildlife, charge offences under the Parks and Wildlife Act as well and consider s77 (1) below. However, note that under s77, the ancillary powers are not the same (i.e. restoration/compensation). Other offences to consider under s77 include selling, holding for sale, importing or delivering pesticides or toxic substances.	
CHARGE COUNT ONE	<b>CONTRAVENTION OF S57 OF THE ENVIRONMENTAL MANAGEMENT ACT [20:27]</b> Unlawful discharge or application of any poison, noxious or obstructing matter, radioactive waste or other pollutants permitting any person to dump or discharge such matter into the aquatic environment in contravention of water pollution standards
PARTICULARS OF OFFENCE	<b>[Name of the accused(s)]</b> on or about the <b>[date]</b> , and at <b>[location]</b> discharged or applied a poisonous or toxic, noxious or obstructing matter, radioactive waste or other pollutants/ permitted another to dump or discharge such matter into the aquatic environment <b>[delete as appropriate]</b> in contravention of water pollution control standards.

**s77 Disposing of toxic substances into the environment**

Penalty found in s77(3) is a fine not exceeding level 12,  
AND/OR Max 10 years imprisonment.

POINTS TO PROVE	ANCILLARY POWERS
Date and location of the offence and identity of the accused  Identify the toxic substance or pesticide  The accused discharged or dumped that substance into the environment or permitted another to so do.  In doing so, he/she breached EMA standards	
<b>Evidence:</b> <i>likely to include but not limited to:</i> Eye witness evidence, statement from the arresting officer, exhibits, either photographic evidence, expert witness i.e. officer from EMA about the impact on the environment and potential risks to human life. A statement from the EMA will be vital to establish the last 'point to prove' namely the contravention of existing standards.	
<b>Notes:</b> 'Environment' is defined as including ecosystems and habitats as well as living organisms whether indigenous or exotic and the interaction between them. Where this conduct is linked to killing of wildlife, charge offences under the Parks and Wildlife Act as well as offences under the Cruelty to Animals Act and other offences under s77 of the EMA.	

<b>CHARGE COUNT ONE</b>	<b>CONTRAVENTION OF S77(1)(a) OF THE ENVIRONMENTAL MANAGEMENT ACT [20:27]</b> Using or disposing into the environment a pesticide or toxic substance in contravention of environmental management standards.
<b>PARTICULARS OF OFFENCE</b>	<b>[Name of the accused(s)]</b> on or about the <b>[date]</b> , and at <b>[location]</b> used or disposed of a pesticide or toxic substance in contravention of standards prescribed by the Standards and Enforcement Committee of the Environmental Management Agency.



# OFFENCES RELATING TO TROPHIES AND BUSHMEAT

For Specially Protected Species and Elephants, consider statutory offences under the Parks and Wildlife Act FIRST. Also consider the Money Laundering Act offence of ‘possession of a proceeds of crime’ – see below.

## RAW IVORY

<b>s82(1) PARKS AND WILDLIFE GENERAL REGULATIONS SI 362/90</b> <b>Unlawful acquisition or possession or sale or transfer</b> <b>of unregistered or unmarked Ivory</b> Penalty found in s128 of the Parks and Wildlife Act [Chapter 20:14] is a Mandatory 9 years imprisonment if applicable	
POINTS TO PROVE	ANCILLARY POWERS
Date and location of offence and Identity of accused person  The accused is in possession of raw, unmarked ivory  The accused acquired or sold or transferred  Specify the weight and number of pieces  Identify the place or how accused was in possession of ivory  The Accused does not possess a permit or a reasonable excuse in terms of the Act	s106 Parks and Wildlife Act: Upon conviction, anything used in commission of the offence will be forfeited to the State. This can include tents, vehicles, aircrafts, boats or vehicles.  s62 of the CPEA: Upon conviction, forfeiture or any article, weapon, instrument used in the commission of the offence.  s62(2) CPEA: – even if found ‘not guilty’, anything ‘intrinsically unlawful’ may be forfeited to the State.
<b>Evidence:</b> <i>likely to include but not limited to:</i> Eye witness statement, statement from the arresting officer and I.O, exhibits i.e the ivory, expert witness identifying ivory and evidence of possession/ identification evidence, confirmation from the Authority regarding the lack of a permit.	
<b>Notes:</b> Useful presumptions: s97 (2) The possession by any person of any ivory/ rhinoceros horn shall unless the contrary is proved be evidence against such person that such ivory/ rhinoceros horn was not registered under any regulations made in terms of Paragraph (t) of subsection (2) of Section 129. 97(7) The burden of proving authority to do any of the acts specified shall be upon the accused Raw Ivory means ivory that is not manufactured ivory	

<b>CHARGE COUNT ONE</b>	<b>CONTRAVENTION OF SECTION 82(1) OF THE PARKS AND WILDLIFE (GENERAL) REGULATIONS as read with section 128 of the PARKS AND WILDLIFE ACT:</b> Unlawful acquisition or possession or sale or transfer of unregistered or unmarked Ivory
<b>PARTICULARS OF OFFENCE</b>	<b>Name of the accused(s)]</b> on or about the <b>[date]</b> , and at <b>[location]</b> was a) found in possession or b) acquired or c) sold or transferred <b>[delete a)b) or c) as appropriate]</b> raw or unmarked ivory <b>[specify the amount or number of pieces]</b> without lawful authority or reasonable excuse.

## MANUFACTURED IVORY

<b>s82(2) PARKS AND WILDLIFE GENERAL REGULATIONS SI 362/90</b> <b>Unlawful acquisition or possession or sale or transfer of any piece of Manufactured Ivory which exceeds 200 grams in mass</b> Penalty found in s128 of the Parks and Wildlife Act [Chapter 20:14] is a Mandatory 9 years imprisonment if applicable.	
POINTS TO PROVE	ANCILLARY POWERS
<p>Date and location of offence and Identity of accused person</p> <p>The accused is/was in possession of manufactured Ivory which exceeds 200grams in mass</p> <p>The manufactured Ivory is not Marked</p> <p>The accused acquired or sold or transferred the manufactured Ivory</p> <p>Specify the weight and number of pieces</p> <p>Identify the place or how accused was in possession, selling or transferring the manufactured ivory</p> <p>The Accused does not possess a permit or a reasonable excuse in terms of the Act.</p>	<p>s106 Parks and Wildlife Act: Upon conviction, anything used in commission of the offence will be forfeited to the State. This can include tents, vehicles, aircrafts, boats or vehicles.</p> <p>s62 of the CPEA: Upon conviction, forfeiture or any article, weapon, instrument used in the commission of the offence.</p> <p>s62(2) CPEA: – even if found ‘not guilty’, anything ‘intrinsically unlawful’ may be forfeited to the State.</p> <p>s104 Parks and Wildlife Act – payment of any amount to compensate for the loss of an animal, plant or fish. The Minister shall issue a schedule of amounts to be imposed - <b>S.I 56 OF 2012 (Parks and Wildlife [Payment for Hunting of Animals and Fish]</b></p>
<p><b>Evidence:</b> <i>likely to include but not limited to:</i> Eye witness statement, statement from the arresting officer and I.O, exhibits i.e the ivory, expert witness identifying ivory and evidence of possession as well as confirmation from the Authority regarding the lack of a permit. A weighing certificate or other evidence of weight is crucial.</p>	
<p><b>Notes: Useful presumptions:</b></p> <p>s97 (2) The possession by any person of any ivory/ rhinoceros horn shall unless the contrary is proved be evidence against such person that such ivory/ rhinoceros horn was not registered under any regulations made in terms of Paragraph (t) of subsection (2) of Section 129.</p> <p>97(7) The burden of proving authority to do any of the acts specified shall be upon the accused</p> <p>Manufactured Ivory means- ivory which, through a skilled process of manufacture, carving or embellishment in accordance with these regulations, has been transformed into utensil, ornament or article or adornment</p> <p>Marked ivory means- a piece of manufactured ivory which has been engraved in terms of Section 80</p>	

<b>CHARGE COUNT ONE</b>	<b>CONTRAVENTION OF SECTION 82(2) OF THE PARKS AND WILDLIFE (GENERAL) REGULATIONS as read with section 128 of the PARKS AND WILDLIFE ACT:</b> Unlawful acquisition or possession or sale or transfer of any piece of Manufactured Ivory which exceeds 200 grams in mass
<b>PARTICULARS OF OFFENCE</b>	<b>Name of the accused(s)]</b> on or about the <b>[date]</b> , and at <b>[location]</b> was a) found in possession or b) acquired or c) sold or transferred <b>[delete a)b) or c) as appropriate]</b> Manufactured Ivory <b>[specify the amount or number of pieces]</b> without lawful authority.

## GENERAL MANUFACTURING OFFENCES UNDER THE PWA

<b>s73 Sale or Manufacture of Articles from Trophies under PARKS AND WILDLIFE ACT.</b> Penalty found in s70(2) is a fine not exceeding Level 6 AND/OR Max 1year imprisonment For any specially protected animals under the 6th Schedule refer to s45.	
POINTS TO PROVE	ANCILLARY POWERS
Identity of the accused and date and location of offence.  Identify the article.  Confirmation that it derives or has been manufactured from a trophy.  The trophy derives from an animal which has been hunted in contravention of the provisions of this Act  The accused knew or had reasonable grounds to believe that the animal had been hunted unlawfully.	s106 Parks and Wildlife Act: Upon conviction, anything used in commission of the offence will be forfeited to the State. This can include tents, vehicles, aircrafts, boats or vehicles.  s62 of the CPEA: Upon conviction, forfeiture or any article, weapon, instrument used in the commission of the offence.  s62(2) CPEA: – even if found ‘not guilty’, anything ‘intrinsically unlawful’ may be forfeited to the State.  s104 Parks and Wildlife Act – payment of any amount to compensate for the loss of an animal, plant or fish. The Minister shall issue a schedule of amounts to be imposed <b>- S.I 56 OF 2012 (Parks and Wildlife [Payment for Hunting of Animals and Fish]</b>
<b>Evidence:</b> <i>likely to include but not limited to:</i> Expert evidence will be required to identify the species. Proving that the trophy derives from an illegally hunted animal will require close consultation with the Parks Authority, enquiry as to certification or other lawful authority regarding the trophy and its origin. Documentary evidence will likely play a key role in this prosecution.	
<b>Notes: Useful presumptions:</b> 97(7) The burden of proving authority to do any of the acts specified under section 24 shall be upon the accused. 97(11) Where the accused person is found NEAR a national park, the prosecution can assume the offence to have been committed inside that national park.	
CHARGE COUNT ONE	<b>CONTRAVENTION OF SECTION 73 OF THE PARKS AND WILDLIFE ACT CHAPTER [20:14] MANUFACTURING AN ARTICLE FROM A TROPHY OF AN ANIMAL THAT WAS ILLEGALLY HUNTED.</b>
PARTICULARS OF OFFENCE	<b>[Name of the accused(s)]</b> on or about the <b>[date]</b> , and at a <b>[location]</b> , manufactured an article namely <b>[identify or describe the article]</b> from an animal trophy namely <b>[identify the species]</b> knowing or having reasonable cause to believe that the animal had been unlawfully hunted.

## FAILURE TO SURRENDER A TROPHY

### **s47 (3) Failure to surrender a state trophy of a specially protected animal**

Penalty found in s47 (4) is a fine not exceeding Level 5  
AND/OR Max 6 months imprisonment

POINTS TO PROVE	ANCILLARY POWERS
<p>Date and location</p> <p>Identity of the accused</p> <p>Identify that trophy relates to a 'specially protected animal species'.</p> <p>Definition of a state trophy includes the trophy of ANY specially protected animal unless a) it has been killed under a permit issued under s46 OR b) it was in lawful captivity before its death.</p> <p>The accused took possession of that 'state trophy' AND The accused has failed to surrender State Trophy within 7 days to the Police or Parks or Appropriate Authority for the land in which the state trophy was found within.</p>	<p>s106 Parks and Wildlife Act: Upon conviction, anything used in commission of the offence will be forfeited to the State. This can include tents, vehicles, aircrafts, boats or vehicles.</p> <p>s62 of the CPEA: Upon conviction, forfeiture or any article, weapon, instrument used in the commission of the offence.</p> <p>s62(2) CPEA: – even if found 'not guilty', anything 'intrinsically unlawful' may be forfeited to the State.</p> <p>s104 Parks and Wildlife Act – payment of any amount to compensate for the loss of an animal, plant or fish. The Minister shall issue a schedule of amounts to be imposed - <b>S.I 56 OF 2012 (Parks and Wildlife [Payment for Hunting of Animals and Fish]</b></p>
<p><b>Evidence:</b> <i>likely to include but not limited to:</i> Eye witness statement, statement from the arresting officer, statement from wildlife officer, evidence of the state trophies i.e. an expert report, the actual exhibit of the state trophy and photographic evidence of the same. However, note the presumptions relating to the identification of the species under s97 (see below) . Identification/day/time evidence including witness testimony or ID parade relating to the accused is also necessary. Evidence of possession of the state trophy be it actual or constructive possession.</p>	
<p><b>Notes:</b> A trophy means any horn, ivory, tooth, tusk, bone, claw, hoof, hide, skin, hair or other durable portion whatsoever of any specially protected animal, whether processed or not which is recognizable as the durable portion of any special animal</p> <p>s47 (5) The burden of proof lies upon the person charged why he is in possession of a State Trophy. Similarly consider an applicable presumption under s.97.</p> <p>Specially Protected Animals are listed in the (sixth) 6th schedule of the Parks and Wildlife Act. These are aardwolf, bat-eared fox, cheetah, gemsbok, Lichtenstein's Hartebeest, pangolin, roan, python and numerous birds such as all cranes, stocks, and pelicans.</p> <p>Useful presumptions:</p> <p>97(6) where such animal species are found in a vehicle/boat/ camping place, there is a presumption that the person associated with that vehicle/boat etc. is in possession of the animal/trophy.</p> <p>97(7) The burden of proving authority to do any of the acts specified shall be upon the accused</p>	

97(9) there is a presumption that the flesh of a species found is the flesh of the species alleged in the charge. i.e. in this case, a specially protected species e.g. rhino.  
 97(2) anyone in possession of rhino or ivory shall be presumed to have NOT registered it unless they prove to the contrary.

<b>CHARGE COUNT ONE</b>	<b>CONTRAVENTION OF SECTION 47 (3) OF THE PARKS AND WILDLIFE ACT CHAPTER [20:14]</b> Failing to surrender a state trophy of a specially protected animal within seven days to the appropriate authority for the land on which it was found.
<b>PARTICULARS OF OFFENCE</b>	<b>Name of the accused(s)]</b> on or about the <b>[date]</b> , and at <b>[location]</b> failed to surrender a state trophy <b>[namely identify the animal species and quantity]</b> , to the relevant authority within seven days.



## BUSHMEAT OFFENCES UNDER PWA

<b>s71 Sale of meat of animal unlawfully hunted</b> Penalty found in s71 (2) is a fine not exceeding Level 6 AND/OR Max 1 year imprisonment.	
POINTS TO PROVE	ANCILLARY POWERS
Date and location and Identity of the accused  Identify the animal species  Confirmation that it had been unhunted unlawfully AND  That the accused had hunted that animal OR that he knew or had reason to believe it had been hunted unlawfully AND  The accused was engaged in selling the meat of that species. unlawfully.	s106 Parks and Wildlife Act: Upon conviction, anything used in commission of the offence will be forfeited to the State. This can include tents, vehicles, aircrafts, boats or vehicles.  s62 of the CPEA: Upon conviction, forfeiture or any article, weapon, instrument used in the commission of the offence.  s62(2) CPEA: – even if found ‘not guilty’, anything ‘intrinsically unlawful’ may be forfeited to the State.  s104 Parks and Wildlife Act – payment of any amount to compensate for the loss of an animal, plant or fish. The Minister shall issue a schedule of amounts to be imposed <b>- S.I 56 OF 2012 (Parks and Wildlife [Payment for Hunting of Animals and Fish]</b>
<b>Evidence:</b> <i>likely to include but not limited to:</i> Eye witness statement, statement from the arresting officer, I.O or wildlife officer, exhibit of the meat and photographic or expert report confirming the type of meat, evidence of the sale of the prohibited meat i.e receipts, storage of meat, eye witness testimony (e.g. undercover operations). Further circumstantial evidence may establish that he had reason to believe it had been hunted unlawfully e.g. the state of the meat, any admissions, proximity to hunting grounds etc.	
<b>Notes: Useful presumptions:</b> 97(1) Possession of any animal, fish, meat, trophy of a freshly killed animal – presumption that the person had hunted or caught such animal or fish. 97(7) The burden of proving authority to do any of the acts specified shall be upon the accused.	
CHARGE COUNT ONE	CONTRAVENTION OF SECTION 71 OF THE PARKS AND WILDLIFE ACT CHAPTER [20:14] Selling meat of an animal that had been unlawfully hunted
PARTICULARS OF OFFENCE	<b>[Name of the accused(s)]</b> on or about the <b>[date]</b> , and at a <b>[location]</b> engaged in the sale of meat of an animal namely <b>[identify the animal]</b> that he had hunted unlawfully/he knew or reasonably believed to be meat of an animal hunted unlawfully <b>[delete as appropriate]</b> .

## PURCHASE OFFENCES UNDER PWA

<b>Purchase of live animals or trophies without authority</b> Penalty found in s74(3) is a fine not exceeding level 6 AND/OR Max 1 year imprisonment.	
POINTS TO PROVE	ANCILLARY POWERS
<p>Date and location and Identity of the accused</p> <p>Identify the species in question whether a live animal or a trophy or both. (note: for certain species, charge possession under other sections).</p> <p>That the accused purchased that live animal or trophy</p> <p>That the accused failed to satisfy himself that</p> <p>a) the seller had authority to conduct that sale or</p> <p>b) failed to satisfy himself that the animal had been born or hatched and remained in captivity or</p> <p>c) that the trophy derived from an animal born or hatched and remained in captivity.</p> <p>The seller did not in fact have authority to conduct that sale.</p>	<p>s106 Parks and Wildlife Act : Upon conviction, anything used in commission of the offence will be forfeited to the State. This can include tents, vehicles, aircrafts, boats or vehicles. There is explicit reference to s24 offences.</p> <p>s62 of the CPEA: Upon conviction, forfeiture or any article, weapon, instrument used in the commission of the offence.</p> <p>s62(2) CPEA: – even if found ‘not guilty’, anything ‘intrinsically unlawful’ may be forfeited to the State.</p> <p>s104 Parks and Wildlife Act – payment of any amount to compensate for the loss of an animal, plant or fish. The Minister shall issue a schedule of amounts to be imposed - S.I 56 OF 2012 (Parks and Wildlife [Payment for Hunting of Animals and Fish]</p>
<b>Evidence:</b> <i>likely to include but not limited to:</i> Eyewitness statement; a statement from the arresting officer; exhibit of the live animal or trophy, photographic or video evidence; a statement from the wildlife officer. Much of the proof of this offence will relate to the enquires made by the purchaser and the circumstances of the purchase.	
<b>Notes:</b> This offence does not apply where the purchase of a trophy takes place in a stall, fete, bazaar or similar venue or in any other fixed place of business. Accordingly, this offence is aimed at ‘backstreet’ sales and so the circumstances of the sale are crucial to establish the reasonableness of any belief that the accused had regarding the authority of the seller. Admissions/verbals from the accused and the seller and any eye witnesses as to the circumstances of the sale will be crucial	

CHARGE COUNT ONE	CONTRAVENTION OF SECTION 74 OF THE PARKS AND WILDLIFE ACT CHAPTER [20:14] Purchase of animals or trophies from an unauthorised seller.
PARTICULARS OF OFFENCE	<p><b>Name of the accused(s)]</b> on or about the <b>[date]</b>, and at a <b>[location]</b> purchased live animal /animal trophies <b>[delete as appropriate and identify the species and quantity]</b> without reasonably believing that the seller had lawful authority/that the animal had been bred in captivity/that the trophy had been obtained from an animal born or hatched in captivity <b>[delete as appropriate]</b></p>

# OFFENCES UNDER THE MONEY LAUNDERING AND PROCEEDS OF CRIME ACT CHAPTER 9:24

FOR LARGE SCALE SEIZURES, CONSIDER THESE OFFENCES. CONSULT WITH HQ.

<p><b>s8: Possession, using, concealing, acquiring any proceeds of crime</b>  Penalty is found in s8(8); (a) fine not exceeding level 14 or not exceeding twice the value of the property involved or the gain derived by the offender, whichever is greater; or (b) by imprisonment for a period not exceeding 25 years; or (c) both such fine and such imprisonment.</p>	
POINTS TO PROVE	ANCILLARY POWERS
<p>Date and location of offence and Identity of the Accused</p> <p>Identify the proceeds of crime e.g. the ivory.\</p> <p>Defined in the preamble as ANY economic advantage including property obtained directly or indirectly from the committing of a crime, and includes property later successively converted, transformed or intermingled as well as income, capital or other economic gains derived from such property at any time after the committing of the crime.</p> <p>NB: In order to prove that property is the proceeds of crime, it is not necessary for there to be a conviction for the offence that has generated the proceeds, or for there to be a showing of a specific offence rather than some kind of criminal activity, or that a particular person committed the offence.</p> <p>Proof of any of the following:</p> <p>Date, location and identify of the accused.</p> <p>Identify the proceeds of crime e.g. pangolin scales or ivory.</p> <p>The accused was involved in any of the following :</p> <p>1) coverting or transferring property , believing or suspecting that it is the proceeds of crime AND for the purposes of concealing or disguising the illicit oriin of that property, or assiting a person involved in the commission of a serious offence to evade the legal consequences.</p> <p>2) concealing or disguising the true nature, source, location, ownership of property, knowing or suspecting that such property is a proceeds of crime.</p> <p>3) acquiring, using or possessing property knowing or suspecting at the time of receipt that such property is the proceeds of crime.</p> <p>4) participating in, associating with, conspiring or attempting, aiding or abetting or facilitating the commission of any of the above.</p>	<p>s12 Search, seizure and Restraint orders.</p> <p>s47(1) Property seizure order under Chapter IV:</p> <p>s59 Benefit Recovery orders.</p> <p>s40 Interdict orders.</p> <p>s50 Confiscation orders.</p> <p>s71 Compensation orders.</p> <p>s72 Production Orders.</p> <p>s75 Search and seizure of documents.</p> <p>s76 Customer information orders.</p> <p>s77 Monitoring Orders.</p> <p>Extensive provisions for mutual legal assistance covered in Part VI</p>

**Evidence:** *likely to include but not limited to:* S8(6) Prosecutors are not required to prove that the property in question is the benefit of a particular or a specific act of criminal conduct, nor is it necessary to prove a conviction for the offence that generated the proceeds. s8(5) knowledge, suspicion, intent or purpose may be inferred from objective factual circumstances. Therefore circumstantial evidence should be considered that ‘paint a picture’ that the accused must have known or suspected the articles to be a proceeds of a crime e.g. poaching or bushmeat hunting or illegal importation/exportation. These offences apply to proceeds of crimes committed outside Zimbabwe provided that conduct would have constituted an offence if committed within Zimbabwe

**Notes:** “serious crime” is defined as offences that carry up to and over 4 years imprisonment with or without the option of fine including those committed outside of Zimbabwe where the penalty would be same.

For such prosecutions, seek early advice from the NPA given the powerful ancillary orders that can be availed to the prosecution.

#### EXAMPLE OF A CHARGE RE: POSSESSION

<b>CHARGE COUNT ONE</b>	<b>CONTRAVENTION OF s OF THE MONEY LAUNDERING AND PROCEEDS OF CRIME ACT CHAPTER 9:24</b> Possession of Proceeds of Crime
<b>PARTICULARS OF OFFENCE</b>	<b>[Name of Accused(s)]</b> on or about the <b>[date]</b> , at <b>[location]</b> possessed property namely <b>[insert description of the property]</b> knowing or suspecting that property to be a proceeds of crime.

# ANCILLARY ORDERS UNDER THE MONEY LAUNDERING AND PROCEEDS OF CRIME ACT [CHAPTER 9:24];

## 1. INTERDICT ORDERS;

S40; An officer may apply for an interdict orders at the High Court of Zimbabwe;

Results of an Interdict orders are:

- Property not be disposed of.
- Property be seized, taken into possession, delivered up for safekeeping or secured by a named authorized officer, the Attorney-General or person appointed for this purpose by the court.
- A named receiver or trustee to take custody and control of the property.

NB: Under S40: It is an offence to contravenes an interdict by disposing of or otherwise dealing with property that is subject to the interdict.

Penalty is: (a) a fine not exceeding one hundred thousand dollars (US \$100 000) or not exceeding twice the value of the property that forms the subject of the charge, whichever is greater; or (b) imprisonment for a period not exceeding twenty-five years; or (c) both such fine and such imprisonment.

## ANCILLARY POWERS;

- Court may set aside the gift, disposition or dealing aside from the day on which it took place;
- Court may set the gift, disposition or dealing aside from the day of the order and declare the respective rights of any persons who acquired interests in the property on or after the day on which the gift, disposition or dealing took place and before the order is made under this subsection.
- Court may make a Property seizure order under Chapter IV: s47(1)
- Power of court to suspend the whole or a portion of the sentence of imprisonment conditionally upon the person complying with the terms of any benefit recovery order.

## 2. CONFISCATION ORDERS.

- Where a person is convicted of a serious offence, the Attorney General may apply to the High court of Zimbabwe for a confiscation against property that is identified as tainted property or terrorist property in relation to that offence.
- Take note of the following;
- Jurisdiction of court to issue this order under s40 of the Act)
- Where such an application has been finally determined, the Attorney-General may not make a further application for a confiscation order in respect of the same offence without the leave of the court. s50(5). This further application may not be made later than six years after the date of the final determination of the previous application under this section. s50(7)

## 3. BENEFIT RECOVERY ORDERS.

- (is an order in personam requiring the defendant to pay an amount equal to the benefit he or she derived from— (a) any offence or offences of which he or she was convicted; or (b) any criminal activity which the court finds to be related to the offence or offences of which he or she was convicted. (Section 63).)

**TAKE NOTE:** For a benefit Recovery Order to be applied, the Prosecutor must give advance notification that the Attorney-General may, upon conviction of the person for any offence, apply for a benefit recovery order in respect of that offence. (s58.)

Notice must be given in;

- (a) the statement of the charge lodged with the clerk of the magistrate's court before which the person is to be tried, where the offence is to be tried summarily; or
- (b) the indictment, where the person is to be tried before the High Court; together with sufficient particulars of the application for the benefit recovery order as will enable the court to determine the application immediately upon the conviction of the defendant. (s58(2).)

#### **4. COURT HAS THE POWER TO ISSUE PRODUCTION ORDER FOR PROPERTY TRACKING DOCUMENTS UNDER S72 OF THE ACT.**

- **It is an Offence if a person fails to comply with production order see S74(1).**
- **Penalty:** s74(2) Where the offence referred to in subsection (1) is committed by
- (a) an individual, fine of one hundred thousand dollars (US \$100 000) or imprisonment for a period of three years or both such fine and such imprisonment.
- (b) a company or other corporate body (i) fine; not exceeding one hundred thousand dollars (US\$100 000); and (ii) every director or member of the governing body of the company or corporate body shall be liable to a fine not exceeding one hundred thousand dollars (US \$100 000) or imprisonment for a period of three years or both such fine and such imprisonment.

#### **5. MONITORING ORDERS**

- Section 77 gives court Power to issue Monitoring orders directing a financial institution to disclose information to an authorized officer obtained by the institution about transactions conducted through an account held by a particular person with the financial institution.

# RELEVANT OFFENCES RELATING TO PLANTS UNDER THE PARKS AND WILDLIFE ACT UNDER THE FOREST ACT

Poachers will often use the opportunity to remove forest produce whether its timber or plants for use elsewhere or for making fires whilst camping. Investigators and prosecutors should be vigilant about plant and forest related offences. Contained herein are some of the main offences under the Forest Act that would be relevant in this context as well as the offences under the PWA.

## OFFENCES UNDER THE FOREST ACT CHAPTER 19:05

**s78 (1) Prohibited Major offences: Illegally cut, fell, injure or destroy any forest produce in, or remove any forest produce from a State Forest or Private Forest.**

NB: This section has similar provisions to s42 of the Forest Act  
Penalty found s78(2)(i) a fine not exceeding level 8 AND/OR Max  
2 year imprisonment where the damage is 'wilful'.

In all other cases, a fine not exceeding level 6 and a Max 1 year imprisonment.

POINTS TO PROVE	ANCILLARY POWERS
<p>Date and location of offence and Identity of the accused</p> <p>That the area is a 'State Forest' or Private Forest</p> <p>"State Forest" = undemarcated or demarcated forest.</p> <p>The accused cut, injures, destroy, collects, removes ANY Tree, timber or other forest produce</p> <p>And he/she had no authorization to so do OR, if acting under a license issued under the Act, breached the conditions, regulations or guidelines made for the proper management of the reserve.</p> <p>Intention or wilfulness to do any of the above.</p>	<p>s62 of the CPEA- Forfeiture.</p> <p>s85(1) Right to seize and detain the weapon/ vehicle/ instrument/ animal used in the commission of the offence.</p> <p>s88(2) Court may order compensation to the State or owner for any loss or damage up to five times the value of the produce OR up to ten times the amount of any fees, royalties or other payments that would have been due had the suspect sought authorization.</p>
<p><b>Evidence:</b> <i>likely to include but not limited to:</i> Eyewitness evidence; statement from forest officer OR an officer from the Forestry Authority confirming the status of the area as a 'forest reserve; exhibits; statement from arresting officer/ I.O; interviews, photographs.</p>	

<b>CHARGE COUNT ONE</b>	<b>CONTRAVENTION OF s78 OF THE FOREST ACT CHAPTER [19:05]</b> Conducting a prohibited activity [identify the respective act] within a forest reserve
<b>PARTICULARS OF OFFENCE</b>	[Name of the accused] on the [date] at [location] being a forest reserve, cut, disturbed, damaged, burned, destroyed, removed [delete as appropriate] forest produce, namely a [identify the plant/produce and quantity if appropriate] without lawful authority or reasonable excuse OR in breach of regulations or guidance issued in relation the proper management of the reserve [delete as appropriate].



<p align="center"><b>s78(2) Causing fire to a state or private forest</b></p> <p align="center">Penalty found in s78(2)(a) a fine not exceeding level 10 AND/OR Max 10 years imprisonment where damage has been wilfully caused</p> <p align="center">In any other case, a maximum fine of Level 6 AND/OR Max 1 year imprisonment.</p>	
<b>POINTS TO PROVE</b>	<b>ANCILLARY POWERS</b>
<p>Date and location of offence and identity of the accused</p> <p>That the area is a State or private 'forest' i.e. any area of land containing vegetation association that is predominantly composed of trees of any size and includes a forest defined under this Act, a natural forest, woodland or plantation, forest produce in a forest and the forest ecosystem.</p> <p>The Accused lit a fire or caused a fire to be lit</p> <p>He/she had no authority to light that fire</p> <p>If he did so wilfully and caused damage, a higher penalty can be imposed.</p>	<p>s85(1) Right to seize and detain the weapon/ vehicle/ instrument/ animal used in the commission of the offence.</p> <p>s88 (2) Court may order compensation to the State or owner for any loss or damage up to five times the value of the produce</p> <p>OR</p> <p>up to ten times the amount of any fees, royalties or other payments that would have been due had the suspect sought authorization.</p>
<p><b>Evidence:</b> Eyewitness evidence; statement from forest officer that the area of the fire was not an area established for the making of fires; eye witness testimony, photographs, suspect's answers upon arrest and interview.</p>	
<p><b>Notes:</b> For poachers who are on a 'recce' or scouting for animals to poach, and camping in State forestry areas, this charge is a good option on top of any normal trespass offence.</p>	
<b>CHARGE COUNT ONE</b>	<b>CONTRAVENTION OF s78(3) OF THE FOREST ACT CHAPTER [19:05] Causing fire within a forest</b>
<b>PARTICULARS OF OFFENCE</b>	<b>[Name of the accused(s)] on the [date] at [location] being a forest, lit or caused to be lit, a fire therein without authority</b>

## PLANT-RELATED OFFENCES UNDER THE PARKS AND WILDLIFE ACT

<b>s28 Introduction into or picking of any plant from a botanical reserve or botanical garden without a permit</b> Penalty found in s28 (2) is a fine not exceeding Level 6 AND/OR Max 1year imprisonment	
POINTS TO PROVE	ANCILLARY POWERS
<p>Date and location of offence That the location constitutes a 'botanical garden or reserve' – see Schedule 2 and identity of accused</p> <p>Identify the plant species and quantity in question.</p> <p>That the accused either: Introduced that plant species into the botanical garden or reserve OR Picked that plant species whilst in the botanical garden or reserve</p> <p>(To pick includes to: cut, take, gather, pluck, uproot, break, remove, damage or destroy)</p> <p>Absence of permission (see presumptions at s97 in 'Notes' below.</p>	<p>s106 Parks and Wildlife Act : Upon conviction, anything used in commission of the offence will be forfeited to the State . This can include tents, vehicles, aircrafts, boats or vehicles. There is explicit reference to s24 offences.</p> <p>s62 of the CPEAct Upon conviction, forfeiture or any article, weapon, instrument used in the commission of the offence.</p> <p>s62(2) CPEA – even if found 'not guilty', anything 'intrinsically unlawful' may be forfeited to the State.</p> <p>s104 Parks and Wildlife Act – payment of any amount to compensate for the loss of an animal, plant or fish. The Minister shall issue a schedule of amounts to be imposed - <b>S.I 56 OF 2012 (Parks and Wildlife [Payment for Hunting of Animals and Fish]</b></p>
<p><b>Evidence:</b> <i>likely to include but not limited to:</i> Eyewitness statement; a statement from the Arresting officer and I.O, the exhibit of the plant introduced or picked and or expert report on the plant in issue. There should also be evidence that the accused person did this at a specific and identifiable botanical reserve or botanical gardens. Evidence of his presence there is also critical and this may include photographic evidence. Circumstantial evidence may be necessary to prove accused's intention to introduce or pick any plant from botanical reserve or botanical garden. See powers of authorized officers under s98 and s101.</p>	
<p><b>Notes::</b> It is a defence if the accused is working on a road within the reserve or garden and the 'picking' is necessary for the lawful performance of his duties. <b>Useful presumptions under s97:</b> 97(7) The burden of proving authority to do any of the acts specified shall be upon the accused. 97(11) Where the accused person is found NEAR the garden or reserve, the prosecution can assume the offence to have been committed inside that national park. This may assist where the accused is in possession of plants clearly from such a reserve or garden but is just outside of it.</p>	

<b>CHARGE COUNT ONE</b>	<b>CONTRAVENTION OF SECTION 28 OF THE PARKS AND WILDLIFE ACT CHAPTER [20:14]</b> Unlawfully introducing into/ Picking of [delete as appropriate] any plant from a Botanical Reserve/ Botanical Garden.
<b>PARTICULARS OF OFFENCE</b>	<b>[Name of the accused(s)]</b> on or about the <b>[date]</b> , and at <b>[location]</b> that being a botanical garden/botanical reserve <b>[delete as appropriate]</b> , a) picked a plant therein, namely <b>[identify the plant/quantity]</b> or b) introduced a plant <b>[identify the plant and quantity]</b> therein <b>[delete a) or b) as appropriate]</b> without a permit

**s50 Picking of specially protected indigenous plants without permit**  
Penalty found in s50(5) is a fine not exceeding Level 6 AND/OR Max 1year imprisonment.

POINTS TO PROVE	ANCILLARY POWERS
<p>Date and location and Identity of the accused</p> <p>Identify the plant species and quantity.</p> <p>That the plant is a 'specially protected indigenous plant' under Schedule 7 of the Act.</p> <p>The accused 'picked' that plant.</p> <p>The absence of a permit to so do.</p> <p>(To pick includes to: cut, take, gather, pluck, uproot, break, remove, damage or destroy)</p>	<p>s106 Parks and Wildlife Act : Upon conviction, anything used in commission of the offence will be forfeited to the State . This can include tents, vehicles, aircrafts, boats or vehicles. There is explicit reference to s24 offences.</p> <p>s62 of the CPEAct Upon conviction, forfeiture or any article, weapon, instrument used in the commission of the offence.</p> <p>s62(2) CPEA – even if found 'not guilty', anything 'intrinsically unlawful' may be forfeited to the State.</p> <p>s104 Parks and Wildlife Act – payment of any amount to compensate for the loss of an animal, plant or fish. The Minister shall issue a schedule of amounts to be imposed - <b>S.I 56 OF 2012 (Parks and Wildlife [Payment for Hunting of Animals and Fish]</b></p>
<p><b>Evidence:</b> <i>likely to include but not limited to:</i> Eye witness statement, statement from the arresting officer and I.O, evidence of the plant picked i.e., actual exhibit of the plant or photographic evidence, expert witness or report that it is a specially protected indigenous plant.</p>	
<p><b>Notes:</b> <b>Useful presumptions under s97:</b> 97(6) where such plants are found in a vehicle/boat/ camping place, there is a presumption that the person associated with that vehicle/boat etc. is in possession of the plant. 97(7) The burden of proving authority to do any of the acts specified shall be upon the accused</p>	

CHARGE COUNT ONE	CONTRAVENTION OF SECTION 50 OF THE PARKS AND WILDLIFE ACT CHAPTER [20:14] Picking of a specially protected indigenous plants without a permit
PARTICULARS OF OFFENCE	<p><b>[Name of the accused(s)]</b> on or about the <b>[date]</b>, and at <b>[location]</b> <b>[identify the area]</b>, picked a plant, <b>[identify plant species]</b>, that plant being a specially protected indigenous plant under the Seventh Schedule of this Act, without a permit</p>

**s52 Sale or purchase of specially protected indigenous plants without permit**  
Penalty found in s52(3) is a fine not exceeding Level 6 AND/OR Max 1year imprisonment.

POINTS TO PROVE	ANCILLARY POWERS
<p>Date and location of offence and identity of accused</p> <p>Identify the plant and quantity in question AND proof that it is a 'a specially protected indigenous plant' under Schedule 7 of the Act.</p> <p>That the accused was engaged in the sale or purchase of said plants.</p> <p>He/she did so without a permit.</p>	<p>s106 Parks and Wildlife Act : Upon conviction, anything used in commission of the offence will be forfeited to the State . This can include tents, vehicles, aircrafts, boats or vehicles. There is explicit reference to s24 offences.</p> <p>s62 of the CPEAct Upon conviction, forfeiture or any article, weapon, instrument used in the commission of the offence.</p> <p>s62(2) CPEA – even if found 'not guilty', anything 'intrinsically unlawful' may be forfeited to the State.</p> <p>s104 Parks and Wildlife Act – payment of any amount to compensate for the loss of an animal, plant or fish. The Minister shall issue a schedule of amounts to be imposed - <b>S.I 56 OF 2012 (Parks and Wildlife [Payment for Hunting of Animals and Fish]</b></p>
<p><b>Evidence:</b> <i>likely to include but not limited to:</i> Eye witness statement, statement of the arresting officer, evidence of the sale of the specially protected indigenous plant i.e receipts, witness testimony, photographic/video evidence of the sale etc. Identification evidence and the accused's lack of a permit should be proved. Produce exhibit of the plant in issue and expert report/testimony that it is a specially protected indigenous plant. However, note the presumptions under s97.</p>	
<p><b>Notes:</b> Specially Protected Indigenous Plants are listed in the seventh 7th Schedule of the Parks and Wildlife Act. These include but are not limited to mangrove fern, harebell, flowering grass, sabi star, lundi star, raffia and borass palm, african jumper, tree ferns, flame lily, cycad and staghorn fern.</p> <p><b>Useful presumptions</b></p> <p>97(6) where such plants are found in a vehicle/boat/ camping place, there is a presumption that the person associated with that vehicle/boat etc. is in possession of the plant.</p> <p>97(7) The burden of proving authority to do any of the acts specified shall be upon the accused.</p>	

<b>CHARGE COUNT ONE</b>	<b>CONTRAVENTION OF SECTION 52 OF THE PARKS AND WILDLIFE ACT CHAPTER [20:14] Sale/purchase [delete as appropriate] of specially protected indigenous plants</b>
<b>PARTICULARS OF OFFENCE</b>	<b>[Name of the accused(s)] on or about the [date], and at [location] sold or purchased a specially protected plant [identify plant species] and quantity], that plant being a specially protected indigenous plant under the Seventh Schedule of this Act without a permit</b>

<b>s55 Picking or selling indigenous plants without a permit</b> Penalty found in s55(3) is a fine not exceeding Level 6 AND/OR Max 6months imprisonment	
POINTS TO PROVE	ANCILLARY POWERS
<p>Date and location and Identity of the accused</p> <p>Identify the plant species and identify that it is 'indigenous' to Zimbabwe.</p> <p>That the accused either 'picked' the plant or was engaged in its sale AND</p> <p>The accused does not possess a permit under s56 of the Act and/or without reasonable excuse.</p> <p>(To pick includes to: cut, take, gather, pluck, uproot, break, remove, damage or destroy)</p>	<p>s106 Parks and Wildlife Act : Upon conviction, anything used in commission of the offence will be forfeited to the State . This can include tents, vehicles, aircrafts, boats or vehicles. There is explicit reference to s24 offences.</p> <p>s62 of the CPEAct Upon conviction, forfeiture or any article, weapon, instrument used in the commission of the offence.</p> <p>s62(2) CPEA – even if found 'not guilty', anything 'intrinsically unlawful' may be forfeited to the State.</p> <p>s104 Parks and Wildlife Act – payment of any amount to compensate for the loss of an animal, plant or fish. The Minister shall issue a schedule of amounts to be imposed - <b>S.I 56 OF 2012 (Parks and Wildlife [Payment for Hunting of Animals and Fish]</b></p>
<p><b>Evidence:</b> <i>likely to include but not limited to:</i> Eye witness statement, statement from the arresting officer, evidence of the picking or sale of the indigenous plant; exhibit of the plant in issue and expert report/testimony that it is an indigenous plant. Identification evidence relating to the accused and the lack of a permit is necessary</p>	
<p><b>Notes:</b>  <b>Useful presumptions</b>            97(6) where such plants are found in a vehicle/boat/ camping place, there is a presumption that the person associated with that vehicle/boat etc. is in possession of the plant.            97(7) The burden of proving authority to do any of the acts specified shall be upon the accused</p>	

CHARGE COUNT ONE	CONTRAVENTION OF SECTION 55 OF THE PARKS AND WILDLIFE ACT CHAPTER [20:14] Unlawful picking or sale [delete as appropriate] of an indigenous plant .
PARTICULARS OF OFFENCE	<p><b>[Name of the accused(s)]</b> on or about the <b>[date]</b>, and at <b>[location]</b> picked/sold <b>[delete as appropriate]</b> an indigenous plant, namely <b>[identify the plant and quantity]</b> without a permit or reasonable excuse</p>

**s57 Failing to comply with a notice issued by the Minister regarding indigenous plants.**

Penalty found in s57(4) is a fine not exceeding Level 6 AND/OR Max 1year imprisonment

POINTS TO PROVE	ANCILLARY POWERS
<p>Date and location and Identity of the accused</p> <p>The Minister had issued a notice prohibiting the picking or selling of indigenous plants within an area within Zimbabwe.</p> <p>That notice was served upon the accused person.</p> <p>The accused went on to pick or sell plants in contravention of that notice.</p>	<p>s106 Parks and Wildlife Act : Upon conviction, anything used in commission of the offence will be forfeited to the State . This can include tents, vehicles, aircrafts, boats or vehicles. There is explicit reference to s24 offences.</p> <p>s62 of the CPEAct Upon conviction, forfeiture or any article, weapon, instrument used in the commission of the offence.</p> <p>s62(2) CPEA – even if found ‘not guilty’, anything ‘intrinsically unlawful’ may be forfeited to the State.</p> <p>s104 Parks and Wildlife Act – payment of any amount to compensate for the loss of an animal, plant or fish. The Minister shall issue a schedule of amounts to be imposed - <b>S.I 56 OF 2012 (Parks and Wildlife [Payment for Hunting of Animals and Fish]</b></p>
<p><b>Evidence:</b> <i>likely to include but not limited to:</i> Exhibit the notice issued by the Minister and means of service upon the accused. Eye witness statements regarding the ‘picking’ or sale of plants as well as the actual exhibit of the plant in issue and or photographic evidence of the same.</p>	
<p><b>Notes:</b> Useful presumptions            97(6) where such plants are found in a vehicle/boat/ camping place, there is a presumption that the person associated with that vehicle/boat etc. is in possession of the plant.            97(7) The burden of proving authority to do any of the acts specified shall be upon the accused</p>	

<b>CHARGE COUNT ONE</b>	<b>CONTRAVENTION OF SECTION 57 OF THE PARKS AND WILDLIFE ACT CHAPTER [20:14].</b> Picking or selling <b>[delete as appropriate]</b> indigenous plants in contravention of a lawful Ministerial Notice.
<b>PARTICULARS OF OFFENCE</b>	<b>[Name of the accused(s)]</b> on or about the <b>[date]</b> , and at <b>[location]</b> having been served a Ministerial notice prohibiting activities relating to indigenous plants namely <b>[insert the notice number and date of service]</b> , contravened that notice by <b>a) picking (b) selling</b> an indigenous plant <b>[identify indigenous plant and quantity]</b>



# OFFENCES RELATING TO FISH AND AQUATIC PLANTS UNDER THE PARKS AND WILDLIFE ACT (SEE ALSO S24)

<b>s87 Using a prohibited method of fishing</b> Penalty found in s87(3) is fine not exceeding Level 6 AND/OR 1year imprisonment.	
POINTS TO PROVE	ANCILLARY POWERS
Date and location (that being waters in Zimbabwe)  Identity of the accused  The accused used one or more of the following methods of fishing: a)explosives b) introduced a chemical or poison or other 'intoxicating' substances into waters c) he used a 'jig' or other electrical device d) he wilfully injured or disturbed the spawn of any fish or spawning bed.  In doing any of the above, he did not have reasonable excuse or any lawful authority.	s106 Parks and Wildlife Act: Upon conviction, anything used in commission of the offence will be forfeited to the State. This can include tents, vehicles, aircrafts, boats or vehicles.  s62 of the CPEA: Upon conviction, forfeiture or any article, weapon, instrument used in the commission of the offence.  s62(2) CPEA – even if found 'not guilty', anything 'intrinsically unlawful' may be forfeited to the State.  s104 Parks and Wildlife Act – payment of any amount to compensate for the loss of an animal, plant or fish. The Minister shall issue a schedule of amounts to be imposed - <b>S.I 56 OF 2012 (Parks and Wildlife [Payment for Hunting of Animals and Fish</b>
<b>Evidence:</b> <i>likely to include but not limited to:</i> Eyewitness statement; statement from the arresting officer and I.O, expert evidence may be required regarding the explosives or the nature of the chemical, poisonous or intoxicating substances used. Identification evidence relating to the accused and lack of permit is necessary.	
<b>Notes:</b> Useful provisions and presumptions. 87(1)(a) the burden of proving reasonable excuse lies on the accused 97(1) Possession of any animal, fish, meat, trophy of a freshly killed animal – presumption that the person had hunted or caught such animal or fish. 97(7) The burden of proving authority to do any of the acts specified shall be upon the accused. E.g. authority may be obtained to introduced into any waters, chemicals for the purposes of disease control etc.	

<b>CHARGE COUNT ONE</b>	<b>CONTRAVENTION OF SECTION 87 OF THE PARKS AND WILDLIFE ACT CHAPTER [20:14]</b> Killing of any fish by means of an explosive charge or by discharge of a firearm or introduction into waters of any chemical, poison or intoxicating substance, or by jigging or an electrical device or by willfully injuring or disturbing the spawn of any fish or any spawning bed <b>[delete as appropriate]</b> without a reasonable excuse or permit
<b>PARTICULARS OF OFFENCE</b>	<b>[Name of the accused(s)]</b> on or about the <b>[date]</b> , and at <b>[location]</b> <b>.,</b> used a prohibited method of fishing namely the use of explosives/the discharge of a firearm / the introduction into those waters of a chemical, poison or intoxicating substance/jigging or use of an electrical device / willfully injuring or disturbing the spawn /spawning bed, bank or shallow <b>[delete as appropriate]</b> reasonable excuse or lawful authority for the purposes of killing fish.

**s88 Introduction/import of fish or aquatic plants into Zimbabwean waters**  
Penalty found in s88(3) is a fine not exceeding Level 6 AND/OR Max 1year imprisonment.

POINTS TO PROVE	ANCILLARY POWERS
<p>Date and location and Identity of the accused</p> <p>Identify the type of fish, fish ova or aquatic plant</p> <p>That the accused either:</p> <p>Introduced those fish or aquatic plants into Zimbabwean waters AND Those species are not native to Zimbabwe AND he had no reasonable excuse to so do</p> <p>OR</p> <p>The accused imported live fish or fish ova AND at the time of doing so, he did not have a permit under s94.</p>	<p>s106 Parks and Wildlife Act: Upon conviction, anything used in commission of the offence will be forfeited to the State. This can include tents, vehicles, aircrafts, boats or vehicles.</p> <p>s62 of the CPEA: Upon conviction, forfeiture or any article, weapon, instrument used in the commission of the offence.</p> <p>s62(2) CPEA – even if found ‘not guilty’, anything ‘intrinsically unlawful’ may be forfeited to the State.</p> <p>s104 Parks and Wildlife Act – payment of any amount to compensate for the loss of an animal, plant or fish. The Minister shall issue a schedule of amounts to be imposed - <b>S.I 56 OF 2012 (Parks and Wildlife [Payment for Hunting of Animals and Fish.</b></p>
<p><b>Evidence:</b> <i>likely to include but not limited to:</i> Eye witness, statement from the arresting officer and I.O, statement from the licensing officer, documentary evidence i.e., may include photographic exhibits, the quantity of the fish, production of the exhibit. Lack of a permit is necessary. Expert evidence of the species where they are not native to Zimbabwe should also address the impact upon the environment – this will be relevant to sentencing.</p>	
<p><b>Notes:</b> Fish includes vertebrate fish, and aquatic molluscs and crustaceans, both indigenous and non-indigenous, but does not include the bilharzia snail (<i>Biomphalaria pfeifferi</i> and <i>Bulinus Physopsis globus</i>) and the liver fluke snail (<i>Lymnea natalensis</i>)</p> <p>97(7) The burden of proving authority to do any of the acts specified shall be upon the accused. The burden of proving he had ‘reasonable excuse’ lies on the accused under s88(1)(a)</p>	

<b>CHARGE COUNT ONE</b>	<b>CONTRAVENTION OF SECTION 88 OF THE PARKS AND WILDLIFE ACT CHAPTER [20:14]</b> Introduction into any waters of a species of fish or any aquatic plant which is not native to such waters OR importation of live fish or fish ova without a permit
<b>PARTICULARS OF OFFENCE</b>	<p><b>[Name of the accused(s)]</b> on or about the <b>[date]</b>, and at <b>[location]</b> carried out a prohibited act, namely:</p> <p>(a) Introduced fish/ aquatic plants namely <b>[specify species and if possible, the quantity]</b> into Zimbabwe without reasonable excuse OR</p> <p>(b) the importation of live fish/ova <b>[specify species and quantity]</b> without a permit.</p> <p><b>[delete a) or b) as appropriate]</b></p>

**s89 Failing to comply with an order for the Authority relating to an injurious fish or aquatic plant species.**

Penalty found in s89(4) is a fine not exceeding Level 5 AND/OR Max 6months imprisonment

POINTS TO PROVE	ANCILLARY POWERS
<p>Date and location and Identity of the accused</p> <p>The Accused is the appropriate authority in charge of 'waters'</p> <p>The Parks and Wildlife Management Authority have issued an Order under s89 in respect of those waters.</p> <p>The accused failed to comply with the terms of the Order in particular:</p> <p>a) render such assistance as required and/or</p> <p>b) failed to take such steps as deemed necessary to kill such fish or aquatic plant.</p>	<p>s89(2) if there is failure to comply, the Minister may give 7 days notice and thereafter authorise an officer or inspect to enter the land riparian to thereto and conduct the work at the expense of the accused's authority.</p> <p>See also the ancillary powers (s106 PWA etc.) upon conviction specified above.</p>
<p><b>Evidence:</b> <i>likely to include but not limited to:</i> Expert report on the fish or aquatic plant and overpopulation; eye witness statement, statement from the arresting officer and I.O, statement from the authority, documentary evidence i.e., may include photography exhibits.</p>	
<p><b>Notes:</b> Authority means the Parks &amp; Wildlife Management Authority established by section 3</p> <ul style="list-style-type: none"> <li>- Expert report on any data or report as to overpopulation or aquatic growth beyond limits set by the authority e.g., in a regulation or directive. This may also include how injurious the unwanted fish or aquatic plant is to other fish populations in those waters and will be relevant to any order on compensation.</li> </ul>	

<b>CHARGE COUNT ONE</b>	<b>CONTRAVENTION OF SECTION 89 OF THE PARKS AND WILDLIFE ACT CHAPTER [20:14]</b> Failure to comply with an order issued by the Parks and Wildlife Management Authority in relation to injurious fish or aquatic plant species.
<b>PARTICULARS OF OFFENCE</b>	<b>Name of the accused(s)</b> on or about the <b>[date]</b> , and at a <b>[location]</b> failed to comply with an order issued by the Parks and Wildlife Management Authority in that <b>[specify the nature of the breach]</b> .

**s90 Carrying on the business of catching and selling fish without a permit**  
 Penalty found in s90 (2) is a fine not exceeding Level 7 AND/OR Max 2years imprisonment.

POINTS TO PROVE	ANCILLARY POWERS
<p>Date and location and Identity of the accused</p> <p>Identify the waters where the activity occurred.</p> <p>That the authority responsible for the area surrounding the waters are required to hold a permit in respect of catching and selling fish caught there.</p> <p>That the accused was catching and selling fish</p> <p>He was doing so for commercial purposes</p> <p>The absence of any permit issued under s94, authorizing the accused to so do.</p>	<p>s106 Parks and Wildlife Act: Upon conviction, anything used in commission of the offence will be forfeited to the State. This can include tents, vehicles, aircrafts, boats or vehicles.</p> <p>s62 of the CPEA: Upon conviction, forfeiture or any article, weapon, instrument used in the commission of the offence.</p> <p>s62(2) CPEA – even if found ‘not guilty’, anything ‘intrinsically unlawful’ may be forfeited to the State.</p> <p>s104 Parks and Wildlife Act – payment of any amount to compensate for the loss of an animal, plant or fish. The Minister shall issue a schedule of amounts to be imposed - <b>S.I 56 OF 2012 (Parks and Wildlife [Payment for Hunting of Animals and Fish.</b></p>
<p><b>Evidence:</b> <i>likely to include but not limited to:</i> Eye witness statement, statement from the arresting officer and I.O, statement from the licensing officer, documentary evidence i.e., may include photography exhibits, receipts, fishing material used for catching, etc. Statement from the Parks Authority confirming that the authority responsible for the waters in question are required to hold a permit for the business of catching and selling fish</p>	
<p><b>Notes:</b> Fish includes vertebrate fish, and aquatic molluscs and crustaceans, both indigenous and non-indigenous, but does not include the bilharzia snail (<i>Biomphalaria pfeifferi</i> and <i>Bulinus Physopsis globus</i>) and the liver fluke snail (<i>Lymnea natalensis</i>).</p> <p><b>Useful presumptions:</b> s97(10) Any fish in any shop, store or other fixed place of business shall be deemed to have been acquired for the purpose of sale, and the person in whose possession of fish is found shall be presumed unlawfully to have dealt therein unless contrary is proved.</p> <p>97(7) The burden of proving authority to do any of the acts specified shall be upon the accused</p>	

<b>CHARGE COUNT ONE</b>	<b>CONTRAVENTION OF SECTION 90 OF THE PARKS AND WILDLIFE ACT CHAPTER [20:14].</b> Carrying on the business of catching and selling fish without a permit
<b>PARTICULARS OF OFFENCE</b>	<b>[Name of the accused(s)]</b> on or about the <b>[date]</b> , and at <b>[location]</b> , carried on the business of catching and selling fish without a permit

<b>s91 Unlawful possession of fishing nets</b> Penalty found in s91 (2) is a fine not exceeding Level 5 AND/OR Max 6 months imprisonment	
POINTS TO PROVE	ANCILLARY POWERS
Date and location and identity of the accused  Identify the 'fishing nets'  That the accused was in possession of those nets.  The accused is not a registered dealer in or manufacturer of fishing nets.  The accused is not an appropriate authority for any waters	s106 Parks and Wildlife Act: Upon conviction, anything used in commission of the offence will be forfeited to the State. This can include tents, vehicles, aircrafts, boats or vehicles.  s62 of the CPEA: Upon conviction, forfeiture or any article, weapon, instrument used in the commission of the offence.  s62(2) CPEA – even if found 'not guilty', anything 'intrinsically unlawful' may be forfeited to the State.  s104 Parks and Wildlife Act – payment of any amount to compensate for the loss of an animal, plant or fish. The Minister shall issue a schedule of amounts to be imposed - <b>S.I 56 OF 2012 (Parks and Wildlife [Payment for Hunting of Animals and Fish.</b>
<b>Evidence:</b> <i>likely to include but not limited to:</i> Eye witness statement, statement from the arresting officer and I.O; statement from the licensing officer from the appropriate authority. Exhibit the fishing nets, photographs etc. Any evidence of sale will be vital.	
<b>Notes:</b> Fish includes vertebrate fish, and aquatic molluscs and crustaceans, both indigenous and non-indigenous, but does not include the bilharzia snail ( <i>Biomphalaria pfeifferi</i> and <i>Bulinus Physopsis globus</i> ) and the liver fluke snail ( <i>Lymnea natalensis</i> ) <b>97(7) The burden of proving authority to do any of the acts specified shall be upon the accused</b>	

CHARGE COUNT ONE	CONTRAVENTION OF SECTION 91 OF THE PARKS AND WILDLIFE ACT CHAPTER [20:14] Unlawful possession of fishing nets
PARTICULARS OF OFFENCE	<b>[Name of the accused(s)]</b> on or about the <b>[date]</b> , and at a <b>[location]</b> was in possession or control of fishing nets without a permit and not being a registered dealer in or manufacturer of fishing nets and not being an appropriate authority for any waters.

<b>s93 Unauthorized use of fishing gear</b> Penalty found in s93 (4) is a fine not exceeding Level 5 AND/OR Max 6months imprisonment.	
POINTS TO PROVE	ANCILLARY POWERS
<p>Date and location and identity of the accused</p> <p>The accused was using fishing gear .</p> <p>Identify the fishing gear: a rod or line or handline to which more than three single hooks were attached or to which more than one conventional lure having more than three single, double or treble hooks were attached. OR A spear gun, OR a spear, OR a basket trap</p> <p>The accused did not have a permit issued under s94 of the Act</p>	<p>s106 Parks and Wildlife Act: Upon conviction, anything used in commission of the offence will be forfeited to the State. This can include tents, vehicles, aircrafts, boats or vehicles.</p> <p>s62 of the CPEA: Upon conviction, forfeiture or any article, weapon, instrument used in the commission of the offence.</p> <p>s62(2) CPEA – even if found ‘not guilty’, anything ‘intrinsically unlawful’ may be forfeited to the State.</p> <p>s104 Parks and Wildlife Act – payment of any amount to compensate for the loss of an animal, plant or fish. The Minister shall issue a schedule of amounts to be imposed - <b>S.I 56 OF 2012 (Parks and Wildlife [Payment for Hunting of Animals and Fish.</b></p>
<b>Evidence:</b> <i>likely to include but not limited to:</i> Eyewitness evidence; statement from the arresting officer and I.O; the exhibits e.g., unauthorized gear and or photographic evidence. Evidence from an ‘expert’ as to the nature of the fishing gear may be necessary	
<b>Notes:</b> Useful presumptions: 97(7) The burden of proving authority to do any of the acts specified shall be upon the accused	

CHARGE COUNT ONE	CONTRAVENTION OF SECTION 93 OF THE PARKS AND WILDLIFE ACT CHAPTER [20:14] Unauthorized use of Fishing Gear.
PARTICULARS OF OFFENCE	<p>[Name of the accused(s)] on or about the [date], and at [location] used unauthorized fishing gear namely [describe the gear] without a permit.</p>

<b>s95 Possession of fish caught in contravention of this Act</b> Penalty found in s95(b) is a fine not exceeding Level 5 AND/OR Max 6months imprisonment.	
POINTS TO PROVE	ANCILLARY POWERS
Date and location and identity of the Accused  Identify the fish and quantity.  The accused was in possession of that fish.  The circumstances of the accused's possession give rise to a reasonable suspicion that the fish were caught in contravention of the Act AND The accused intended to sell the fish.	s106 Parks and Wildlife Act: Upon conviction, anything used in commission of the offence will be forfeited to the State. This can include tents, vehicles, aircrafts, boats or vehicles.  s62 of the CPEA: Upon conviction, forfeiture or any article, weapon, instrument used in the commission of the offence.  s62(2) CPEA – even if found ‘not guilty’, anything ‘intrinsically unlawful’ may be forfeited to the State.  s104 Parks and Wildlife Act – payment of any amount to compensate for the loss of an animal, plant or fish. The Minister shall issue a schedule of amounts to be imposed - <b>S.I 56 OF 2012 (Parks and Wildlife [Payment for Hunting of Animals and Fish.</b>
<b>Evidence:</b> <i>likely to include but not limited to:</i> Eye witness statement, statement by the arresting officer and I.O, quantity or packaging, documentary evidence i.e may include photography exhibits, the fish caught, etc	
<b>Notes:</b> The burden is upon the accused to establish that the fish were not caught in contravention of the Act or that he had reasonable grounds for believing the fish were not caught in contravention of the Act – s95(b)	

CHARGE COUNT ONE	CONTRAVENTION OF SECTION 95 OF THE PARKS AND WILDLIFE ACT CHAPTER [20:14] Possession of fish caught In contravention of the Parks and Wildlife Act.
PARTICULARS OF OFFENCE	<b>Name of the accused(s)]</b> on or about the <b>[date]</b> , and at <b>[location]</b> was found in possession of fish <b>[identify the species and amount in kilograms]</b> caught in contravention of the provisions of the Parks and Wildlife Act.



<b>s96 Fishing in contravention of a notice by the Minister</b> Penalty found in s96(5) is a fine not exceeding Level 5 AND/OR Max 6months imprisonment.	
POINTS TO PROVE	ANCILLARY POWERS
<p>Date and location and identity of the accused</p> <p>A Ministerial Notice had been issued under s96 in relation to fishing activities in a specified area.</p> <p>The accused was served with that Notice</p> <p>The accused failed to comply with the notice by :</p> <p>a) fishing in contravention of the terms of the Notice</p> <p>b) being in possession of equipment ordinarily used for the fishing of such fish in or near the water specified in the Notice or</p> <p>c) authorizing another person to do a) or b) above.</p>	<p>s106 Parks and Wildlife Act: Upon conviction, anything used in commission of the offence will be forfeited to the State. This can include tents, vehicles, aircrafts, boats or vehicles.</p> <p>s62 of the CPEA: Upon conviction, forfeiture or any article, weapon, instrument used in the commission of the offence.</p> <p>s62(2) CPEA – even if found ‘not guilty’, anything ‘inherently unlawful’ may be forfeited to the State.</p> <p>s104 Parks and Wildlife Act – payment of any amount to compensate for the loss of an animal, plant or fish. The Minister shall issue a schedule of amounts to be imposed - <b>S.I 56 OF 2012 (Parks and Wildlife [Payment for Hunting of Animals and Fish.</b></p>
<b>Evidence:</b> <i>likely to include but not limited to:</i> Eye witness evidence, statement from the arresting officer and I.O, documentary evidence, photography evidence /exhibits of the fishing rods, nets; proof of service of the notice by the Minister	
<b>Notes:</b> The burden is upon the accused to establish that the fish were not caught in contravention of the Act or that he had reasonable grounds for believing the fish were not caught in contravention of the Act – s95(b)	

<b>CHARGE COUNT ONE</b>	<b>CONTRAVENTION OF SECTION 96 OF THE PARKS AND WILDLIFE ACT CHAPTER [20:14]</b> Fishing in contravention of a notice issued by the Minister
<b>PARTICULARS OF OFFENCE</b>	<b>[Name of the accused(s)]</b> on or about the <b>[date]</b> , and at <b>[location]</b> contravened the provisions of a Notice by <b>[specify the nature of the breach with reference to section 96(1)(a ) (b) of (c)]</b>

# MISCELLANEOUS OFFENCES

## OFFENCES RELATING TO FAILURE TO REPORT/PROFESSIONAL HUNTERS/ PERMITS AND OBSTRUCTION OF OFFICERS

<b>s63 Failure to report killing of animals or injury of animals other than dangerous animals or specially protected animals</b> Penalty found in s63(6) is a fine not exceeding Level 4 AND/OR Max 3months imprisonment.	
POINTS TO PROVE	ANCILLARY POWERS
Date and location of offence and Identity of the accused  Identify the species of animal that has been killed or injured by the accused  That the accused did so in self defence or by accident or in error whilst hunting  That the accused failed to report the killing within seven days  OR Where the accused has killed the animal in a vehicle, AND he retrieves it, he failed to report the killing to nearest authority or police station or other local authority, in person.	s106 Parks and Wildlife Act: Upon conviction, anything used in commission of the offence will be forfeited to the State. This can include tents, vehicles, aircrafts, boats or vehicles.  s62 of the CPEAct Upon conviction, forfeiture or any article, weapon, instrument used in the commission of the offence.  s104 Parks and Wildlife Act – payment of any amount to compensate for the loss of an animal, plant or fish. The Minister shall issue a schedule of amounts to be imposed- S.I 56 OF 2012 (Parks and Wildlife [Payment for Hunting of Animals and Fish]
<b>Evidence:</b> <i>likely to include but not limited to:</i> Eyewitness evidence; a statement from the arresting officer and I.O or wildlife life officer. Identification evidence and lack of a permit where the killing occurred during a hunt. Exhibit of the animal in issue or photographic evidence of the same. Proximity of reporting authorities to the area where the kill occurred may be relevant to show the failure to report was unreasonable. Conduct an inspection in loco whenever a live animal is involved.	

CHARGE COUNT ONE	CONTRAVENTION OF SECTION 63 OF THE PARKS AND WILDLIFE ACT CHAPTER [20:14] Failing to report the killing or injury of an animal.
PARTICULARS OF OFFENCE	<b>[Name of the accused(s)]</b> on or about the <b>[date]</b> , and at <b>[location]</b> killed or injured an animal namely <b>[identify the species and number]</b> and (a) <b>failed</b> to report the killing or (b) failed to report the <b>injury of</b> that animal within 7 days of the killing or injury.

<b>s64 Failure to report of injury of dangerous animals</b> Penalty found in s64(3) is a fine not exceeding Level 5 AND/OR Max 6months imprisonment	
POINTS TO PROVE	ANCILLARY POWERS
<p>Date and location of offence and Identity of the accused</p> <p>That the accused injured an animal</p> <p>That animal is classified as a 'dangerous animal' under Schedule 9 of the Act namely: a buffalo, elephant, hippopotamus, leopard, lion, or rhino.</p> <p>The accused failed to report the injury within 24 hours to either a wildlife authority office, a police station or local authority near or in the area concerned</p>	<p>s106 Parks and Wildlife Act : Upon conviction, anything used in commission of the offence will be forfeited to the State . This can include tents, vehicles, aircrafts, boats or vehicles.</p> <p>s62 of the CPEAct Upon conviction, forfeiture or any article, weapon, instrument used in the commission of the offence.</p> <p>s104 Parks and Wildlife Act – payment of any amount to compensate for the loss of an animal, plant or fish. The Minister shall issue a schedule of amounts to be imposed - <b>S.I 56 OF 2012 (Parks and Wildlife [Payment for Hunting of Animals and Fish]</b></p>
<b>Evidence:</b> <i>likely to include but not limited to:</i> Eye witness statement, evidence as to the injured animal; statement from I.O, licensing officer and arresting officer. Exhibit or photographic evidence of injured dangerous animal. Proximity of wildlife authority or police station to the location of the incident would be relevant to the issue fo reasonableness of failing to report e.g. signage, visibile offices etc.	

CHARGE COUNT ONE	CONTRAVENTION OF SECTION 64 OF THE PARKS AND WILDLIFE ACT CHAPTER [20:14] Failure To Report Injury Of Dangerous Animals
PARTICULARS OF OFFENCE	<p><b>[Name of the accused(s)]</b> on or about the <b>[date]</b> and at <b>[location]</b> injured an animal <b>[identify the species and number]</b>, namely that animal being a dangerous animal under the eight schedule of this ACT, failed to report the injury of an animal within twenty –four (24) hours of injuring the animal.</p>

### s65 Operating a Safari without a License

Penalty found in s65(6) is a fine not exceeding Level 7 AND/OR Max 1year imprisonment.

POINTS TO PROVE	ANCILLARY POWERS
<p>Date and location of offence and Identity of accused</p> <p>The accused:</p> <ol style="list-style-type: none"> <li>1. Operated, for reward, a               <ol style="list-style-type: none"> <li>b. Hunting safari or</li> <li>c. Photographic or viewing safari either on foot or on horseback</li> </ol> </li> </ol> <p>In a national park, safari area, sanctuary, forest land or communal land for which the Wildlife Authority is the appropriate authority AND</p> <p>He did so without a license OR</p> <ol style="list-style-type: none"> <li>2. Offered to conduct for reward any such safari without being the holder of an appropriate license whether that offer was inside or outside of Zimbabwe OR</li> <li>3. He published, or caused to be published any statements about hunting, photographic or viewing safaris in Zimbabwe AND those statements were false or misleading (and those statements were published either inside or outside of Zimbabwe).</li> </ol>	<p>s106 Parks and Wildlife Act : Upon conviction, anything used in commission of the offence will be forfeited to the State. This can include tents, vehicles, aircrafts, boats or vehicles.</p> <p>s62 of the CPEAct Upon conviction, forfeiture or any article, weapon, instrument used in the commission of the offence.</p> <p>s62(2) CPEA – even if found ‘not guilty’, anything ‘intrinsically unlawful’ may be forfeited to the State.</p> <p>s104 Parks and Wildlife Act – payment of any amount to compensate for the loss of an animal, plant or fish. The Minister shall issue a schedule of amounts to be imposed- S.I 56 OF 2012 (Parks and Wildlife [Payment for Hunting of Animals and Fish</p>
<p><b>Evidence:</b> <i>likely to include but not limited to:</i> Eye witness statement, photographic evidence, travel forms, signed contract forms, evidence from customers (if they are willing!), website/ social media information, published statements. A statement from the licensing officer; a statement from the safari owner, a copy of the hunting license and/or application form, proof of reward through bank payment or other means.</p>	
<p>Notes: Useful presumptions: 97(1) Possession of any animal, fish, meat, trophy of a freshly killed animal – presumption that the person had hunted or caught such animal or fish. 97(7) The burden of proving authority to do any of the acts specified shall be upon the accused</p>	

#### CHARGE COUNT ONE

**CONTRAVENTION OF SECTION 65 OF THE PARKS AND WILDLIFE ACT CHAPTER [20:14]** Operating or control of a without a license.

<p><b>PARTICULARS OF OFFENCE</b></p>	<p><b>[Name of the accused(s)]</b> on or about the <b>[date]</b>, and at <b>[location]</b>, that being a <b>[identify if a national park, sanctuary, safari area, forest land or communal land]</b> operated or controlled or offered to conduct for reward, a safari therein namely <b>[identify the nature of that safari (hunting/photos/walking)]</b>, for reward and at the time of doing so, was not in possession of a relevant licence authorizing such conduct.</p> <p>OR</p> <p><b>Name of the accused(s)]</b> on or about the <b>[date]</b>, and at <b>[location]</b> Published or caused to be published a false or misleading statement relating to a safari conducted within Zimbabwe and at the time of doing so, knew or reasonably believed that statement to be false or misleading. <b>[delete as appropriate]</b></p>
--	---

### S66(2) Failing to control or supervise a hunt

Penalty found in s66 (3) is a fine not exceeding Level 7 AND/OR Max 1year imprisonment.

POINTS TO PROVE	ANCILLARY POWERS
<p>Date and location of offence and Identity of accused</p> <p>The accused was the holder of a 'professional hunter's license'</p> <p>The accused failed to supervise and control any hunter during safaris executed under his license OR</p> <p>Failed to take all reasonable steps to prevent the unlawful hunting by any person during a safari conducted by him/her.</p>	<p>s106 Parks and Wildlife Act: Upon conviction, anything used in commission of the offence will be forfeited to the State. This can include tents, vehicles, aircrafts, boats or vehicles.</p> <p>s62 of the CPEAct Upon conviction, forfeiture or any article, weapon, instrument used in the commission of the offence.</p> <p>s104 Parks and Wildlife Act – payment of any amount to compensate for the loss of an animal, plant or fish. The Minister shall issue a schedule of amounts to be imposed - <b>S.I 56 OF 2012 (Parks and Wildlife [Payment for Hunting of Animals and Fish</b></p> <p>s106(5) Cancellation of authority/license.</p>
<p><b>Evidence:</b> <i>likely to include but not limited to:</i> Eye witness statement, statement of the arresting officer, statement from the licensing officer, exhibits in photographic form of the animal unlawfully hunted. The license should be properly exhibited.</p>	
<p><b>NOTES:</b> Useful presumptions: S66(4) : where an animal has been hunted in contravention of this Act, and that hunting has occurred during a safari conducted by the holder of a professional hunter's license, it shall be presumed that he/she failed to take reasonable steps to prevent the unlawful killing of that animal.</p>	
<p>Hunters may lose their professional hunters license depending on the type of sentence imposed – see section 106(5).</p>	

CHARGE COUNT ONE	CONTRAVENTION OF SECTION 66(2) OF THE PARKS AND WILDLIFE ACT CHAPTER [20:14] Failure by to supervise and control hunting during a safari.
PARTICULARS OF OFFENCE	<p>[Name of the accused(s)] on or about the [date] whilst being the holder of a professional hunter's license, conducted a safari in a specified area namely [identify the area] and whilst doing so,</p> <p>a) <b>failed</b> to supervise or control the hunt or</p> <p>b) <b>Failed to take reasonable steps</b> to or prevent unlawful hunting during that safari conducted by him</p> <p><b>[delete a) or b) as appropriate]</b></p>

**s70 Failure to comply with a request from a lawful hunter**  
 Penalty found in s70 (2) is a fine not exceeding Level 4 AND/OR Max 3 months imprisonment

POINTS TO PROVE	ANCILLARY POWERS
<p>Date and location and Identity of the accused</p> <p>Presence of the accused within the hunting land</p> <p>The accused appeared to be hunting therein</p> <p>That he was asked to produce his hunting permit or other authority or furnish his name and address.</p> <p>That the person making the request was a lawful hunter under the Act.</p> <p>The accused failed to respond to the request or, if furnishing name and address, made false or inaccurate disclosure of said details.</p>	<p>s106 Parks and Wildlife Act: Upon conviction, anything used in commission of the offence will be forfeited to the State. This can include tents, vehicles, aircrafts, boats or vehicles.</p> <p>s62 of the CPEAct Upon conviction, forfeiture or any article, weapon, instrument used in the commission of the offence.</p> <p>s104 Parks and Wildlife Act – payment of any amount to compensate for the loss of an animal, plant or fish. The Minister shall issue a schedule of amounts to be imposed - <b>S.I 56 OF 2012 (Parks and Wildlife [Payment for Hunting of Animals and Fish</b></p> <p>s106(5) Cancellation of authority/license.</p>
<p><b>Evidence:</b> <i>likely to include but not limited to:</i> Eyewitness statement from the hunter making the request; the lawful hunter's permit/license; proof that any details furnished were in fact false</p>	
<p><b>NOTES:</b> Useful presumptions:                  97(1) Possession of any animal, fish, meat, trophy of a freshly killed animal – presumption that the person had hunted or caught such animal or fish.                  97(7) The burden of proving authority to do any of the acts specified shall be upon the accused.</p>	

<b>CHARGE COUNT ONE</b>	<b>CONTRAVENTION OF SECTION 70 OF THE PARKS AND WILDLIFE ACT CHAPTER [20:14]</b> Failing to comply with a request from a lawful hunter
<b>PARTICULARS OF OFFENCE</b>	<b>[Name of the accused(s)]</b> on or about the <b>[date]</b> , and at location, <b>[identify the location which is the hunting land]</b> and whilst within the hunting land failed to comply with a request from a lawful hunter, namely <b>[insert name of the lawful hunter]</b> in that <b>[insert details of the breach as either a) he failed to produce any lawful authority for hunting therein or b) he failed to furnish his name and address or c) he furnished false or incomplete details regarding his name or address.]</b>

<b>s99(2) Hindering or obstructing or resisting search on alienated land</b> Penalty found in s99 (2) is a fine not exceeding Level 5 AND/OR Max 6months imprisonment.	
POINTS TO PROVE	ANCILLARY POWERS
<p>Date and location and identity of the accused</p> <p>That the location constitutes ‘alienated land’ i.e.            (a) private land; or            (b) State land held in terms of an agreement of purchase or lease; or            (c) trust land held in terms of an agreement of lease;</p> <p>An authorized officer from the authority responsible for that land was exercising his/ her powers under s99 ie. search, seizure.</p> <p>The accused hindered, obstructed or resisted the officer in the execution of that power</p>	<p>s106 Parks and Wildlife Act : Upon conviction, anything used in commission of the offence will be forfeited to the State . This can include tents, vehicles, aircrafts, boats or vehicles.</p> <p>S99 (1) sets out the powers of authorised officers.</p>
<p><b>Evidence:</b> <i>likely to include but not limited to:</i> Eyewitness evidence; a statement from person conducting the search; photographic or video evidence. The statement of the landowner/ occupier/person seeking to carry out the search MUST address the reasonable grounds on which they came to suspect the breach of the Act and must demonstrate that they identified themselves as the landowner/occupier/ person authorized by the landowner/occupier. As a matter of caution, it would be also recommended that they inform the accused of the grounds of their suspicion and record that in their statement as well.</p>	

<b>CHARGE COUNT ONE</b>	<b>CONTRAVENTION OF SECTION 99(2) OF THE PARKS AND WILDLIFE ACT CHAPTER [20:14]</b> Hindering or obstructing or resisting an authorized officer in the lawful execution of their duties
<b>PARTICULARS OF OFFENCE</b>	<b>[Name of the accused(s)]</b> on or about the <b>[date]</b> , and at <b>[location]</b> being alienated land, obstructed, hindered or resisted an authorized person, namely <b>[identify the person]</b> from exercising their powers under the Act.



**s101 Failure to comply with lawful direction from an authorized officer/obstruction of an authorized officer/false information to an authorized officer.**

Penalty found in s101(4) is a fine not exceeding Level 5 AND/OR Max 6months imprisonment.

**POINTS TO PROVE**

Date and location and identity of the accused

Identify the officer as someone who is an 'authorised officer' under the Act, an employee of the Parks and Wildlife Management Authority, or an inspector for that Authority appointed under s11.

That the officer was acting in the lawful execution of his duties under s101 of the Act i.e. stop and search, requiring a person in a boat or vehicle to provide his/her full name or address or requiring a person to show authority for any Act being conducted in circumstances that raise reasonable grounds to believe authority under this Act would be required

The Accused failed to comply to instruction or knowingly gave false information

**ANCILLARY POWERS**

s106 Parks and Wildlife Act: Upon conviction, anything used in commission of the offence will be forfeited to the State. This can include tents, vehicles, aircrafts, boats or vehicles.

See s101 (1) a) b) c) for specifics on the powers of stop, search etc.

**Evidence:** *likely to include but not limited to:* Eye witness statement, statement from the arresting officer and I.O, vehicle registration book

**Notes:** s97 (18) If the driver of any vehicle fails to stop when required to do so by any person authorized by this Act, it shall be presumed, unless contrary is proved that the person in whose name such vehicle is registered was the driver of the vehicle at that time.

**CHARGE COUNT ONE**

**CONTRAVENTION OF SECTION 101 OF THE PARKS AND WILDLIFE ACT CHAPTER [20:14]**

Failure to comply with any request or direction issued by an authorised officer / obstruction of authorised officer/furnishing false details and information upon an authorised officer [delete as appropriate].

**PARTICULARS OF OFFENCE**

**[Name of the accused(s)]** on or about the **[date]**, and at **[location]** obstructed an authorized officer in the lawful execution of their duties by **[specify the nature of the breach in terms of subsections a) to c)]**

**s113 Obstructing/ failing to answer/using abusive language  
or gestures to ,an authorised officer**  
Penalty found in s113 is a fine not exceeding Level 5 AND/OR Max 6months

POINTS TO PROVE	ANCILLARY POWERS
<p>Date and location of offence and Identity of accused person</p> <p>That the ‘authorised officer’ is a Director, officer, inspector or employee of the Parks and Wildlife Management Authority.</p> <p>That officer issued a lawful direction in execution of his/her powers under the Act.</p> <p>The accused failed to comply by :</p> <p>a) hindering/obstructing or resisting that officer or</p> <p>b) failed without reasonable cause to answer fully and satisfactorily, any question put to him/her</p> <p>c) used foul abusive or insulting language at or towards that officer or</p> <p>d) used foul, abusive or insulting signs or gestures towards that officer.</p>	
<p><b>Evidence:</b> <i>likely to include but not limited to:</i> The evidence of the authorized officer will be key to establishing the nature of the breach alongside any eye witness statement from other observers to corroborate that account.</p>	
<p><b>Notes:</b> The statement of the officer MUST address the reasonable grounds on which they decided to exercise their powers under the Act, and must demonstrate that they identified themselves as a person authorized by the Parks and Wildlife Management Authority. As a matter of caution, it would be also recommended that they inform the accused of the grounds of their suspicion and record that in their statement as well.</p>	

<b>CHARGE COUNT ONE</b>	<b>CONTRAVENTION OF SECTION 113 OF THE PARKS AND WILDLIFE ACT CHAPTER [20:14]</b> Obstruction, hindering or resisting or failing or refusing to answer fully, using foul, abusive or insulting language or making any abusive or insulting signs or gesture towards a director, officer, an inspector or an employee in exercise of their powers or duties in terms of the Act
<b>PARTICULARS OF OFFENCE</b>	<p><b>[Name of the accused(s)]</b> on or about the <b>[date]</b>, and at <b>[Location]</b> obstructed a director /officer/ an inspector or an employee <b>[delete as appropriate]</b>, namely <b>[insert name]</b> in exercise of their powers or duties by</p> <p>a) Failing or refusing to answer questions asked by <b>[insert name of the officer]</b> OR</p> <p>b) using of foul or insulting language or gestures towards <b>[insert the name of the officer]</b> <b>[delete a) or b) as appropriate]</b></p>

**s123(3) Unlawful Transfer Or Alteration of Any Authority, Permit Or License.**

Penalty found in s123(4) is a fine not exceeding Level 5 AND/OR  
Max 3 months imprisonment

**POINTS TO PROVE**

Date and location of offence and Identity of accused person

Transfer of authority or license to another person.

Willful material alteration of permit without authority

Failure or refuse to return cancelled or amended permit

**ANCILLARY POWERS**

s106 Parks and Wildlife Act: Upon conviction, anything used in commission of the offence will be forfeited to the State. This can include tents, vehicles, aircrafts, boats or vehicles.

s62 of the CPEA: Upon conviction, forfeiture or any article, weapon, instrument used in the commission of the offence.

**Evidence:** *likely to include but not limited to:* Eye witness, statement from the licensing officer, statement from the arresting officer and I.O, exhibits i.e., the false or altered permits etc , original permit with permit conditions

**Notes:** Consider offences of Fraud, Forgery and Corruption offences before making a decision to charge on this one offence alone.

**CHARGE  
COUNT ONE**

**CONTRAVENTION OF SECTION 123 OF THE PARKS AND WILDLIFE ACT CHAPTER [20:14]** Unlawful Transfer Or Alteration of Any Authority, Permit Or License.

**PARTICULARS  
OF OFFENCE**

**[Name of the accused(s)]** on or about the **[date]**, and at **[location]** knowing that permits are not transferable, unlawfully  
(a) transferred a permit to another or  
(b) materially altered a permit.

**[delete as appropriate]**

**s119 Prospecting and mining without a permit**  
Penalty found in s119 (5) is a fine not exceeding Level 5 AND/OR  
Max 6months imprisonment

POINTS TO PROVE	ANCILLARY POWERS
<p>Date and location of offence and Identity of accused person</p> <p>Identify the area as national park, reserve or botanical garden or recreational park</p> <p>That Accused was mining or prospecting therein</p> <p>The Accused does not possess a permit issued by the Minister or other authority.</p>	<p>s106 Parks and Wildlife Act: Upon conviction, anything used in commission of the offence will be forfeited to the State. This can include tents, vehicles, aircrafts, boats or vehicles.</p> <p>s62 of the CPEA: Upon conviction, forfeiture or any article, weapon, instrument used in the commission of the offence.</p> <p>s62(2) CPEA – even if found ‘not guilty’, anything ‘intrinsically unlawful’ may be forfeited to the State.</p> <p>s104 Parks and Wildlife Act – payment of any amount to compensate for the loss of an animal, plant or fish. The Minister shall issue a schedule of amounts to be imposed - <b>S.I 56 OF 2012 (Parks and Wildlife [Payment for Hunting of Animals and Fish</b></p>
<p><b>Evidence:</b> <i>likely to include but not limited to:</i> Eye witness statement and photographic evidence, statement from the arresting officer, exhibits, statement from the mining or prospecting officer; expert witness from the mining sector; evidence from the Authority responsible for Mining.</p>	

<b>CHARGE COUNT ONE</b>	<b>CONTRAVENTION OF SECTION 119 OF THE PARKS AND WILDLIFE ACT CHAPTER [20:14]</b> Mining or prospecting within a national park /botanical reserve/ sanctuary / recreational park without a permit issued by the Minister or other lawful authority
<b>PARTICULARS OF OFFENCE</b>	<b>[Name of the accused(s)]</b> on or about the <b>[date]</b> , and at <b>[location]</b> that being a national park/ botanical reserve/sanctuary/safari area/ recreational park <b>[delete as appropriate]</b> carried out prospecting or mining activities therein without a permit issued by the Minister or any other lawful authority.

# GUIDANCE NOTES

## MAKING THE DECISION TO CHARGE — A GUIDE FOR PROSECUTORS

### APPLYING THE “FULL CODE TEST” FOR THE DECISION TO CHARGE

This will be applied where all reasonable lines of investigation have been completed or where the prosecutor is satisfied that any further investigation will not make any difference to his/her ability to make a decision on whether or not to charge.

#### STEP 1.

Is there sufficient and admissible evidence to provide a ‘reasonable prospect of conviction’?

#### STEP 2.

Is a prosecution in the public interest?

### STEP 1: SUFFICIENCY AND ADMISSIBILITY OF EVIDENCE TEST: FACTORS TO CONSIDER:

Is the evidence sufficient to establish a ‘realistic prospect of conviction’? Here the ‘Points to Prove’ approach will assist prosecutors and investigators in identifying the requirements of the offence and assessing if the evidence obtained meets those requirements. In assessing sufficiency of evidence, the prosecutors should assess the following:

#### 1. Is the evidence obtained admissible under the law?

Here, early engagement with the prosecutor can ensure that the evidence obtained has been obtained in accordance with procedure laid down by law and that any factors that may bar its admission in court can be assessed and alternative methods of proof addressed in advance of trial. Take note of Sections 252 - 260 of the CPE Act which relates to admissibility.

#### 2. Are the state witnesses credible?

Consider: what sort of impression is the witness likely to make? Are there any matters that might be put by the defence to attack the credibility of that witness e.g. previous convictions? Are there contradictions between the witnesses that go beyond what is ordinary and expected and materially weaken the prosecution case?

Take note of Section 253 of the CPE Act - As a general rule hearsay evidence is inadmissible in the Zimbabwean courts of law.

#### 3. Is the evidence reliable?

E.g. if identity is in issue, do the statements sufficiently address issues like: lighting, first recording of appearance, distance from the suspect and duration of observation, if recognition, does the statement address how the suspect was recognized, was there an identification parade and was it properly conducted?

#### 4. How strong is the case for the State?

Here, the ‘points to prove’ approach will enable investigators and prosecutors to go through each offence under consideration and assess whether they have evidence, usually in the form of statements but also exhibits, documentary evidence, expert reports (properly exhibited), to assess each and every one of the points to prove identified. E.g. do you have a statement confirming the type of species involved? Do you have a statement confirming that the weapon is in fact a ‘firearm’ within the meaning of the Firearms Act? Some statutes include presumptions in law that are helpful to the prosecution. For example, in terms of Section

97(1) of the Parks and Wildlife Act [Chapter 20:14]: “The possession of any animal or fish or meat or trophy of a freshly killed animal shall be prima facie evidence against a person accused of contravening any provision of this Act that he has hunted such animal or fish”.

### **5. How strong is the case for the defence?**

A record of interview is vital to enabling a proper assessment of this aspect. Does the defendant’s answers raise other avenues of reasonable inquiry e.g. alibi?

---

According to the policy and standards referred above, once charged, any decision to decline, prosecute or withdraw before plea must be explained by a prosecutor through/by writing an opinion assessing the evidence and citing reasons for that conclusion. Accordingly, a written recording of that decision should always be made to assist the prosecutor in that explanation and in terms of keeping a contemporaneous record of why the decision to withdraw was made. This record is an internal document and not subject to disclosure.

### **THE GOLDEN RULE**

**A CASE THAT DOES NOT PASS THE EVIDENTIAL TEST MUST NOT PROCEED NO MATTER HOW SERIOUS OR SENSITIVE THE CASE MAY BE. THE ONLY EXCEPTION WILL BE WHERE THE “THRESHOLD TEST” IS PASSED – SEE BELOW**

---

## **STEP 2: THE ‘PUBLIC INTEREST TEST’**

IF there is sufficient evidence, the next question is: is it in the public interest to prosecute this case? Factors listed in the national prosecution policy include: the nature and seriousness of the offence, the interests of the victim and the broader community, the circumstances of the offender, delay between the date of the offence and when the prosecution was instituted taking into account the complexity of the case and the role of the accused in the delay, and whether there are non-criminal justice alternatives to prosecution that would better service the public interest e.g. where juveniles are concerned and the offence is not so serious.

### **THE ‘PUBLIC INTEREST TEST’ IN WILDLIFE CRIME**

In the context of wildlife crime, the following factors, if any one or more are present, would mean that it **WILL** be in the public interest to prosecute the case.

1. The case involves a protected species designated under the Zimbabwe Parks and Wildlife Act or an animal protected under CITES APPENDIX 1.

In particular, any offence involving elephant or ivory, rhino or rhino horn, pangolin or pangolin scales, shall merit a prosecution in the public interest provided the evidential test is satisfied.

2. Any case involving bush meat, no matter how small or isolated, will require a public prosecution in the public interest.

- Game meat trade commonly refers to illegal taking of wildlife for meat and income.
  - Game meat consumption rapidly reduces wildlife populations thereby depriving the wider public and national economies of the benefits of conservation and tourism including foreign exchange, revenue, employment and household incomes.
  - Game meat consumption also presents serious public health risks including zoonotic disease transmission since wildlife animals are known reservoirs of several diseases due to their inherent natural immunity.
3. Where an offence involves the killing of a problem animal, the prosecutor must first consider whether any previous complaints had been made to Parks and Wildlife Management Authority, the extent of the damage and what efforts, if any, had been to mitigate the risks posed by the problem animal. Accordingly, where no complaint or call has been made to Parks and Wildlife Management Authority; where no attempt to mitigate risk has been made and/or where the extent of the damage is limited, it shall always be in the public interest to prosecute that offender.
  4. Where the offence involves a weapon. In particular, if a firearm is used, consideration must be given to charges under the Firearms Act.
  5. Where two or more suspects are involved in the commission of the offence, or where there is evidence that the offence was pre-meditated/subject to careful planning and organisation, it shall be in the public interest to prosecute. This is because of the increased understanding of the links between wildlife crime and organised crime.
  6. Where the offence involves import, export or transit of a wildlife trophy or species (live or dead).
  7. Any offence involving illegal logging or removal of timber in or near forest reserves should always be prosecuted, given the prevalence of such offending and the damage to Zimbabwe's natural forest resources and economic wellbeing.
  8. Where poison was used no matter how small the quantity. This is because of the risks posed to the environment and other wildlife species through the reckless use of poison (e.g. in watering holes); and the risks to the human population through sale of contaminated meat.
  9. Where the suspect is a repeat offender in the context of wildlife crime – this need not be a conviction but where there is evidence of previous arrests, it shall be in the public interest to prosecute such an offender no matter how minor the current wildlife offence may appear.
  10. Where members of the armed forces are accused of wildlife crime, it is in the public interest that they are prosecuted within the sphere of the criminal justice system and not by way of court martial. Where such cases come before Parks and Wildlife Management Authority at first instance, these should be referred immediately to the Prosecutor-General.

---

**Any decision NOT to prosecute such a case where the evidential test is satisfied, must be recorded with reasons as to why and the PROSECUTOR-GENERAL informed directly.**

---

## THE THRESHOLD TEST

In limited circumstances, it may be necessary to charge a suspect where not all of the evidence establishing all of the points to prove are present in the file. This power must be used sparingly and when used, with stringent and determined follow up with the I.O. to ensure that the required evidence is obtained within a reasonable time. Continuous review of the case must be held at intervals consistent with the accused's attendance at court and a decision to charge on the full code test above must be taken at the earliest available opportunity or the decision to discontinue made without unreasonable delay.

"Holding Charges" are not acceptable. The following factors **MUST** be present where a decision to charge is made in the absence of all of the evidence establishing the 'points to prove'.

1. There is insufficient evidence currently available to apply the evidential test **AND**
  2. The prosecutor has grounds, **BASED ON SOME EVIDENCE** obtained thus far, to have a reasonable suspicion that the accused committed the offence  
**AND**
  3. There are **REASONABLE GROUNDS** to believe that further evidence **WILL** be available **WITHIN A REASONABLE TIME**  
**AND**
  4. The **SERIOUSNESS** or circumstances of the offence justify the making of an immediate charging decision  
**AND**
  5. The accused presents a **SUBSTANTIAL BAIL RISK** that justifies withholding bail.
- The grounds for applying the threshold test must be recorded by the prosecutor in the file and an action plan written for the I.O. with deadlines for completion.
  - A copy of the action plan should be kept in the file with the written review.
  - Upon receipt of each piece of additional evidence, a further written review must be conducted and kept in the file and if necessary, further action plans developed with deadlines set.
  - The prosecutor must ensure that deadlines are adhered to through contact with the I.O.
  - Where it appears that the required evidence is not forthcoming within a reasonable time, the case must be discontinued at the earliest opportunity.



# REMEMBER TO RECORD THE REASONS FOR YOUR DECISION

## PROSECUTION REVIEW FORM TEMPLATE

<b>NAME OF THE ACCUSED:</b>	
<b>CR NUMBER:</b> <b>PP's REF NUMBER:</b> <b>CRB NUMBER:</b>	
<b>CHARGE (S):</b>	
<b>I.O. CONTACT DETAILS:</b>	
<b>STATEMENTS/EVIDENCE CONSIDERED AT TIME OF REVIEW:\</b>	
<b>EVIDENTIAL TEST:</b>	<b>DATE:</b>
<b>INITIALS OF THE PROSECUTOR</b>	
<b>PUBLIC INTEREST TEST</b>	
<b>INITIALS OF THE PROSECUTOR</b>	
<b>ACTION PLAN (to be given to the I.O. with date specified for return).</b>	
<b>DATE FOR RETURN/FOLLOW-UP:</b>	
<b>DATE AND INITIALS OF THE PROSECUTOR:</b>	

# GUIDANCE ON DRAFTING AND SELECTION OF CHARGES

## Who should draft charges or indictments

- In Ss. 136 and 139 of the CPEA it is the duty and right of a prosecutor, to draft or approve the charge or indictment. So while the police may prepare draft charges/indictments, the prosecutor has final say.

## Difference of a Charge and Indictment

- Prosecution of any person in a Magistrates Court is by a charge (S. 139 CPEA), while at a High Court, it is by an indictment (S.136 CPEA).

## Essentials of a Charge or Indictment

As per Ss.139 and 146 CPEA:

1. a description of the accused person by his full name, (if company-name of company)
2. His place of abode and occupation,
3. Name of the offence as per statute or statutory instrument,
4. Particulars of the offence, and
5. Time and place at which it was committed.

The prosecutor must ensure that the **correct section of the Act or Statutory Instrument has been cited, as well as, the penalty section, and that the particulars correspond with the provision itself.** Where offence has proviso or exception, it is not mandatory to negate it in framing the charge.

## Joinder of Counts and Accused Persons

- S, 144 CPEA allows for a charge or indictment to have more than one offence in the charge-sheet. It also permits more than one count for the same offence to be in one charge-sheet.
- An offence committed by a person on different dates may also be considered as one count provided there is sufficient nexus.
- Ss. 158 and 159 CPEA also permit the joinder of accused persons under one charge if they committed the offence at different times or committed separate offences at the same time and place or at the same place and about the same time or in concert including those who aided and abetted the crime.
- Each count therefore, should be numbered consecutively.

## Splitting or Duplicity of Charges

There will be an improper splitting or duplicity of charges –

1. if a person commits two acts, each of which standing alone would be criminal, but does so with a single intent and both acts are necessary to carry out that intention; or
2. where the same evidence which is essential to prove one criminal act is also essential to prove another criminal act.

## Alteration/Amendment/Withdrawal of Charge or Indictment

- Where a charge is defective for want of material particulars or duplicity, the prosecution may apply to alter, amend or withdraw the charge before plea or before close of the prosecution's case as per S.8 CPEA. The State is at liberty to bring the accused back to court at a later date on the same or different charge.

## CHARGE SHEET SPECIMEN

### EXAMPLE OF DRAFTING A CHARGE FOR AN OFFENCE INVOLVING A SPECIALLY PROTECTED ANIMAL

#### **HUNTING A SPECIALLY PROTECTED ANIMAL CONTRAVENING SECTION 45 (1) (a) OF THE PARKS AND WILDLIE ACT CHAPTER 20:14 AS READ WITH SECTION 128(1)(a) OF THE SAID ACT.**

In that on the..... [date] and at .....[identify the location] ..... [name of accused person(s)] unlawfully and intentionally [hunted / possessed / sold ] a specially protected animal [identify the species and number of species] without a permit.

---

Whenever you draft a charge always make sure that date, name of accused person(s), location where the offence took place and the nature of offence is clearly described.

# BAIL

## GROUND OF OPPOSITION TO BAIL

In terms of Section 50(1)(d) of the Constitution an accused person is entitled to bail unless there are compelling reasons to deny him/her bail. It is the duty of the state to advance compelling reasons why the accused person should not be granted bail. The power to grant bail is regulated by the Criminal Procedure and Evidence Act [CPEA] and the Constitution of Zimbabwe. The four main grounds to oppose bail are set out in the case of *S v Dzawo* 1998 (1) ZLR at 568 as follows:

### A. LIKELIHOOD THAT THE ACCUSED WILL ABSCOND

- The nature of the charges that the accused is facing may result in the accused not standing his or her trial or appear to receive sentence. E.g the accused is a foreign national
- The gravity of the offence that the accused is charged with and the severity of the punishment if convicted eg Third Schedule crimes like murder, rape, robbery and as a result of General Laws Amendment Act [5 of 2011] offences related to protected species
- Circumstances under which the accused was arrested that may be indicative of avoiding and evading police eg arrested at the scene of the crime after a shoot out with the police
- The gravity of the offence with which the accused is charged with and the sentence which they are likely to receive if convicted eg offences attracting the death penalty like murder
- Residency of the accused ie has a place of fixed abode whether rented or owned
- Whether the accused has sound sureties
- Whether the accused has jumped bail / bond on previous occasion
- Stage / status of the trial
- Family attachment of the suspect including ie whether they are married and have family obligations
- The existence and location of assets held by the accused
- The ties of the accused to the place of trial
- Employment status of the accused

### B. LIKELIHOOD OF INTERFERENCE WITH WITNESSES

- Whether the accused is familiar with any witness or the evidence
- Whether any witness has made any statement
- Whether the investigation is completed
- The accused's relationships with any witness and the extent to which the witness may be influenced by the accused
- The ease with which the accused can conceal or destroy any evidence
- Whether the accused will attempt to influence or intimidate witness or conceal or destroy evidence

### C. LIKELIHOOD OF ACCUSED COMMITTING ANOTHER OFFENCE WHILE ON BAIL

- Whether the accused is in custody on another charge or is released on licence in terms of the Prisons Act [Chapter 7:11]
- Any previous failure by the accused to comply with bail conditions
- The disposition of the accused to commit an offence referred to in the First Schedule while released on bail
- Any evidence that the accused previously committed an offence referred to in the First Schedule while released on bail

#### **D. OTHER CONSIDERATIONS**

- There is a strong prima facie case against the applicant ie being caught in possession of protected species without permit or licence
- The period for which the accused has already been in custody since his or her arrest
- The probable period of detention until the disposal or conclusion of the trial if the accused is not released on bail
- The reason for any delay in the disposal or conclusion of the trial and any fault on the part of the accused with regards to such delay
- Any impediment in the preparation of the accused's defence or any delay in obtaining legal representation which maybe brought about by the detention of the accused
- The state of health of the accused eg grave illness
- The age of the accused eg advanced age
- Likelihood of the accused to undermine or jeopardise the objectives or proper functioning of the criminal justice; including the bail system

#### **E. DETENTION NECESSARY FOR ACCUSED'S SAFETY**

- Whether the safety of the accused might be jeopardized by his or her release

#### **F. DETENTION NECESSARY FOR PUBLIC SAFETY**

- Whether the nature of the offence and circumstances under which offence was committed is likely to induce a sense of shock or outrage in the community where the offence was committed
- Whether the shock or outrage of the community where the offence was committed might lead to public disorder if the accused is released
- Whether the sense of peace of and security among members of the public will be undermined or jeopardized by the release of the accused
- Whether the release of the accused will jeopardise or undermine the public confidence in the criminal justice system
- Whether the release of the accused will endanger the safety of the public or any particular person or will commit an offence referred to in the First Schedule while on bail
- The degree of violence towards others implicit in the charge against the accused
- Any threat of violence which the accused may have to any person
- The resentment the accused is alleged to harbour against any person
- Where in exceptional circumstances there is the likelihood that the release will disturb the public order or undermine public peace or security

### **2. WHO HAS POWER TO GRANT BAIL FOR WILDLIFE OFFENCES? CONCERNING PROTECTED SPECIES**

In terms of section 116 of the CPEA, the power to admit to bail rests with a judge or magistrate. However, there are some exceptions to this provision. The exceptions apply to cases, which are listed in the Third Schedule. Cases that are listed in the Third Schedule include murder, rape, robbery and, as a result of General Laws Amendment Act (5 of 2011), offences related to protected species. Section 11 of the General Laws Amendment Act amends section 128 of the Parks and Wildlife Act (Chapter 20:14). It states that:

The Parks and Wildlife Act [Chapter 20: 14] is amended by the repeal of section 128 and the substitution of the following:

“128 Special penalty for certain offences

- (1) Notwithstanding any other provision of this Act, any person who is guilty of an offence under this Act involving—
- (a) the unlawful killing or hunting of rhinoceros, or any other specially protected animal specified by the Minister by statutory instrument; or
  - (b) the unlawful possession of, or trading in, ivory or any trophy of rhinoceros or of any other specially protected animal that may be specified by the Minister by statutory instrument;

Since the unlawful hunting, killing, possession and trading of special protected species is now regarded as serious crime as listed in the Third Schedule, it therefore follows that admission to bail can only be granted by the High Court.

However, even with the hunting, killing, possession and trading of protected species which is regarded as a serious crime under the Third Schedule, **it is still possible for a regional magistrate to grant bail with regards to wildlife crimes concerning protected species.**

Section 116 of the CPEA with regards to the power to admit to bail states that “Provided that, **with the consent of the Attorney General**, a magistrate may admit a person to bail or alter a person’s conditions of bail in respect of any offence.”<sup>1</sup> It further emphasise the importance of the consent of the Attorney General by further stating that –

A magistrate shall not, **without the personal consent of the Prosecutor –General, admit a person to bail or alter a person’s conditions** of bail in respect of an offence specified in the Third Schedule<sup>2</sup>.

These two provisions, that is sections 116 (1) (b) & 116 (c) (iii) shows that **it is possible for a magistrate to grant bail even in cases related to protected species as long as he or she has consent from the Attorney General.** This discretion given to lower courts like the magistrates court to impose lower penalties with the consent of the Attorney General may undermine the deterrent effect of these penalties as it is open to abuse and corruption<sup>3</sup>. However, it is important to note that in the absence of consent from the Attorney General, a magistrate cannot grant bail over crimes related to protected species as these are listed under the Third Schedule.

<sup>1</sup>Section 116 (1) (b)

<sup>2</sup>Section 116 (c) (iii)

<sup>3</sup>DLA Piper (2015). Empty Threats 2015. Does the law combat illegal wildlife trade? A review of legislative and judicial approaches in fifteen jurisdictions.

## TEMPLATE FOR POLICE REGARDING BAIL

The I.O. should give early consideration to the issue of bail and have regard to the factors set out below, giving consideration to issues such as bond, surety, security and conditions that may be attached. The I.O. should complete a written proposal regarding bail and attach it to the file when presenting the case to the prosecutor for a charging decision. This will enable the prosecutor to better prepare arguments relating to bail in advance of any hearing.

## GROUND FOR OPPOSING BAIL

### LIKELIHOOD THAT THE ACCUSED WILL ABSCOND

1. The nature of the accusation. E.g. offence involving personal violence, massive destruction of property, threat to life, etc  
.....  
.....
2. The gravity of the offence charged and the severity of the punishment which conviction might entail. E.g. offences attracting death penalty or life imprisonment  
.....  
.....
3. The circumstances of arrest; e.g. accused was in hiding after the commission of the offence; attempted to run away to evade arrest; fought with police; had concealed his identity (masking, man dressing in woman clothes, skin bleaching etc.)  
.....  
.....
4. The antecedents of the accused so far as they are known. E.g. having jumped police bond, previous conviction, failure to respond to police summons, resisting arrest etc.  
.....  
.....
5. Whether the accused has a fixed place of abode within the jurisdiction of court or is ordinarily resident outside Zimbabwe or is a vagabond  
.....  
.....
6. Whether the accused has sound sureties within the jurisdiction of court to undertake that the accused will comply with the conditions of bail  
.....  
.....
7. Whether the accused has jumped bail/bond on a previous occasion  
.....  
.....

8. The stage/status of the trial. E.g. where prosecution has closed its case and a prima-facie case is made out. Or substantial evidence against the accused has been adduced

.....

.....

9. Where suspects are committed for trial to the High Court the conditions for grant of bail fall under Criminal Procedure and Evidence Act namely: exceptional circumstances, grave illness, infancy, advanced age or certificate of no objection from the Prosecutor.

.....

.....

10. The family attachment of the suspect, including family obligations

.....

.....

11. Confirmation of any employment.

.....

.....

#### **LIKELIHOOD OF INTERFERENCE WITH WITNESSES**

12. Whether the applicant is likely to interfere with any of the witnesses for the prosecution or any of the evidence to be tendered in support of the charge. E.g. whether she/he is a person in authority over the witness, she/he is a reputed serial offender, she/he stays with or near the witnesses, e.t.c

.....

.....

#### **LIKELIHOOD OF ACCUSED COMMITTING ANOTHER OFFENCE WHILE ON BAIL**

13. Whether there are any other charges pending against the accused

.....

.....

14. The conduct of the suspect, in committing the offence, at arrest, and while in detention. E.g. attempt to break out of police cells, resisting arrest, previous conviction e.t.c

.....

.....

15. Character, conduct and background of the accused

.....

.....



## **OTHER CONSIDERATIONS**

16. The period spent on remand

.....

.....

17. Whether there are exceptional circumstances to warrant release on bail. E.g. advanced age, grave illness, infancy, existence of a certificate of no objection issued by the Prosecutor

.....

.....

18. The age of the accused.

.....

.....

19. The health of the applicant and whether this can be managed if remanded in custody e.g. diabetes.

.....

.....

## **DETENTION NECESSARY FOR ACCUSED'S SAFETY**

20. Where detention is in the interest of the accused that he/she be remanded. E.g. threat to kill the suspect, suspects with suicidal tendencies,

.....

.....

**THE REPUBLIC OF ZIMBABWE**

**IN THE ..... COURT OF ZIMBABWE AT .....**

**CRIMINAL MISCELLANEOUS APPLICATION NO..... OF .....**

**(Arising from .....Criminal case No. .... Of .....)**

.....**APPLICANT**

**VERSUS**

**ZIMBABWE.....RESPONDENT**

**AFFIDAVIT IN OPPOSITION TO GRANT OF BAIL**

I, .....(Name of deponent)..... of C/O .....(address of deponent) ..... do  
solemnly make oath and state as hereunder:

1. That I am ..... (status of deponent) an adult Zimbabwean of sound mind  
and depone to the contents herein in that capacity.
2. That on the .....(date), the applicant was produced at ..... (name of court)  
Court and charged with the offences of ..... Contrary to .....  
(law) and thereafter remanded to ..... Government prison.
3. ....
4. ....
5. ....
6. That I believe it would be in the interest of justice that bail be denied
7. That I swear this affidavit in opposition of the application for Bail by .....
8. That what is stated herein above is true and correct to the best of my knowledge and belief.

Sworn at .....

This.....day of.....

..... (names)

..... (signature)

**DEPONENT**

**BEFORE ME:-**

.....  
**COMMISSIONER OF OATHS/ MAGISTRATE**

***Drawn and Filed by:***

The National Prosecuting Authority  
Xx Floor, xx House, xx Road. P. O. Box xxxxx, HARARE

# STANDARD OPERATING PROCEDURES ON INVESTIGATION AND PROSECUTION OF WILDLIFE CRIME

## 1. PRE-ARREST CONFERENCE BETWEEN PARKS DEPARTMENT AND THE INVESTIGATION OFFICER

Where an arrest is being contemplated, the parks and I.O. may consider a pre-arrest conference desirable. If so, this shall be requested at the convenience of the investigating authority to ensure that a pre-arrest conference is held as soon as possible after notification from the investigating officer to the prosecutor. At the conference, the parks and I.O. may address the following issues and may seek the advice of a prosecutor:

- a. Possible offences to charge
- b. Lines of inquiry
- c. Admissibility of the evidence
- d. Potential need for expert evidence
- e. Possible legal preliminary applications e.g. restraining orders, mobile data production orders, inspection of bank accounts, liaison with customs and immigration regarding movement of goods or persons
- f. Identification of likely issues in the case e.g. relations between accused and witnesses, compellability of witnesses, age of suspects and witnesses, jurisdiction and venue of possible trial
- g. Consideration of issues regarding witness protection and care (e.g. screens in court, protection of informants etc.).
- h. Cross border investigations e.g. extradition processes, mutual legal assistance, use of Interpol data.
- i. Whether a parallel financial investigation should be involved e.g. contacting the Financial Intelligence Authority, Inspectorate of Government.
- j. Evidential and legal consequences of a proposed investigative technique e.g. surveillance, controlled delivery
- k. The need for regular meetings between prosecution and investigation to track the progress of the investigation
- l. Preservation of crimes scenes, collection and handling of exhibits.
- m. Use of informants and how best to encourage information sharing from sources.

## 2. POST ARREST ACTIONS

Where an arrest is made in the absence of prior consultation with the prosecution, the following shall occur (note, this is not an exhaustive list).

- a. Extra-Curial statement /Recording warned and caution statements
- b. Conduct of identification parades where necessary (see guidance below)
- c. Lifting of finger prints from the objects and suspects involved
- d. Profiling of accused person i.e. photo, height, complexion, scars, tattoos etc (Full description)
- e. Interviewing and recording of witness statements.

- f. Consideration of bail and any other relevant applications (see Form 242)
- g. Any further inquiries by the investigator.
- h. Give consideration to the need for liaison with any other relevant agencies e.g. immigration.
- i. Consideration of granting the suspect a police bail where the file is not ready for charge.
- j. Drafting of the charge sheet.
- k. Consider the need for advice listed in (1) above
- l. Obtain record of previous convictions

**MINIMUM REQUIREMENT OF A FILE TO BE SUBMITTED  
BY THE I.O. to the PROSECUTOR**

<b>PRE- CHARGE (SEEKING A REMAND IN CUSTODY)</b>	<b>PLEA STAGE</b>
Particulars of the accused	A sanctioned charge sheet as authorized by the Prosecutor
Time, Date and Place of offence	Antecedents of the accused persons, affidavit regarding bail.
Affidavits containing grounds for opposing bail. E.g. Nature and sensitivity of the case, possibility of interfering with witnesses.	Witness statements including arresting officers and Investigating Officer and scene of crime officers in the file.
	Expert reports or indication if one is required and anticipated date of completion of analysis and report.
	List of exhibits. Any expert reports available at this time; photographs, bank statements , any recording e.g. on disc (properly labelled), any mobile phone records if available; exhibits slips.
	Sketch plan if relevant
	Defence statements and charge and caution statements if applicable.
	Brief facts of the case.
	File index.
	Witness contacts are recorded on a statement
Setdown - Date of registration in court	Copy of Investigation Diary
Name and contact of the investigating officer	
Name and contacts of the prosecutor if assigned at this stage.	

### 3. POST CHARGE CONFERENCE

After first appearance, the Prosecutor will consider the need for a post charge conference depending on the nature of outstanding investigations and complexity of the case.

### 4. CASE MANAGEMENT CONFERENCES

At the Magistrates Court: where the accused enters a plea of 'Not Guilty', the prosecution should address the following criteria during a case management conference:

- a. Set time frames for disclosure of evidence and need for further investigations if any
- b. Confirm the number of witnesses and their availability
- c. Agreeing on the trial date and schedule
- d. Inform court whether locus visits are required and advise on the need for exhibit stores
- e. Agree on procedure of tendering evidence where exhibits are involved.
- f. Preservation and handling of perishable and live exhibits
- g. Confirm the requirement of expert evidence
- h. Address issues regarding the suspects legal representation
- i. Address the issues relating to release of exhibits to their owners where required and clarify to owners the obligation to return to court with exhibits as and when required.
- j. Alert court on the issues regarding forfeiture applications and any other ancillary orders that may be sought post-conviction such as deportation, unclaimed assets and identification of the appropriate agency to which forfeiture may be made.
- k. Address issues of witness protection concerns.
- l. Considering logistical requirements in prosecution of the case such as retrieving expert reports, transportation of witnesses and exhibits.
- m. Consider the Fast Track Trial process.

### 5. PRE-TRIAL CONFERENCE WITH THE INVESTIGATING OFFICER

Where the case involves a protected species or where there is an international element e.g. where the case involves trafficking across borders or mutual legal assistance, the pre-trial conference should take place not less than fourteen days in advance of trial but continued engagement with the I.O. is likely required throughout. For all other cases, the prosecutor shall consider the need for a pre-trial conference and where deemed appropriate, the I.O. and Prosecutor should hold a pre-trial conference to ensure the matter is trial ready.

### 6. DISPUTE RESOLUTION BETWEEN THE I.O AND THE PROSECUTOR

In case of a dispute or a disagreement between the I.O and the prosecutor that cannot be resolved between the two of them, the matter should be referred to the Prosecutor in charge/ District Prosecutor/ Chief Prosecutor (as the case may be); and in relation to the I.O his superior officer in the relevant agency.

# AT COURT:

## 1. LISTING THE CASE FOR TRIAL

At the Magistrates Court: where the accused enters a plea of 'Not Guilty', the prosecution should address the following criteria when listing the matter for trial - these are similar to the matters that should be addressed at a pre-trial conference within the High Court when a wildlife crime is held at that venue:

- a. Set time frames for disclosure of evidence and need for further investigations if any
- b. Confirm the number of witnesses and their availability
- c. Agreeing on the trial date and schedule
- d. Inform court whether locus visits are required and advise on the need for exhibit stores
- e. Agree on procedure of tendering evidence where exhibits are involved.
- f. Preservation and handling of perishable and live exhibits
- g. Confirm the requirement of expert evidence
- h. Address issues regarding the suspects legal representation
- i. Address the issues relating to release of exhibits to their owners where required and clarify to owners the obligation to return to court with exhibits as and when required.
- j. Alert court on the issues regarding forfeiture applications and any other ancillary orders that may be sought post-conviction such as deportation, unclaimed assets and identification of the appropriate agency to which forfeiture may be made.
- k. Address issues of witness protection concerns
- l. Considering logistical requirements in prosecution of the case such as retrieving expert reports, transportation of witnesses and exhibits.
- m. Considering the possibility of a plea bargain

## PRE-TRIAL WRITTEN REVIEW

Not later than five days before trial – and ideally earlier – the Prosecutor shall obtain the police file and check that witnesses have been informed of the trial date; the prosecutor shall prepare a pre-trial written review on the file to confirm if the case is trial ready or not. If there is anything that suggests that the case will not proceed, the Prosecutor shall take all reasonable steps to do the following in order to minimize inconvenience to witnesses and all parties to the case.

- a. where the accused is represented, seek agreement from his/her counsel to adjourn the case and seek advance agreement before a judicial officer;
- b. where the accused is unrepresented, take all reasonable steps to inform the accused that the prosecution is not ready to proceed on the scheduled trial date
- c. to minimize inconvenience to witness, they should be called by the prosecutor so as to be inform them of the reason why the case will not be tried on that particular date.
- d. The Prosecutor should check whether the subpoena was properly served on the witness

## 3. ORDERS POST CONVICTION

- a. Where forfeiture is involved, the prosecutor must stipulate the specific agency to which any such asset is to be forfeited.
- b. In case of cases involving foreign nationals, upon conviction, the prosecution shall inform the immigration and Interpol about the duration of the sentence so that they follow up the deportation process.
- c. Prosecution must consider orders for disposal of exhibits

# GENERAL GUIDANCE

## REQUIREMENTS WHEN TAKING WITNESS STATEMENTS

Telephone number, address for the witness and a next of kin should NOT be recorded in the body of the statement but on a separate page that can be kept in the file and NOT to be disclosed to the defence. This is to mitigate the risks of witness interference or intimidation.

The I.O. should capture the following information when taking a statement from ANY witness (professional or non-professional alike):

- a. Dates when the witness knows that they will not be available to attend trial. This will enable the prosecutor to, as far as possible, seek to avoid listing the trial when it is known that the witness will not be available e.g. market days, holidays, weddings etc.
- b. For sensitive cases, witness details should be retained by the Prosecutor-General but this should be done in early consultation between the I.O. and the Prosecutor-General.
- c. Whether facilitation is required in monetary terms to enable the witness to come to court.
- d. Whether the witness is vulnerable in any way and requires assistance either in getting to court or whilst at court e.g. disability, impaired hearing or sight.
- e. Whether an interpreter is required and if so in what language.
- f. Whether the witness wrote the statement themselves, whether the statement was taken by way of 'questions and answers' or as a narrative and whether the witness was able to read through his/her statement before signing or whether the I.O. had to read the statement to the witness before signing
- g. Whether there are any witness protection requirements. This should be brought to the immediate attention of the prosecutor.
- h. That the I.O. has explained to the witness that he or she may be required to attend court, at the time of taking the statement.
- i. the person recording the statements must be able to understand the language spoken by the witnesses

## ENSURING WITNESSES ARE WARNED FOR TRIAL

The Prosecutor shall follow up with the I.O. within 7 days of the case being listed for trial to check that summons have been served PERSONALLY (whether by the I.O. or other officer whom she/he shall name). The Prosecutor shall record on the file that this has been done and when and by whom.

## STATEMENT OF SUSPECT

1. The arresting detail or officer must record a statement at the earliest possible opportunity
2. The accused person should be informed of his Constitutional rights as per Sections 50 and 70 of the Constitution. Inform suspect during and after arrest of his right to silence and cautioning the suspect.
3. If any confession is to be relied upon, it must have been obtained in accordance with the Criminal Procedure and Evidence Act.
4. Where possible, video recording should be used in recording a confession. The approved police officer in the context of confessions should be present in the interview in case a confession is made. Suspect should know he is being recorded and the caution should be captured on the recording. He should be asked if he is comfortable and whether he has

been or feels intimidated or uncomfortable. He should be told that if he wants to take a break, he can; he should be offered a drink of water and asked if he has been forced to take part of the interview. All of these questions and answers should be captured on the recording.

5. It is advisable that a female suspect has a female officer present in the interview. A statement from that female officer should be taken to confirm her presence and her role within that interview.
6. Where a defence is raised by the suspect (e.g. alibi) the I.O. has a duty to investigate its authenticity.
7. If the accused/ suspect is a juvenile the statement should be recorded in the presence of a guardian, parent or probation officer.

## DISCLOSURE

Timing of disclosure is key. Disclosure is required but with restrictions e.g. seminal case law on bail.

In a nutshell:

- Whatever evidence the prosecution wish to rely upon at trial must be disclosed unless the exceptions outlined above, apply.
- The prosecutor should call for the police file in advance of trial to ensure disclosure of the evidence to be relied upon is made.
- The prosecutor MUST record what is disclosed, when and to whom, in the prosecution file.
- The way in which disclosure is made should also be recorded e.g. by hand, by post.
- That disclosure must occur sufficiently in advance of trial to allow a reasonable time for the defence to prepare for that trial

It is recommended that information that undermines the prosecution case or assists the defence case as far as the prosecutor can reasonably ascertain from the papers, should be disclosed in the interests of justice.



# GUIDELINES ON IDENTIFICATION

## IDENTIFICATION WITH INDICATIONS

When taking a statement from an identifying witness, the officer must address the following within the statement;

- ⇒ Distance between the witness and the suspect at the time of sighting
- ⇒ Whether that distance remained constant or not e.g. was the suspect running away or getting closer?
- ⇒ General description of the suspect (height, build, weight, hair colour etc)
- ⇒ Lighting
- ⇒ Gender
- ⇒ Distinguishing marks or features
- ⇒ Duration of observation
- ⇒ Familiarity – is this a ‘recognition’ case?
- ⇒ A description of the type and colour of the clothing worn by the suspect
- ⇒ If there were any obstructions between the witness and the suspect
- ⇒ The witness has not been tainted by other factors or opinions of third parties.

### **The police officer conducting the parade is required to ensure the following:**

- ⇒ The identity parade should be held as soon as possible after arrest;
- ⇒ That the accused person is always informed that he may have an advocate or friend present when the parade takes place;
- ⇒ The I/O should not be present at all before or during the identification parade;
- ⇒ The accused person should be advised that they have the right to a legal practitioner of their own choice during the identification parade;
- ⇒ That the witness does not see the accused again at any time before the parade;
- ⇒ That the accused is placed among at least eight persons as far as possible, of similar age, height, general appearance; race and class of life as the accused;
- ⇒ That the accused is allowed to take any position he or she wishes after each identifying witness has left if he/she so desires;
- ⇒ Care should be exercised that the witnesses are not allowed to communicate with each other after they have been to the parade;
- ⇒ Exclude every person who has no business there;
- ⇒ Make a careful note after each witness leaves the parade, recording whether the witness identifies the suspect or not, the exact words used and any other relevant fact.
- ⇒ If the witness desires to see the accused walk, hear him speak, see him with his hat on or off, see that this is done. As a precautionary measure, it is being suggested the whole parade be asked to do this;
- ⇒ See that the witness touches the person he or she identifies;
- ⇒ At the preparation of the parade or during the parade ask the accused if he or she is satisfied that the parade is being conducted in a fair manner and make a note of his or her reply;
- ⇒ In introducing the witness, tell him or her that he or she will see a group of people who may or may not contain the suspected person. Do not say “Pick out somebody” or influence him or her in any way whatsoever;
- ⇒ Act with scrupulous fairness, otherwise the value of the identification as evidence will depreciate considerably;

# GUIDANCE ON EXPERT EVIDENCE

An expert is a person who is a specialist in a subject to the extent that qualifies them to present their opinion about a fact in a case during legal proceedings. This may be by training, education and/or experience.

An expert may give evidence by affidavit with a report exhibited; or by a statement exhibiting the same. The difference is that the affidavit MAY be accepted as testimony in a case whereas a statement will likely require an expert to attend court unless the defence agree the evidence.

## DUTIES OF AN EXPERT WITNESS

1. To give testimony which is an independent non-binding opinions which is the product of their expertise.
2. To give evidence that is not biased in the case.
3. The expert must not omit material evidence
4. All preserve all documents relied upon by the expert in making a determination upon the fact in issue.
5. Expert evidence should be confined to matters outside of the competence of the court.
6. An expert should make clear when a particular question or issue falls outside of his area of expertise
7. Expert witnesses who submit an affidavit must ensure that that affidavit is properly commissioned.

## THE FUNCTIONS OF AN EXPERT INCLUDE:-

- a. Clarification of issues in contention on specified matter.
- b. Guide a court to reach an informed decision in respect of a specific issue within their expertise.
- c. Testifying on specific issues.
- d. Giving a conclusive distinction or identification of an exhibit.

## CONTENTS OF A STATEMENT/AFFADVIT:

Such expert witnesses can only be called to testify if the contents of their affidavit reports are in dispute or challenged. Every expert must state, both verbally and within his statement and report, the following matters:

- a. Personal details i.e. his name, business registration details if relevant to his role as an expert.
- b. His qualifications and educational experience.
- c. His work experience in the field of the expertise to which he gives evidence e.g. where not professionally qualified, evidence of his experience that gives rise to his expertise e.g. 20 years experience as a mechanic.
- d. The methodology used in the conduct of his expert analysis of the fact in issue.
- e. Conclusion and the basis of that conclusion.
- f. Signature, date and stamp where applicable.
- g. A Commissioner of Oaths stamp, signature, date and place.

## **COMMISSIONER OF OATHS.**

The Commissioner of Oaths who takes an affidavit must not be connected with the body or authority relying upon the expert. The commissioner must be in receipt of the written report prepared by an expert and must be empowered by the Justices of the Peace and Commissioners of Oaths Act [Chapter 7:09] who shall in terms note his name, signature and position.

## **VETERINARY SURGEONS.**

Their reports must be done in affidavit form and in terms of s 278 (3) of the CPEAct and its production is admissible.

# GUIDANCE ON DIGITAL EVIDENCE

Section 279 of the Criminal Procedure and Evidence Act [Chapter 9:06] makes reference to the Admissibility of Photographs, Plans and Reports.

## **Subsection 2 provides as follows:**

- (2) A photograph or plan relating any matter which is relevant to the issue in any proceedings shall be admissible in evidence at any stage of such proceedings subject to the conditions that—
- any person who is a competent and compellable witness in such proceedings and upon whose indications or observations such photograph or plan was taken or prepared shall be called as a witness, either before or after such photograph or plan is put in by the party tendering such evidence; or
  - the evidence of such person is admitted in terms of section two hundred and fifty-five

## **CCTV:**

There should be a statement that includes confirmation that the installation was done by a licensed agent appointed by the issuing authority, along with statements regarding how often the device was serviced, the procedure that was followed to extract the CCTV recording on to a CD or disk and who had access to that recording. The chain of custody regarding that exhibited recording must be carefully recorded.

## **PERSONAL PHONES/CAMERA/IPADS:**

From civilians OR officers using a personal device such as a their own mobile phone: any statement exhibiting a photograph taken by a non-professional witness e.g. a photograph taken on a smartphone, should include the following information:

- Ownership of device;
- Make and model of the device;
- A statement that the device was in good condition at the time of recording the information whether by photo/video or other.
- Declaration of any interest by the witness in relation to the accused or complainant
- Presence at the scene, time, date, place and that he used the device to capture the information
- The information was stored in that device and that device remained in good working order.
- The time and place when he revealed it to the I.O.
- What he/she did with the image/digital recording in between;
- At what point was the device handed over in its original form OR
- If he/she sent a digital copy to the I.O. to print or exhibit, confirmation that he observed the copy and confirmation that it is the same as that contained in his device i.e. the actual exhibiting of the photograph or recording by that witness within the statement.
- If he/she shared the information e.g. through social media, he should state this.
- This does NOT require that the owner to hand over his phone to the custody of the police until trial, IF the above requirements are adhered to. What is vital is that the investigating officer prints out copies of the photograph or captures the recording and that they are seen, verified and exhibited by the witness.

## **DIGITAL EVIDENCE FROM BUSINESS RECORDS/EQUIPMENT:**

On business records e.g. telecoms printouts of call logs or banking statements, or devices used in the course of business by investigating officers e.g. an 'office camera', make sure the statement includes the following points:

- He/she made regular use of the computer/device in the ordinary course of business of that organisation;
- At the time of recording the relevant information, the computer/device was operating properly and that if there was any defect, it would not have affected its accuracy.
- There was no interference between what was recorded by the computer/device and what is now being produced
- If a copy, that copy is certified by the person producing it as accurate.

# GUIDANCE ON SECURING EXHIBITS

As a matter of best practice, the Investigating Officer should oversee and ensure the following occurs:

- i. The first officer at the scene of crime shall recover and ensure safety of exhibits and must prepare an inventory and hand over to Investigating Officer who shall ensure the exhibit's chain of custody is maintained in the Exhibit Book together with the Tag and Certificate of Description/weight
- ii. Investigating Officer shall ensure that the exhibits are properly labelled and kept in separate bags, kits, envelopes or containers to prevent contamination.
- iii. The Investigating Officer shall ensure safe custody and proper recording of the exhibit in an Exhibit register.
- iv. Where a firearm or ammunition is seized, the police shall be immediately informed so as to assist the investigation.
- v. The Investigating Officer shall determine exhibits that require expert examination, complete the correct forms and forward them to the appropriate expert examining body without delay.
- vi. The Investigating Officer shall collect the expert report together with the exhibit from the expert, and keep them in safe custody until their production in court.
- vii. Where a suspect is in custody, the I.O. should inform the expert and request an early preliminary report.
- viii. Where there is a documentary exhibit that does not require expert opinion, the Investigating Officer shall keep copies in the file and produce the originals in court.
- ix. Only a court may determine when an exhibit may be released to an interested party.
- x. Exhibit shall be stored wherever possible with the Parks and Wildlife Management Authority. The I.O. shall ensure he obtains a nominated point of contact at the Department who shall take responsibility for storage of those exhibits. Wherever that Department officer hands over responsibility to another officer, he shall record the time, date and name of that handover in the occurrence book. That new officer shall bear the same responsibility and duty on any subsequent handover. This information must be supplied to the I.O.
- xi. In any case where any exhibit is lost or misappropriated or altered or manipulated in any way or at any time, the NPA shall direct a robust investigation with a view to identifying and charging the responsible party.
- xii. Where the exhibit lost in (xi) above concerns ivory or rhino horn, the NPA shall prioritize the direction of that investigation.

# GUIDANCE ON APPEALS

## APPEAL AGAINST GRANTING OF BAIL

### Magistrates' Court to High Court

Section 121 (1) (a) of the **Criminal Procedure and Evidence Act [Chapter 9:07]**.

Prosecutor- General or Public Prosecutor may appeal **within 48 hours** of the decision.  
**High Court to Supreme Court**

Section 121(1) (a) of the **Criminal Procedure and Evidence Act [Chapter 9:07]**.

Section 121(2) (a) of the **Criminal Procedure and Evidence Act [Chapter 9:07]**.

Section 121(3) of the **Criminal Procedure and Evidence Act [Chapter 9:07]**.

Section 121(8) of the **Criminal Procedure and Evidence Act [Chapter 9:07]** provides that there shall be no appeal to a judge of the Supreme Court from a decision or order of a High court judge unless the decision relates to the admission to bail of a person charged with any offence referred to in-

(a) paragraph 10 of the Third Schedule; or

(b) the Ninth Schedule in respect of which the Prosecutor – General has issued a certificate referred to in subsection (3b) of section thirty –two

### **APPEALS AGAINST INTERLOCUTORY DECISIONS OR RULING**

#### **Magistrates' Court to High Court**

There is no right of appeal against interlocutory rulings of the magistrates.

The National Prosecuting Authority can however apply for review of interlocutory decisions in terms of section 26 as read with section 27 of the  
**High Court Act [ Chapter 7:06]**

#### **High Court to Supreme Court**

Section 44(5) of the **High Court Act [ Chapter 7:06]**

Appeal is permissible only if a judge of the High Court grants leave.

### **APPEAL AGAINST ACQUITTAL**

#### **Magistrates' Court to High Court**

Section 198(4) of the **Criminal Procedure and Evidence Act [Chapter 9:07]**.

Where accused has been acquitted at the close of the prosecution case

Section 61 of the **Magistrates Court Act [Chapter 7:10]**.

Where accused has been acquitted at the close of the defence case.

- Appeal can be on a point of law, fact or both law and fact.
- Appeal is permissible only if a judge of the High Court grants leave.

### **High Court to Supreme Court**

Section 44(6) of the **High Court Act [Chapter 7:06]**

This is permissible where an accused has been acquitted by the High Court or where the High Court has allowed his appeal.

- Appeal can be on a point of law, fact or both law and fact.
- Appeal is permissible only if a judge of the Supreme Court grants leave.

### **APPEAL AGAINST SENTENCE**

#### **Magistrates' Court to High Court**

Section 62 of the **Magistrates Court Act [Chapter 7:10]**.

- Appeal is permissible only if a judge of the High Court grants leave.
- Appeal has to be lodged with the Registrar of the High Court within 10 days of passing of sentence.

### **High Court to Supreme Court**

Section 44(7) of the **High Court Act [Chapter 7:06]**

- Appeal is permissible only if a judge of the High Court grants leave.

### **FROM ANY COURT TO CONSTITUTIONAL COURT**

Section 175 (4) of the Constitution of Zimbabwe.

If a constitutional matter arises in any proceedings before a court, the Prosecutor-General as a party to the proceedings may request for a referral of the matter.



## **CASE LAW ON APPEALS**

**TO:** Chief Public Prosecutor: Appeals, Reviews and Constitutional Matters.

**Mr J Uladi**

**FROM :** Mrs S Fero

**DATE :** 25 September 2018

**RE: S v PHILEMON CHIGWADA C/S 47 AND S189 ARW S47(1) (a) (b) OF THE CRIMINAL LAW (CODIFICATION AND REFORM ACT) [CHAPTER 9:23] MURDER AND ATTEMPTED MURDER CRB1780/16**

The matter was allocated to me with the following instruction:

*'Please consider. Was the sentence imposed adequate? 2. Is it competent to suspend a portion of the sentence for a person convicted of murder?'*

A transcribed record of proceedings which captures the judgement, the trial prosecutor's submissions in aggravation, the defence counsel's submissions in mitigation and the reasons for sentence was attached to the request.

I did not have the benefit of the complete record of proceedings hence my opinion will be guided by the said documents.

The judgement speaks to the fact that the accused was convicted on one count of murder with actual intent and one count of attempted murder.

He was subsequently sentenced as follows:

Count 1: 18 years imprisonment of which 3 years is suspended on the usual conditions of good behaviour.'

Count 2: 10 years imprisonment of which 4 years is suspended on the usual condition of good behaviour

The sentences are to run concurrently; therefore the accused is to serve a total effective 15 years imprisonment.

I will first deal with the second question viz:

**Is it competent to suspend a portion of the sentence for a person convicted of murder?**

Section 358 of the **Criminal Procedure and Evidence Act [Chapter 9:07]** provides for powers of courts as to postponement or suspension of sentences.

Subsection (2) reads:

**358 Powers of courts as to postponement or suspension of sentences**

(2) When a person is convicted by any court of any offence other than an offence specified in the Eight Schedule, it may-

- a. postpone for a period not exceeding five years the passing of sentence and release the offender on such conditions as the court may specify in the order
- b. pass sentence but order the operation or any part of the sentence to be suspended for a period not exceeding five years on such conditions as the court may specify in the order.
- c. pass sentence of a fine or, in default of payment, imprisonment, but suspend the issue of a warrant for committing the offender to prison in default until expiry of such period, not exceeding twelve months, as the court may fix for payment, in instalments or otherwise of the amount of fine, or until default has been made by the offender in payment of the fine or any such instalment, the amounts of any instalments and the dates of payment thereof being fixed by order of court, and the court may in respect of the suspension of the issue of warrant impose such conditions as it may think necessary or advisable in the interests of justice; or
- d. discharge the offender with a caution or reprimand

The above cited section is applicable to any offence with the exclusion of offences in the Eight Schedule. There are 3 Eight Schedule offences viz:

1. Murder
2. Any conspiracy or incitement to commit murder
3. Any offence in respect of which any enactment imposes a minimum sentence and any conspiracy, incitement or attempt to commit such offence.

It was therefore incompetent for the Honourable judge to suspend a portion of the imprisonment term on a charge of murder which is an Eight Schedule offence.

**Was the sentence imposed adequate?**

Sentencing is a delicate exercise and is for the discretion of the trial court.

**Count 1 Murder**

In casu, the accused was found guilty of murder with actual intent. Prior to the promulgation of the new Constitution, the trial court in such circumstances would be obliged to hear submissions on extenuation, make a finding of whether there are extenuating circumstances or not before imposing the appropriate sentence. In the absence of extenuating circumstances, the ultimate penalty would be imposed.

The position is now different under the new constitutional dispensation. The new approach was succinctly laid down by Kudya J in the case of ***S v Phibion Malundu*** HH68/15. The court stated:

‘Section 48 of the Constitution of Zimbabwe provides for the right to life to every person. Subsection (2) thereof states:

*‘(2) A law may permit the death penalty to be imposed only on a person convicted of murder committed in aggravating circumstances, and  
(a) the law must permit the court a discretion whether or not to impose the penalty’*

*The contemplated law that complies with this constitutional provision is not yet in place. Part XVIII of the Criminal Procedure and Evidence Act [Cap 9:07] comprehensively deals with the punishments that may be imposed for all criminal offences in Zimbabwe. Section 336(1) (a) empowers the High Court to impose the death penalty. Section 337 mandated the imposition of the death penalty in the absence of extenuating circumstances.*

*There was recognisable distinction in our law and practice between extenuating circumstances and aggravating features before the new constitutional dispensation. The cases of **S v Jacob** 1981 ZLR 1 (S). **S v Mutsunge & Anor** 1987 (1) ZLR 53 (S) and **S v Tshuma** 1991(1) ZLR 166 (S) underline the distinction and may throw light on the meaning of the present constitutional provision.*

*My view is that until a law contemplated by the Constitution is promulgated, the Criminal Procedure and Evidence Act, supra, must be interpreted in conformity with the constitution. The effect of such an interpretation is that extenuation is no longer a requirement and the death penalty is no longer mandatory. It may only be imposed where the sentencing court finds that the murder was committed in aggravating circumstances. The procedure envisaged may very well be along the lines intimated by EBRAHIM JA in **S v Tshuma**, supra at p. 170B. The court is addressed in mitigation by the accused, followed by aggravation by the State and thereafter the court determines in the normal way whether aggravating circumstances that warrant death exist. This appears to have been the approach adopted by Hungwe J in **S v Mutsinze** HH645/12'*

It follows that the court now has to hear submissions in mitigation and in aggravation and thereafter determine whether the mitigatory factors are eclipsed as to warrant the imposition of the death penalty. If not the court can impose a sentence which it deems appropriate in the circumstances.

In casu, two issues arise: firstly the wrong procedure was adopted and secondly the trier of fact took into account irrelevant factors in considering the appropriate sentence as will be demonstrated below.

Procedurally, on record page 8, the State simply stated that the murder was committed in aggravating circumstances as defined in section 48(2). The aggravating factors were not outlined and it prayed for capital punishment.

In turn, the defence submitted in mitigation, clearly specifying the mitigatory factors. It conceded the offence was committed in aggravatory circumstances and prayed for a sentence of 20 years imprisonment.

The court then requested for 'extenuating circumstances' to which the defence submitted that none existed. The approach by the State, in my view deprived the court of adequate pre-sentencing information that would assist it in the determination of an appropriate sentence. There was also no basis for the court to inquire on extenuation in light of the developments in the law.

The court then took irrelevant factors in considering the appropriate sentence. On record page 9, the court reasoned :

*'In response to the submission made on behalf of the State, that the court should consider capital punishment, the court has found that it is an extenuating circumstance that the*

*accused is a first offender. Because the accused is a first offender, the court has not found it fit to impose capital punishment on him.....'*

The above reasoning is, in my considered view flawed in light of the Malundu decision supra. There is misdirection in that regard. The reasons that informed the sentence that was ultimately passed were based on a wrong premise and as such the sentence is in my view subject to scrutiny.

### **Count 2: Attempted Murder**

The accused was sentenced to 10 years imprisonment of which 4 years was suspended on 'the usual conditions of good behaviour'. The court did not comply with the provisions of section 358(2) of the **Criminal Procedure and Evidence Act [Chapter 9:07]** which requires that the conditions on which a sentence is suspended must be clearly specified. The phrase 'on usual conditions of good behaviour' does not, with all due respect, meet the standard envisaged in the said provision. The accused has to know the specific conditions so that he complies with same. Despite the apparent irregularity, I however hold the view that the sentence imposed for attempted murder was appropriate in the circumstances and is in tandem with sentences imposed in cases of such a nature. See **Gatsi v S** HH340/16 and **Chigji and Anor v S** HB51/2011 where the sentence of 7 years imprisonment with 3 years suspended were considered appropriate sentences on a charge of attempted murder.

The court further ordered that 'these sentences are to run concurrently; therefore the accused person is to serve a total effective 15 years imprisonment'

Section 343 of the **Criminal Procedure and Evidence Act [Chapter 9:07]** provides for cumulative and concurrent sentences. The relevant section reads:

#### ***343 Cumulative or con current sentences***

*(1) When a person is convicted at one trial of two or more different offences or when a person under sentence or undergoing punishment for one offence is convicted of another offence, the court may sentence him to several punishments for such offences or for such last offence, as the case may be, as the court is competent to impose*

*(2) When sentencing any person to punishments in terms of subsection (1) , the court may direct the order in which the sentences shall be served or that such sentences shall run concurrently*

The court in my considered view and in light of the above cited section could competently order that the sentence of murder run concurrently with the effective sentence of attempted murder. The real challenge is that it had suspended 3 years on the charge of murder and suspended 4 years on the charge of attempted murder. It clearly could not and failed to reconcile the two in the ultimate sentence passed.

### **Recommendation**

The sentence can clearly not stand and ought to be corrected by a different and higher court. I recommend that the Prosecutor –General proceeds in terms of section 44 (7) of the High Court Act [Chapter 7:06].

# GUIDANCE ON SENTENCING

It is the role of a Prosecutor to guide the court towards an appropriate sentence, including by presenting well researched legal submissions, impact of the offence and all aggravating or extenuating circumstances of each case. For instance the prosecution can submit on the special circumstances in wildlife cases of specially protected wildlife animals or state trophies. In their submissions, prosecutors should always guide the court as to the correct penal provisions and the applicable sentencing range or levels in line with the schedule of fines as gazetted. The presiding magistrate to be guided by the penal provision by the specific Acts.

The following gives guidance on the sort of factors that a prosecutor may draw to the courts attention when addressing the issue of sentence.

## OVERVIEW OF POACHING AND TRANSNATIONAL ORGANISED CRIME

- The illegal wildlife trade is valued at USD 20 billion per year, ivory and rhino horn constitute an important component of this trade;
- Over 1,000 rangers have lost their life in the last 10 years protecting wildlife across the world;
- Wildlife crime is undermining economic development, security and destabilizing fragile ecosystems;
- Criminal syndicates conduct sophisticated planning; have access to significant finances, access to trade routes and work in collusion with corrupt member of civil society;
- Criminal syndicates are stockpiling ivory and rhino horn, speculating on the future extinction of elephants and rhinos to maximize financial returns.

## SPECIES-SPECIFIC SUBMISSIONS ON POACHING — TO BE COMBINED WITH IDENTIFICATION OF AGGRAVATING FEATURES FROM THE CHECKLIST IN APPENDIX IV.

### ELEPHANTS

- In **1980** Africa had an estimated population of **1.3 million elephants**;
- In **2017**, the continental population is estimated at just **415,000 elephants** (ref: The Great Elephant Census (GEC) in 2017);
- Between 2007 – 2014, a total of **144,000 elephants** were illegally killed for their ivory (**20,000 per year**) – this represents a decline of approximately **30%** across the continent.
- Protecting Zimbabwe's wildlife takes a heavy toll on public resources and exposes rangers to severe risk of injury or death from ruthless poachers;
- Elephants contribute a vital role to the Zimbabwe landscape, creating watering holes, germinating seeds, enriching the soil, maintaining grasslands and contributing the integrity of the ecosystem.

### RHINOS

- There are approximately **4,200 black rhinos and 20,500 white rhinos** left in Africa;
- In 1970 there were approximately **70,000 black rhino** in Africa;
- Between 2013 – 2015, on average **1,200 rhinos were poached** across Africa per year and a total of **5,940 since 2008** (ref: Rhino Conservation Botswana);

- Rhinos are slow to reproduce, breeding only once every 4 or 5 years and producing only one calf at a time;
- Rhino horn may fetch up to USD 65,000 per kilo in consumer countries in the Far East;
- If poaching rates continue across Africa, black rhinos may become extinct by 2025.

## GIRAFFES

- There are **4 distinct species of giraffe and 5 subspecies** currently recognised;
- The giraffe is an iconic species, much like the elephant and the rhino that international tourists pay to see;
- The giraffe is an umbrella species, shaping and preserving ecosystems for other animals;
- Giraffe population numbers have **plummeted across Africa by nearly 40%** in the past three decades as **a result of poaching for meat**, habitat loss and habitat degradation (Ref: Giraffe Conservation Foundation)
- Often Giraffes are poached just for their tails to be used as decorative items and as fly whisks;

## PANGOLINS

- These are **the world's most trafficked species** (see: <https://news.nationalgeographic.com/2016/03/1160317-pangolins-united-states-endangered-species-act/>);
- Around 300 pangolins are poached everyday (Independent Article);
- In 2016, CITES up-listed **all species of pangolin to Appendix 1** – the highest level of protection;
- **Pangolin scales are prized** in the east for human consumption of their meat and for medicinal purposes of their scale and also for their blood which is used as a tonic. Their meat can sell at \$350 per kilo (CNN article);
- There are 4 species of pangolin in Africa;
- **Pangolins only produce a single offspring per year** making the species vulnerable to local extinction because it responds slowly to poaching pressure;

## LIONS

- The very symbol of African wildlife, **the Lion is classified as a Vulnerable Species** under threat on the International Union for the Conservation of Nature (IUCN) Red list;
- In 1900 there were an estimated 200,000 lions, **today it is less than 20,000** (ref: Panthera);
- Lion populations have **decreased by over 40%** in the last 20 years (AWF);
- As top predators, the balance of our ecosystems and habitats rely on lions. Without lions, the resulting imbalance would lead our grasslands being overgrazed, and degraded;
- Lions are also a major tourist attractions and natural resources. **The economic value of a living lion over its life time could amount to up to \$2million** [based on a Botswana Savuti survey];
- Further, only a live animal can reproduce and create another of similar value – only live animals are a sustainable, potentially renewable resource.
- The **lion bone trade** is a growing business in the far east.
- At current rates of decline **lions could come extinct in the wild by 2050** (ref: AWF).

## BUSHMEAT - GENERALLY

- However small one case might appear, it is part of a much bigger, destructive picture that threatens not only wildlife but the health of our human populations through zoonotic disease transmission. E.g. Foot and Mouth disease and Ebola;
- Competition between humans and other predators for limited prey reduces the ecosystem's carrying capacity for large carnivores. E.g. lions don't have enough to eat, bringing them closer to human populations and threatening their survival.
- **Bushmeat poaching is an extremely cruel and indiscriminate practice** whereby animals are caught in snares and may die a slow and painful death;
- **Illegal bushmeat poaching** is an increasing threat that has overtaken the scale of trophy poaching;
- Bushmeat is seen as a delicacy and a cheaper alternative to other sources of protein.

## FORESTRY CRIME — GENERALLY

- Forests play a vital role in local livelihoods, in preserving bio-diversity, supporting natural habitats and balancing our precious eco-system and climate.
- Our forests capture and store greenhouse gases, ensure water catchment, soil preservation and pollination, and home many unique and endangered species found nowhere else in the world.
- While forest crimes are often overlooked, the illegal revenue from this organised crime dwarfs that of wildlife crime (**globally estimated at \$30-100billion/year: UN**).
- In addition to massive lost revenue, forest crimes make managing our sustainable, renewable forestry resources impossible.
- Forest crimes have a devastating impact on all of these aspects of life. These crimes contribute to loss of species and habitat, deforestation, desertification and other forms of environmental degradation.
- **Forest crimes such as the illegal charcoal trade and illegal logging are often linked to organised crime**, and the funding of terrorism, and therefore present serious risks to our stability, security and rule of law.
- Charcoal burning also presents a risk of fire within wooded areas and thus a risk to the public.

## AGGRAVATING FEATURES CHECKLIST

- The species is a particular driver of tourism or other economic benefit to Zimbabwe
- The offence against the protected species also took place within a protected area
- The accused is a public official charged with the duty of protecting Zimbabwe's natural resources and heritage or involved law enforcement or military officials in the commission of the offence
- The commission of the offence involves international elements
- The offence involved a group of persons acting in the execution or furtherance of a common purpose, in which the accused played a leadership role
- The offence was planned or meticulously premeditated and executed
- The offence was committed for commercial purposes with a high value
- Where damage has been caused, cost of clean-up/restoration/rebuilding is significant
- The offence involved a high degree of sophistication in execution such as the use of poisoning, illegal weaponry or explosives, concealment of trophies, or corruption of others
- A protected species was actually killed.
- Automatic or semi-automatic weapons were used in the commission of the offence
- A law enforcement officer was killed or injured during the execution of the offence
- Death or injury to any human.
- The offence involved a large number of protected species
- The offence caused significant damage to the environment or a community (e.g. illegal grazing)
- The offence caused significant financial loss to a community
- The offence brought disrepute to a government agency or national government
- The offence posed a high risk to public health
- The offence has inflamed community tension and conflict



# SPECIAL CIRCUMSTANCES REGARDING REASONS FOR NOT IMPOSING THE MAXIMUM SENTENCE UNDER THE PARKS AND WILD LIFE ACT

Special circumstances also known as special reasons have their genesis in the prescription of minimum sentences for particular offences by the legislature. Prescription of minimum sentences is meant to be deterrent. However, in order to mitigate the potential harshness if the mandatory minimum penalty were to be imposed in all cases, the legislature adds a rider that the minimum penalty sentence does not have to be in those cases where there are “special circumstances” or “special reasons” which justifies the imposition of sentences less than the prescribed minimum. Special circumstances or special reasons apply to all criminal offences, including to wildlife crimes especially with relation to protected species.

As a result of the Generals Laws Amendment Act<sup>4</sup>, section 128 of the Parks and Wildlife Act was repealed and substituted by a special penalty for certain offences. Following the amendment, it now reads as follows:

128 Special penalties for certain offences:

(1) Notwithstanding any other provision of this Act, any person who is guilty of an offence under this Act involving—

- (a) the unlawful killing or hunting of rhinoceros, or any other specially protected animal specified by the Minister by statutory instrument; or
- (b) the unlawful possession of, or trading in, ivory or any trophy of rhinoceros or of any other specially protected animal that may be specified by the Minister by statutory instrument;

shall be liable—

- (i) on a first conviction, to imprisonment for a period not less than nine years;
- (ii) on a second or subsequent conviction, to imprisonment for a period of not less than eleven years.

Provided that where on conviction the convicted person satisfies the court that there are special circumstances in the particular case justifying the imposition of a lesser penalty, the facts of which shall be recorded by the court.

(2) Where no special circumstances are found by a court as mentioned in the proviso to subsection (1), no portion of a sentence imposed in terms of subsection (1) shall be suspended by the court if the effect of such suspension is that the convicted person will serve—

- (a) in the case of a first conviction, less than nine years imprisonment;
- (b) in the case of a second or subsequent conviction, less than eleven years.”.

This means that in case of a conviction, the court is required to impose the minimum sentence of 9 years for a first offender and 11 years for second and or any subsequent conviction. These are deterrent penalties whose objective is to discourage the poaching of protected species. The only exception when there can be a variation of penalty ie lesser years is when “there are special circumstances”.

<sup>4</sup>General Laws Amendment Act (No.5 of 2011)<sup>2</sup>Section 116 (c) (iii)

## MEANING OF 'SPECIAL CIRCUMSTANCES'

Special circumstances means;

- a) extraordinary that is out of the ordinary either in their nature or extent
- b) factors arising either out of the commission of the offence or peculiar to the offender which are out of the ordinary either in their degree or their nature.
- c) mean more than the general consequences flowing from the imposition of the prescribed punishment.
- d) They are different from mitigating circumstances

## EXAMPLES OF SPECIAL CIRCUMSTANCES

- where for example the accused was out of necessity compelled by circumstances to commit an offence, e.g. forced to drive whilst drunk because of urgent medical necessity,
- where accused was bona fide ignorant of some statutory provision of the law, such factors could constitute not only mitigating factors but 'special circumstances' in the case."
- where the accused committed an offence as a result of a trap by law enforcement agents, tempted to commit a crime which one would not have committed
- delay in bringing to trial through no fault of the accused

## CASE LAW ON SENTENCING AND “SPECIAL CIRCUMSTANCES”

In the case of Hill<sup>5</sup>, the appellant had bought a rhino horn and two elephant tusks in 1957. He kept these as ornaments. However the law was changed in 1975 through the Parks and Wildlife Act, which made it illegal to keep rhino horns and elephant tusks without a permit. The appellant was ignorant that his possession had become illegal in 1975. The court found that this was a technical breach of the law and the trial court should have found that there were special circumstances.

In the case of Ncube and Another, the court also found special circumstances<sup>6</sup>. The case involved two accused people. The first accused was an unsophisticated communal dweller who found a bit of ivory in the bush and picked it up simply to give it to a witch doctor. The second accused was a city dweller who persuaded his co-accused to sell the piece of ivory and took it for that purpose. The trial court sentenced the two to the mandatory 5-year jail term. The review court found that there were **special circumstances** in respect of the second accused and reduced his sentence to 6 months’ imprisonment based on their moral blameworthiness.

Other cases in which special circumstances were dealt with include:

- a) ***State v Mbewe & Others 1988 (1) ZLR 7 (H)***
- b) ***Sv Siziba 1990 (2) ZLR 87 (H)***
- c) ***Sv Rawstron 1982 (2) ZLR 221***

<sup>5</sup>HB 106-89

<sup>6</sup>HB -143-91

# ANNEXES

## ANNEX 1

### LEVELS OF FINES (USD): CRIMINAL LAW CODE, SCHEDULE

**NB: Levels are subject to change from time to time**

**Level 3 \$30.00**

**Level 4 \$100**

**Level 5 \$200**

**Level 6 \$300**

**Level 7 \$400**

**Level 8 \$500**

**Level 9 \$600**

**Level 10 \$700**

**Level 11 \$1000**

**Level 12 \$2000**

**Level 13 \$3000**

**Level 14 \$5000**

## ANNEX 2

### **Statutory Instrument 56 of 2012**

Parks and Wildlife (Payment for Hunting of Animals and Fish) Notice, 2012 The Minister of Environment and Natural Resources in terms of section 104(2) of the Parks and Wildlife Act [Chapter 20:14] hereby makes the following notice:-

1. This notice may be cited as the Parks and Wildlife (Payment for Hunting of Animals and Fish) Notice, 2012.
2. The amounts specified in the second column of the Schedule shall, in respect of the species of animals and fish specified in the first column of the Schedule, be imposed in terms of an order made in terms of section 104(1) of the Act.
3. The Parks and Wildlife (Payment for Hunting of Animal sand Fish) Notice 2009, published in Statutory Instrument 92 of 2009, is repealed.

### **Statutory Instrument 57 of 2012**

Parks and Wildlife (Payment for Trapping of Wild Animals) Notice 2012

The Minister of Environment and Natural Resources Management, in terms of section 19 (2) of the Trapping of Animals (Control) Act [Chapter 20:21] hereby makes the following notice: -

4. This notice may be cited as the Parks and Wildlife (Payment for Trapping of Animals and Fish) Notice 2012.
5. The amounts specified in the second column of the Schedule shall, in respect of the species of wild animals specified in the first column of the Schedule, be imposed in terms of an order made in terms of section 19(1) of the Act.
6. The Trapping of Animals (Payment for Trapping of Wild Animals) Notice 188

Please see the following tables for values in USD;

	Common Name	Latin	S.I.56 (HUNTING)	S.I.57 (TRAPPING)
1	Aardwolf	<i>Proteles cristatus</i>	5,000.00	5,000.00
2	Ant-bear (Aardvark)	<i>Orycteropus afer</i>	1,500.00	1,500.00
3	Bat-eared Fox	<i>Otocyon megalotis</i>	5,000.00	5,000.00
4	Blesbok	<i>Damalis cusalbifrons</i>	1,000.00	1,000.00
5	Blue duiker	<i>Cephalophus monticola</i>	1,500.00	1,500.00
6	Blue wildebeest	<i>Connochaetes taurinus</i>	1,000.00	1,000.00
7	Brown Hyena	<i>Hyaena brunnea</i>	3,000.00	1,000.00
8	Buffalo(male)	<i>Syncerus caffer</i>	10,000.00	10,000.00
9	Buffalo(female)	<i>Synceru scaffer</i>	8,000.00	8,000.00
10	Bushbaby	<i>Galagocras sicaudatus</i>	500.00	500.00
11	Bushbuck	<i>Tragelaphus scriptus</i>	1,000.00	1,000.00
12	Bushpig	<i>Potamochoerus porcus</i>	1,000.00	500.00
13	Cape hunting dog	<i>Lycaon pictus</i>	5,000.00	5,000.00
14	Caracal	<i>Felis caracal</i>	1,500.00	1,500.00
15	Chacma Baboon	<i>Papio Ursinus</i>	500.00	800.00
16	Cheetah	<i>Acinonyx jubatus</i>	20,000.00	20,000.00
17	Civet	<i>Viverracivetta</i>	1,500.00	1,500.00
18	Clawless Otter	<i>Anonyx capensis</i>	1,500.00	1,500.00
19	Common Duiker	<i>Sylvicapra grimmia</i>	1,000.00	1,500.00
20	Eland(male)	<i>Taurotragus oryx</i>	5,000.00	2,500.00
21	Eland(female)	<i>Taurotragus oryx</i>	4,000.00	2,500.00
22	Elephant(male)	<i>Loxodonta africana</i>	50,000.00	50,000.00
23	Elephant(female)	<i>Loxodonta africana</i>	50,000.00	50,000.00
24	Elephant(tuskless)	<i>Loxodonta africana</i>	40,000.00	50,000.00
25	Gemsbok	<i>Oryx gazelle</i>	5,000.00	5,000.00
26	Giraffe	<i>Giraffa camelopardus</i>	5,000.00	3,500.00
27	Hedgehog	<i>Atelerix frontalis</i>	1,500.00	1,500.00
28	Hippopotamus	<i>Hippopotamus amphibious</i>	5,000.00	5,000.00
29	Honeybadger	<i>Mellivora capensis</i>	1,500.00	1,000.00
30	Impala(male)	<i>Aepyceros melampus</i>	1,000.00	1,000.00
31	Impala(female)	<i>Aepyceros melampus</i>	1,000.00	1,000.00
32	Jackal	<i>Canis mesomelas</i>	1,000.00	1,000.00
33	Klipspringer	<i>Oreotragus oreotragus</i>	1,000.00	1,000.00
34	Kudu (male)	<i>Tragelaphus strepsiceros</i>	3,000.00	2,000.00
35	Kudu (female)	<i>Tragelaphus strepsiceros</i>	2,000.00	2,500.00
36	Leguaan	<i>Varanus spp.</i>	500.00	500.00
37	Leopard	<i>Panthera pardus</i>	20,000.00	20,000.00
38	Lichtenstein's Hartebeest	<i>Alcelaphus Lichtensteini</i>	5,000.00	5,000.00
39	Lion (male)	<i>Panthera leo</i>	20,000.00	20,000.00
40	Lion (Female)	<i>Panthera leo</i>	20,000.00	20,000.00
41	Mongoose family	<i>Viveridae</i>	1,000.00	1,000.00
42	Monkey (Simango)	<i>Cercopithecus spp.</i>	1,000.00	500.00
43	Monkey (Vervet)	<i>Cercopithecus aethiops</i>	1,000.00	500.00
44	Night ape	<i>Galago senegalensis</i>	1,000.00	1,000.00
45	Nyala	<i>Tragelaphus angasi</i>	2,000.00	2,000.00
46	Oribi	<i>Ourebia ourebi</i>	1,000.00	1,000.00
47	Pangolin	<i>Manis temminckii</i>	5,000.00	5,000.00
48	Pole cat	<i>Ictonyx striatus</i>	1,000.00	1,000.00
49	Porcupine	<i>Hystrix africaeaustralis</i>	1,000.00	1,000.00
50	Puku	<i>Kobus vardonii</i>	500.00	1,000.00
51	Python	<i>Python sebae</i>	2,000.00	1,500.00
52	Reedbuck	<i>Redunca arundinum</i>	1,000.00	1,000.00

53	Redhartebeest	<i>Alcelaphusbuselaphus</i>	1,000.00	1,000.00
54	Rhinoceros (black)	<i>Dicerosbicornis</i>	120,000.00	120,000.00
55	Rhinoceros (white)	<i>Ceratotheriumsimum</i>	120,000.00	120,000.00
56	Roan Antelope	<i>Hippotragus equines</i>	20,000.00	20,000.00
57	Genet rusty spotted	<i>Genetatigrina</i>	1,000.00	1,000.00
58	Genet-small spotted	<i>Genettagenetta</i>	1,000.00	1,000.00
59	Sable (male)	<i>Hippotragusniger</i>	15,000.00	15,000.00
60	Sable (female)	<i>Hippotragusniger</i>	15,000.00	15,000.00
61	Sharpes grysbok	<i>Raphicercus sharpie</i>	2,500.00	1,000.00
62	Serval	<i>Felisserval</i>	1,000.00	1,000.00
63	Sitatunga	<i>Tragelaphusspekei</i>	500.00	2,000.00
64	Spotted Hyena	<i>Crocutacrocota</i>	1,000.00	1,500.00
65	Spotted Neck Otter	<i>Lutramaculicollis</i>	1,000.00	1,500.00
66	Springbok	<i>Antidorcuscarnsupialis</i>	1,000.00	1,000.00
67	Steenbok	<i>Raphicercuscarnpestris</i>	1,000.00	1,000.00
68	Suni	<i>Nesotragusmoschatus</i>	1,000.00	1,000.00
69	Tsessebe	<i>Damaliscuslunatus</i>	3,000.00	3,000.00
70	Warthog (male)	<i>Phacochoerusaethiopicus</i>	1,000.00	1,000.00
71	Warthog (female)	<i>Phacochoerusaethiopicus</i>	1,000.00	1,000.00
72	Waterbuck (male)	<i>Kobus ellipsiprymnus</i>	3,000.00	2,500.00
73	Waterbuck (female)	<i>Kobus ellipsiprymnus</i>	2,000.00	2,500.00
74	Weasel	<i>Peocilogalealbinucha</i>	1,000.00	1,000.00
75	African Wild Cat	<i>Felislybica</i>	3,000.00	3,000.00
76	Zebra	<i>Equusburchelli</i>	3,000.00	2,500.00
77	All the bustards and khorhans family	<i>Otidae</i>	500.00	200.00
78	All the cranes family	<i>Gruidae</i>	1,000.00	200.00
79	All the flamingo family	<i>Phonicopteridae</i>	100.00	500.00
80	All the pelican family	<i>Pelecanidae</i>	100.00	200.00
81	All the stork family	<i>Ciconiide</i>	1,000.00	500.00
82	All the vulture family	<i>Aegyptiide</i>	1,500.00	200.00
83	All bats and animals without a trophy fee value		500.00	100.00
84	All birds otherwise not specified		100.00	100.00
85	All Parrots	<i>Psittaciformesspp.</i>	200.00	500.00
86	African Hawk Eagle	<i>Hieraaetusspilogaster</i>	1,000.00	200.00
87	Ayres Hawk Eagle	<i>Hieraaetusbubus</i>	1,000.00	200.00
88	Bateleur	<i>Terathopiceusecaudatus</i>	2,000.00	200.00
89	Black Eagle	<i>Aquilavereauxi</i>	3,000.00	200.00
90	Black Breasted Snake Eagle	<i>Circaetuspectoralis</i>	1,000.00	200.00
91	Black Sparrow Hawk	<i>Acciptermelanoleucus</i>	1,000.00	200.00
92	Brown Snake Eagle	<i>Circaetuscinereus</i>	1,000.00	200.00
93	Crowned Eagle	<i>Stephanaetuscoronatus</i>	1,000.00	200.00
94	Fish Eagle	<i>Haliatusvocifer</i>	1,000.00	200.00
95	Hammerkop	<i>Scopus umbretta</i>	1,000.00	200.00
96	Lanner Falcon	<i>Falco biarmicus</i>	3,000.00	500.00
97	Long Crested Eagle	<i>Lophaetusoccipitalis</i>	1,000.00	200.00
98	Martial Eagle	<i>Polamaetusbellicosus</i>	1,000.00	200.00
99	Osprey	<i>Pandionhaliettus</i>	1,000.00	200.00
100	Ostrich	<i>Struthiocamelus</i>	1,000.00	1,500.00
101	Ostrich egg (live)	<i>Struthiocamelus</i>	1,000.00	500.00
102	Ostrich egg (Shell)	<i>Struthiocamelus</i>	500.00	100.00

103	Peregrine Falcon	<i>Falco peregrines</i>	200.00	200.00
104	Secretary Bird	<i>Segattariusserpentarius</i>	200.00	200.00
105	Taita Falcon	<i>Falcon fasciinucha</i>	200.00	200.00
106	Tawny Eagle	<i>Aquila rapox</i>	200.00	200.00
107	Crested Guineafowl	<i>Gutterapucherani</i>	100.00	100.00
108	Crowned (Helmeted) Guineafowl	<i>Numidameleagris</i>	100.00	100.00
109	Yellow spotted Dassie	<i>Heterohyrax</i>	100.00	500.00
110	All reptiles not otherwise specified		100.00	100.00
111	Crocodile	<i>Crocodylusniloticus</i>	1,500.00	1,500.00
112	Crocodile egg(live)	<i>Crocodylusniloticus</i>	500.00	1,000.00
113	Crocodile egg(shell)	<i>Crocodylusniloticus</i>	200.00	200.00
114	Tortoise family	<i>Tetsudidaespp.</i>	100.00	500.00
115	All meat (dried) per kilogram		40.00	40.00
116	All meat (wet) per kilogram		30.00	30.00
117	All fish (dried or smoked) per kg		6.00	6.00
118	All fish (wet) per kilogram		5.00	5.00

## ANNEX 3

### LIST OF SPECIALLY PROTECTED ANIMALS UNDER SCHEDULE 6 OF THE PARKS AND WILDLIFE ACT

#### MAMMALS—MAMMALIA

1. Aardwolf—*Proteles cristatus*
2. Bat-eared Fox—*Otocyon megalotis* Wankie district
3. Cheetah—*Acinonyx jubatus*
4. Gemsbok—*Oryx gazella*
5. Lichtenstein's Hartebeest—*Alcelaphus Lichtensteini*
6. Pangolin—*Manis temmincki*
7. Rhinoceros—
  - (a) Black—*Diceros bicornis*
  - (b) Square-lipped—*Ceratotherium simum*
8. Roan—*Hippotragus equinus*

#### REPTILES—REPTILIA

1.
  1. Python—*Python sebae*

#### BIRDS—AVES

1. African Hawk Eagle—*Hieraaetus spilogaster*
2. All the Bustards and Korhaans—Family *Otididae*
3. All the Cranes—Family *Gruidae*
4. All the Flamingoes—Family *Phoenicopteridae*
5. All the Pelicans—Family *Pelecanidae*
6. All the Storks—Family *Ciconiidae*
7. All the Vulturs—Family *Aegypiidae*
8. Ayres' Hawk Eagle—*Hieraaetus dubius*
9. Bateleur—*Terathopius ecaudatus*
10. Black Eagle—*Aquila verreauxi*
11. Black-breasted Snake-Eagle—*Circaetus pectoralis*
12. Black Sparrowhawk—*Accipiter melanoleucus*
13. Brown Snake-Eagle—*Circaetus cinereus*
14. Crowned Eagle—*Stephanoaetus coronatus*
15. Fish Eagle—*Haliaeetus vocifer*
16. Hamerkop—*Scopus umbretter*
17. Lanner Falcon—*Falco biarmicus*
18. Long-crested Eagle—*Lophaetus occipitalis*
19. Martial Eagle—*Polemaetus bellicosus*
20. Osprey—*Pandion haliaetus*
21. Peregrine—*Falco peregrinus*
22. Secretary Bird—*Sagittarius serpentarius*
23. Teita Falcon—*Falco fasciinucha*
24. Tawny Eagle—*Aquila rapax*.







# **WILDLIFE CRIME IN ZIMBABWE**

**POINTS TO PROVE: A GUIDE FOR PROSECUTORS AND INVESTIGATORS  
ON CASE BUILDING, INCLUDING SAMPLE CHARGES, GUIDANCE ON THE  
'DECISION TO CHARGE' AND SENTENCING GUIDELINES**

**1 S T E D I T I O N 2 0 1 9**