

THE VIABILITY OF LEGALISING TRADE IN IVORY AND ENDANGERED SPECIES PRODUCTS: A

NAMIBIAN PERSPECTIVE WITH SADC COMPARISONS

A THESIS SUBMITTED IN FULFILMENT OF THE REQUIREMENTS FOR THE DEGREE OF

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ABSTRACT

This thesis investigates the viability of legalizing trade in ivory and endangered species products in Namibia and its impact on species conservation, anti-poaching efforts, and sustainable development. The study employs a mixed-methods approach, incorporating both doctrinal legal analysis and empirical data collection through questionnaires distributed to key 29 stakeholders, including conservation experts, government officials, and community leaders.

The research objectives include evaluating current Namibian and international legal frameworks; assessing the ecological, economic, and enforcement implications of legalizing ivory trade; comparing Namibia's legal regime with South Africa, Botswana, and Zimbabwe; and proposing policy recommendations that ensure conservation while considering economic benefits for local communities. The study also explores the potential consequences of implementing legal trade systems, such as the risk of encouraging poaching and the mismanagement of wildlife populations.

Key empirical findings indicate that while there is substantial support for legalizing trade, significant concerns remain about enforcement mechanisms, public trust, and the potential for increased poaching. The legal frameworks in Namibia, such as the Controlled Wildlife Products and Trade Act and the Prevention of Organised Crime Act (POCA), provide a strong foundation for wildlife crime prevention but are insufficient for regulating legal trade due to conflicting provisions on asset forfeiture and wildlife trafficking. Comparisons with South Africa and Zimbabwe reveal gaps in enforcement and coordination that could undermine a regulated trade system.

The study concludes that legalizing trade in ivory is not currently viable due to the high risks of exploitation by criminal networks and the potential negative impacts on endangered species. Instead, Namibia should focus on strengthening anti-poaching efforts, enhancing community-based conservation programs, and seeking alternative income-generating activities for communities reliant on wildlife. The thesis recommends refining existing legal frameworks, improving cross-border enforcement cooperation, and exploring regulated trade options under stringent international supervision.

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Table 6.1: The demographic information of respondents

ACRONYMS AND ABBREVIATIONS

ACC: Anti-Corruption Commission

CBD: Convention on Biological Diversity

CBNRM: Community-Based Natural Resource Management

CITES: Convention on International Trade in Endangered Species of Wild Fauna and
Flora

CAMPFIRE: Communal Areas Management Programme for Indigenous Resources

COP: Conference of the Parties

DEA: Department of Environmental Affairs

EA: Environmental Assessment

EMC: Environmental Management Committee

EMR: Environmental Management Report

EMT: Environmental Monitoring Team

EMP: Environmental Management Plan

EIA: Environmental Impact Assessment

EPT: Environmental Protection Tribunal

EU: European Union

GDP: Gross Domestic Product

GIS: Geographic Information System

GIZ: Deutsche Gesellschaft für Internationale Zusammenarbeit

GMO: Genetically Modified Organism

GPTF: Game Products Trust Fund

ICCWC: International Consortium on Combating Wildlife Crime

ICU: International Cooperation Unit

IUCN: International Union for Conservation of Nature

MEFT: Ministry of Environment, Forestry and Tourism

MET: Ministry of Environment and Tourism

NBSAP: Namibia's National Biodiversity Strategy and Action Plan

NGO: Non-Governmental Organization

NP: National Park

PAWM: Protected Areas and Wildlife Management

POCA: Prevention of Organised Crime Act

PRD: Protected Resources Division

SADC: Southern African Development Community

TFCAs: Transfrontier Conservation Areas

TRAFFIC: Trade Records Analysis of Flora and Fauna in Commerce

UNODC: United Nations Office on Drugs and Crime

UNTOC: United Nations Convention against Transnational Organized Crime

CHAPTER ONE: INTRODUCTION AND BACKGROUND TO THE STUDY

1.1 INTRODUCTION

The global trade in ivory and endangered species products represents a complex and contentious issue at the intersection of conservation, economics, and international law¹. This study examines the viability of legalizing trade in ivory and endangered species products, with a specific focus on Namibia, and its potential impact on species conservation and anti-poaching efforts.

Ivory, primarily derived from elephant tusks and rhino horns, has been a valuable commodity for centuries, prized for its use in art, jewellery, and traditional medicine². However, the demand for ivory has led to widespread poaching, threatening the survival of elephant and rhino populations across Africa³. Beyond ivory, the trade in endangered species products encompasses a wide range of items, including pangolin scales, tiger bones, sea turtle shells, and rare plant species⁴.

The international community has responded to the threat of extinction for many species by implementing trade bans through agreements such as the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)⁵. Despite

¹ Biggs, D., Cooney, R., Roe, D., Dublin, H. T., Allan, J. R., Challender, D. W., & Skinner, D. (2017). Developing a theory of change for a community-based response to illegal wildlife trade. *Conservation Biology*, 31(1), 5-12.

² Hoare, R. (2012). Lessons from 15 years of human–elephant conflict mitigation: management considerations involving biological, physical and governance issues in Africa. *Pachyderm*, 51, 60-74.

³ Lindsey, P. A., Miller, J. R., Petracca, L. S., Coad, L., Dickman, A. J., Fitzgerald, K. H., & Hunter, L. T. (2018). More than \$1 billion needed annually to secure Africa's protected areas with lions. *Proceedings of the National Academy of Sciences*, 115(45), E10788-E10796.

⁴ United Nations Office on Drugs and Crime. (2020). *Wildlife crime: Trafficking in ivory and other endangered species*. UNODC.

⁵ Burgess, N. D. (2018). Unveiling the patterns and trends in 40 years of global trade in CITES-listed wildlife. *Biological Conservation*, 223, 47-57.

these efforts, illegal trade continues to flourish, driven by high demand and lucrative black markets⁶.

Namibia, known for its diverse wildlife and conservation efforts, faces significant challenges in protecting its endangered species, particularly rhinos and elephants⁷. The country's unique position as home to the largest free-roaming black rhino population in the world makes it a critical player in global conservation efforts⁸.

The term "legalization" in the context of this study refers to the process of making the trade in ivory and endangered species products lawful under regulated conditions⁹. This concept extends beyond mere decriminalization, encompassing the development of comprehensive legal frameworks to govern the trade, including harvest quotas, certification systems, and mechanisms for revenue distribution¹⁰.

Wildlife crime in Namibia poses a serious threat to its natural heritage and economic stability. Well-organised gangs and crime syndicates exploit vulnerable areas and establish trafficking networks for horns and tusks, potentially triggering a cycle of enhanced rural poverty if left unchecked¹¹. The illegal killing of wildlife impacts the environment by reducing breeding numbers and thinning the gene pool, while also causing financial cutbacks and job losses in tourism, a key economic sector.

⁶ Challender, D. W., & MacMillan, D. C. (2014). Poaching is more than an enforcement problem. *Conservation Letters*, 7(5), 484-494.

⁷ Muntifering, J. R., Linklater, W. L., Clark, S. G., Uri-Khob, S., Kasaona, J. K., Uiseb, K., & Knight, A. T. (2017). Harnessing values to save the rhinoceros: Insights from Namibia. *Oryx*, 51(1), 98-105.

⁸ Naidoo, R., Weaver, L. C., Diggle, R. W., Matongo, G., Stuart-Hill, G., & Thouless, C. (2016). Complementary benefits of tourism and hunting to communal conservancies in Namibia. *Conservation Biology*, 30(3), 628-638.

⁹ 't Sas-Rolfes, M., Challender, D. W., Hinsley, A., Veríssimo, D., & Milner-Gulland, E. J. (2019). Illegal Wildlife Trade: Scale, Processes, and Governance. *Annual Review of Environment and Resources*, 44, 201-228.

¹⁰ Biggs, D., Courchamp, F., Martin, R., & Possingham, H. P. (2013). *Legal trade of Africa's rhino horns*. *Science*, 339(6123), 1038-1039.

¹¹ Ibid

Addressing these criminal aspects through effective law enforcement and stringent legal frameworks is essential for protecting Namibia's biodiversity and ensuring sustainable economic development.

Current research on the legalization of wildlife product trade presents conflicting views. While some studies suggest that legal trade could reduce poaching by satisfying demand through regulated channels¹², others argue that it might stimulate demand and provide cover for illegal products. This discrepancy highlights a significant gap in our understanding of how legalization might function in specific national contexts, particularly in countries like Namibia with unique ecological and economic circumstances¹³.

The importance of this research lies in its potential to inform evidence-based policy decisions in Namibia and beyond. By examining the viability of legal trade from multiple perspectives - ecological, economic, and legal - this study aims to contribute to the development of more effective conservation strategies¹⁴. Furthermore, by exploring the potential for legal trade in a wider range of endangered species products beyond ivory, this research seeks to provide a more comprehensive understanding of the complexities involved in wildlife product trade¹⁵.

¹² Biggs, D., Courchamp, F., Martin, R., & Possingham, H. P. (2013). Legal trade of Africa's rhino horns. *Science*, 339(6123), 1038-1039.

¹³ Naidoo, R., Weaver, L. C., Diggle, R. W., Matongo, G., Stuart-Hill, G., & Thouless, C. (2016). Complementary benefits of tourism and hunting to communal conservancies in Namibia. *Conservation Biology*, 30(3), 628-638.

¹⁴ Dickman, A. J., Macdonald, E. A., & Macdonald, D. W. (2011). A review of financial instruments to pay for predator conservation and encourage human–carnivore coexistence. *Proceedings of the National Academy of Sciences*, 108(34), 13937-13944.

¹⁵ Challender, D. W., Harrop, S. R., & MacMillan, D. C. (2015). *Understanding markets to conserve trade-threatened species in CITES*. *Biological Conservation*, 187, 249-259.

As the global community continues to grapple with the dual challenges of species conservation and sustainable development, research into alternative approaches to wildlife management becomes increasingly crucial¹⁶. This study's focus on Namibia's specific context, combined with a comparative analysis of other jurisdictions, offers the potential for insights that could reshape conservation efforts across the African continent and beyond¹⁷.

1.2 BACKGROUND TO THE STUDY

The trade in ivory and endangered species products has a long and complex history, intertwined with human cultural practices, economic systems, and conservation efforts¹⁸. In Namibia, as in many African countries, this trade has had significant impacts on wildlife populations and local communities¹⁹.

Historically, the ivory trade has been a major driver of elephant population decline. In the 1980s, it's estimated that Africa's elephant population halved from 1.3 million to 600,000 due to intensive poaching²⁰. Namibia's elephant population, while more stable than in some other African countries, has not been immune to these pressures. As of

¹⁶ Jones, B. (2009). Policy lessons from the evolution of a community-based approach to wildlife management, Kunene Region, Namibia. *Journal of International Development*, 11(2), 295-304.

¹⁷ Lindsey, P. A., Petracca, L. S., Funston, P. J., Bauer, H., Dickman, A., Everatt, K., & Hunter, L. T. (2017). The performance of African protected areas for lions and their prey. *Biological Conservation*, 209, 137-149.

¹⁸ † Sas-Rolfes, M., Moyle, B., & Stiles, D. (2014). *The complex policy issue of elephant ivory stockpile management*. *Pachyderm*, 55, 62-77.

¹⁹ Naidoo, R., Weaver, L. C., Diggle, R. W., Matongo, G., Stuart-Hill, G., & Thouless, C. (2016). Complementary benefits of tourism and hunting to communal conservancies in Namibia. *Conservation Biology*, 30(3), 628-638.

²⁰ Cooney, R., Roe, D., Dublin, H., Phelps, J., Wilkie, D., Keane, A., & Biggs, D. (2017). From poachers to protectors: engaging local communities in solutions to illegal wildlife trade. *Conservation Letters*, 10(3), 367-374.

2016, Namibia was home to approximately 22,754 elephants, a significant recovery from the low points of the 1980s but still vulnerable to poaching pressures²¹.

Rhino poaching in Namibia has shown alarming trends in recent years. According to the Ministry of Environment, Forestry and Tourism, rhino poaching incidents increased from 0 in 2009 to a peak of 97 in 2015²². While there has been some decline since then, with 43 rhinos poached in 2020, the threat remains significant. The black rhino, in particular, faces severe pressure, with the population in Namibia estimated at around 1,857 as of 2012²³.

Beyond elephants and rhinos, other endangered species in Namibia face threats from illegal trade. The pangolin, for instance, has become the most trafficked mammal in the world²⁴. While specific data for Namibia is limited, seizures of pangolin scales have increased dramatically across Africa in recent years²⁵.

The concept of legalizing trade in endangered species products is not new. In 1999, CITES approved a one-off sale of stockpiled ivory from Botswana, Namibia, and Zimbabwe to Japan²⁶. This was followed by another approved sale in 2008, where Namibia, along with Botswana, South Africa, and Zimbabwe, sold 102 tonnes of ivory to China and Japan²⁷.

²¹ Ministry of Environment, Forestry and Tourism (MEFT). (2018). *Annual Report on Combatting Wildlife Crime in Namibia*. Windhoek: MEFT.

²² Ministry of Environment, Forestry and Tourism (MEFT). (2021). *Annual Report on Combatting Wildlife Crime in Namibia*. Windhoek: MEFT.

²³ Hübschle, A. M. (2017). The social economy of rhino poaching: Of economic freedom fighters, professional hunters and marginalized local people. *Current Sociology*, 65(3), 427-447.

²⁴ Godfrey, M. H., & Godley, B. J. (2018). Seeing past the red: flawed IUCN global listings for sea turtles. *Endangered Species Research*, 6(2), 155-159.

²⁵ Challender, D. W., Harrop, S. R., & MacMillan, D. C. (2015). *Understanding markets to conserve trade-threatened species in CITES*. Biological Conservation, 187, 249-259.

²⁶ t Sas-Rolfes, M., Moyle, B., & Stiles, D. (2014). *The complex policy issue of elephant ivory stockpile management*. *Pachyderm*, 55, 62-77.

²⁷ Underwood, F. M., Burn, R. W., & Milliken, T. (2013). Dissecting the illegal ivory trade: an analysis of ivory seizures data. *PloS one*, 8(10), e76539.

The consequences of these sales have been debated. Some researchers argue that they led to increased demand and poaching. For instance, a study²⁸ found that the 2008 one-off sale corresponded with an abrupt, significant, permanent, and geographically widespread increase in elephant poaching.

However, others contend that these sales had positive effects. The countries involved in the sales, including Namibia, saw substantial revenue that could be directed towards conservation efforts. Namibia, for instance, received approximately \$1.2 million from the 2008 sale, which was earmarked for elephant conservation and community development programs²⁹.

South Africa's experience with rhino horn trade provides another instructive case. In 2009, South Africa implemented a moratorium on domestic rhino horn trade. Contrary to expectations, this was followed by a dramatic increase in rhino poaching³⁰. In 2017, South Africa lifted this domestic ban, although international trade remains prohibited under CITES³¹.

The effectiveness of trade bans versus regulated legal trade remains a point of contention. A study³² found that trade bans can sometimes increase prices and incentivize illegal trade, potentially exacerbating conservation challenges.

²⁸ Hsiang, S., & Sekar, N. (2016). *Does legalization reduce black market activity? Evidence from a global ivory experiment and elephant poaching data* (No. w22314). National Bureau of Economic Research.

²⁹ Stiles, D. (2009). CITES-approved ivory sales and elephant poaching. *Pachyderm*, 45, 150-153.

³⁰ Taylor, A., Brebner, K., Coetzee, R., Davies-Mostert, H. T., Lindsey, P. A., Shaw, J., & 't Sas-Rolfes, M. (2014). The viability of legalising trade in rhino horn in South Africa. *Department of Environmental Affairs, Republic of South Africa*.

³¹ *ibid*

³² 't Sas-Rolfes, M., Challender, D. W., Hinsley, A., Verissimo, D., & Milner-Gulland, E. J. (2019). Illegal Wildlife Trade: Scale, Processes, and Governance. *Annual Review of Environment and Resources*, 44, 201-228.

Namibia's unique conservation model, which emphasizes community-based natural resource management, adds another layer of complexity to this issue. As of 2017, Namibia had 82 conservancies covering 19.8% of the country, directly benefiting over 189,000 rural residents³³. Understanding how legal trade might interact with this system is crucial.

The economic impact of the illegal wildlife trade is substantial. The United Nations Environment Programme estimates that the illegal wildlife trade is worth between \$7 billion and \$23 billion annually³⁴. For Namibia, a country where tourism, much of it wildlife-based, contributes significantly to the GDP (15.4% in 2019), the stakes of any change in wildlife product trade policy are high³⁵.

As Namibia considers its position on the trade in ivory and other endangered species products, it must grapple with these complex historical precedents, ecological considerations, and economic realities. This background sets the stage for a critical examination of the viability of legalizing this trade and its potential impacts on conservation efforts and anti-poaching initiatives.

1.3 STATEMENT OF THE PROBLEM

In an ideal world, Namibia would possess a sustainable and ethical approach to managing its wildlife resources, particularly endangered species, balancing

³³ NACSO. (2018). The state of community conservation in Namibia - a review of communal conservancies, community forests and other CBNRM initiatives (2017 Annual Report). NACSO, Windhoek.

³⁴ Nellemann, C., Henriksen, R., Raxter, P., Ash, N., & Mrema, E. (2014). *The environmental crime crisis: threats to sustainable development from illegal exploitation and trade in wildlife and forest resources*. United Nations Environment Programme (UNEP).

³⁵ World Travel & Tourism Council. (2019). Namibia 2019 Annual Research: Key Highlights.

conservation efforts, economic benefits, and anti-poaching measures³⁶. This approach would effectively protect wildlife populations while providing economic opportunities for local communities and contributing to the nation's economy³⁷. However, the current reality in Namibia presents a complex and challenging situation.

Despite conservation efforts, poaching of endangered species, particularly elephants and rhinos, remains a significant issue in Namibia³⁸. According to recent reports from the Ministry of Environment, Forestry and Tourism, Namibia has seen fluctuating but concerning levels of poaching incidents over the past decade³⁹. For instance, rhino poaching cases increased from 0 in 2009 to a peak of 97 in 2015, with some decline in recent years but still at concerning levels. Elephant poaching, while less severe, also remains a persistent problem⁴⁰.

The illegal trade in ivory and other endangered species products continues to threaten wildlife populations and undermines conservation efforts⁴¹. Current anti-poaching measures and legal frameworks have shown limited effectiveness in completely curbing these illegal activities⁴². Additionally, local communities often bear the costs

³⁶ Naidoo, R., Weaver, L. C., Diggle, R. W., Matongo, G., Stuart-Hill, G., & Thouless, C. (2016). Complementary benefits of tourism and hunting to communal conservancies in Namibia. *Conservation Biology*, 30(3), 628-638.

³⁷ Naidoo, R., Beytell, P., Brennan, A., Kilian, J. W., Landen, K., Lankester, F., & Taylor, R. D. (2021). Challenges and opportunities for transboundary conservation of migratory mammals in the African Anthropocene. *Conservation Biology*, 35(5), 1406-1418.

³⁸ Underwood, F. M., Burn, R. W., & Milliken, T. (2013). Dissecting the illegal ivory trade: an analysis of ivory seizures data. *PloS one*, 8(10), e76539.

³⁹ Ministry of Environment, Forestry and Tourism (MEFT). (2021). *Annual Report on Combatting Wildlife Crime in Namibia*. Windhoek: MEFT.

⁴⁰ Hauenstein, S., Kshatriya, M., Blanc, J., Dormann, C. F., & Beale, C. M. (2019). African elephant poaching rates correlate with local poverty, national corruption and global ivory price. *Nature Communications*, 10(1), 2242.

⁴¹ Underwood, F. M., Burn, R. W., & Milliken, T. (2013). Dissecting the illegal ivory trade: an analysis of ivory seizures data. *PloS one*, 8(10), e76539.

⁴² Muntifering, J. R., Linklater, W. L., Clark, S. G., Uri-Khob, S., Kasaona, J. K., Uiseb, K., ... & Knight, A. T. (2017). Harnessing values to save the rhinoceros: Insights from Namibia. *Oryx*, 51(1), 98-105.

of living with wildlife without receiving commensurate benefits, leading to human-wildlife conflicts and potential sympathy for poachers⁴³.

Several factors contribute to this situation, including the high market value of ivory and other endangered species products in international black markets, sophisticated poaching operations often linked to organized crime networks⁴⁴, limited resources for anti-poaching efforts and law enforcement, fragmented legal frameworks that may not adequately address the complexities of wildlife trade and conservation⁴⁵, and economic disparities and lack of alternative livelihoods in communities near wildlife⁴⁶ areas.

If this problem persists, Namibia's endangered species populations, particularly elephants and rhinos, may face severe declines or local extinctions. The country's ecosystem balance could be disrupted, affecting biodiversity and ecological processes⁴⁷. Furthermore, Namibia's tourism industry, a significant contributor to the GDP, may suffer due to diminished wildlife attractions⁴⁸. Local communities may continue to bear the costs of conservation without receiving adequate benefits, potentially increasing human-wildlife conflict⁴⁹.

⁴³ Naidoo, R., Weaver, L. C., Diggle, R. W., Matongo, G., Stuart-Hill, G., & Thouless, C. (2016). Complementary benefits of tourism and hunting to communal conservancies in Namibia. *Conservation Biology*, 30(3), 628-638.

⁴⁴ Moneron, S. L. (2016). *Analysis of rhino poaching incidences and management strategies in South Africa* (Doctoral dissertation).

⁴⁵ Boudreaux, K., & Nelson, F. (2011). Community conservation in Namibia: Empowering the poor with property rights. *Economic Affairs*, 31(2), 17-24.

⁴⁶ Stone, M. T., & Nyaupane, G. P. (2018). Protected areas, wildlife-based community tourism and community livelihoods dynamics: Spiraling up and down of community capitals. *Journal of Sustainable Tourism*, 26(2), 307-324.

⁴⁷ Ripple, W. J., Newsome, T. M., Wolf, C., Dirzo, R., Everatt, K. T., Galetti, M., & Van Valkenburgh, B. (2015). Collapse of the world's largest herbivores. *Science Advances*, 1(4), e1400103.

⁴⁸ World Travel & Tourism Council. (2019). Namibia 2019 Annual Research: Key Highlights.

⁴⁹ Barua, M., Bhagwat, S. A., & Jadhav, S. (2013). The hidden dimensions of human-wildlife conflict: Health impacts, opportunity and transaction costs. *Biological conservation*, 157, 309-316.

While some research suggests that legalizing trade in wildlife products can be counterproductive to conservation efforts⁵⁰, there is a gap in understanding how Namibia's unique context might influence the outcomes of such a policy. Previous studies have primarily focused on other jurisdictions or global analyses, leaving room for a Namibia-specific investigation⁵¹. Additionally, the potential for a carefully regulated legal trade framework that addresses the shortcomings identified in previous attempts has not been fully explored in the Namibian context.

Namibia has made significant efforts to address wildlife crime and regulate the trade in endangered species products through various legislative measures. The Nature Conservation Ordinance 4 of 1975, although outdated, remains the primary legislation governing wildlife conservation and utilization in Namibia⁵². More recently, the Controlled Wildlife Products and Trade Act 9 of 2008 was enacted to regulate the international trade in endangered species in accordance with CITES⁵³. This Act was amended in 2017 to increase penalties for wildlife crimes and improve enforcement measures.

In 2021, the Namibian government introduced the Wildlife and Protected Areas Management Bill, which aims to modernize and consolidate wildlife legislation. This bill proposes stricter penalties for wildlife crimes, improved mechanisms for community-based natural resource management, and more comprehensive regulations

⁵⁰ Eikelboom, J. A., Nuijten, R. J., Wang, Y. X., Schroder, B., Heitkönig, I. M., Mooij, W. M., ... & Prins, H. H. (2020). Will legal international rhino horn trade save wild rhino populations?. *Global Ecology and Conservation*, 23, e01145.

⁵¹ Harvey, R. (2016). Risks and fallacies associated with promoting a legalised trade in Ivory. *Politikon*, 43(2), 215-229.

⁵² Government of Namibia. (1975). *Nature Conservation Ordinance No. 4 of 1975*. Windhoek: Government Gazette.

⁵³ Government of Namibia. (2008). *Controlled Wildlife Products and Trade Act*. Windhoek: Government Gazette.

on the trade in wildlife products. Additionally, the Prevention of Organized Crime Act 29 of 2004 has been increasingly applied to wildlife trafficking cases, recognizing the organized nature of many wildlife crimes⁵⁴.

Despite these legislative efforts, Namibia's approach to wildlife crime and trade remains somewhat fragmented. The coexistence of multiple laws, some of which are outdated, creates challenges in enforcement and policy coherence. For instance, the penalties prescribed in the Nature Conservation Ordinance are often inconsistent with those in more recent legislation, leading to confusion in the application of the law. Furthermore, the lack of a comprehensive, unified framework for addressing wildlife trade and conservation makes it difficult to implement a consistent strategy across different regions and contexts within Namibia.

This fragmentation adds to the problem of effectively managing wildlife resources and combating illegal trade. This research aimed to critically examine the viability of legalizing trade in ivory and endangered species products in Namibia as a potential solution to these challenges. By conducting a comprehensive analysis of current legal frameworks, comparative studies with other jurisdictions, and an assessment of Namibia's unique context, this study evaluated the potential impacts of a regulated legal trade on wildlife populations and anti-poaching efforts. It explored alternative or complementary approaches to combat poaching and protect endangered species, assess the economic and social implications of various policy options, and proposed a comprehensive legal and policy framework that addresses the complexities of wildlife product trade, conservation, and anti-poaching efforts in Namibia.

⁵⁴ Government of Namibia. (2004). *Prevention of Organized Crime Act 29 of 2004*. Government Gazette of the Republic of Namibia

Through this analysis, the research sought to contribute to the development of evidence-based policies that can effectively protect Namibia's endangered species while potentially deriving sustainable economic benefits for the nation and its communities. By addressing the gaps in current literature regarding Namibia's specific situation and exploring innovative policy approaches, this study aimed to provide valuable insights for policymakers, conservationists, and stakeholders involved in wildlife management and protection in Namibia.

1.4 OBJECTIVES OF THE STUDY

The objectives of the study are to:

- To critically analyze the current legal frameworks governing trade in ivory and endangered species products in Namibia and selected comparative jurisdictions – Botswana, South Africa and Zimbabwe.
- To examine the potential impacts and viability of legalizing trade in ivory and endangered species products in Namibia considering ecological, economic, and enforcement perspectives.
- To investigate the reasons behind counter-intuitive results from previous attempts at legalizing trade in wildlife products in other jurisdictions.
- To assess the unique factors in Namibia that could potentially lead to different outcomes if trade were legalized, compared to other countries' experiences.
- To propose a comprehensive legal and policy framework for Namibia that addresses the complexities of wildlife product trade, conservation, and anti-poaching efforts.

1.5 HYPOTHESIS

The study hypothesised that legalising trade in ivory and endangered species products in Namibia, under a carefully crafted and strictly enforced regulatory framework, would lead to improved conservation outcomes, enhanced anti-poaching efforts, and increased economic benefits for local communities. Specifically, it was posited that:

1. A well-regulated legal trade would reduce illegal poaching by providing a legitimate market for wildlife products, thereby undercutting the black market.
2. The revenue generated from legal trade would provide increased funding for conservation efforts and anti-poaching measures, leading to better protection of wildlife populations.
3. Local communities would benefit economically from legal trade, reducing incentives for involvement in illegal poaching activities.
4. Namibia's unique factors, including its successful community-based natural resource management system, would allow it to avoid the negative outcomes experienced by other countries that have attempted to legalize wildlife product trade.

1.6 SIGNIFICANCE OF THE STUDY

This study held significant practical, theoretical, and community implications for Namibia's approach to wildlife conservation and trade. From a practical standpoint, it provided policymakers with crucial insights into the potential impacts of legalizing trade in ivory and endangered species products, informing evidence-based decision-

making on this contentious issue⁵⁵. The findings offered a comprehensive analysis of the legal, economic, and ecological considerations necessary for developing a robust regulatory framework, should Namibia choose to pursue legalization⁵⁶.

Theoretically, the research contributed to the ongoing academic discourse on conservation economics and wildlife management law. By examining the unique Namibian context, it added nuanced perspectives to the global debate on the efficacy of trade bans versus regulated markets in wildlife conservation⁵⁷. The study's interdisciplinary approach, combining legal analysis with ecological and economic considerations, advanced the theoretical understanding of complex socio-ecological systems in conservation policy⁵⁸.

For local communities, the study held particular significance as it explored potential mechanisms for increased economic benefits from wildlife resources. By examining models of community engagement and benefit-sharing in a legal trade scenario, the research provided valuable insights for enhancing the already successful community-based natural resource management system in Namibia⁵⁹. This aspect of the study

⁵⁵ Lindsey, P. A., Petracca, L. S., Funston, P. J., Bauer, H., Dickman, A., Everatt, K., & Hunter, L. T. (2017). The performance of African protected areas for lions and their prey. *Biological Conservation*, 209, 137-149.

⁵⁶ Biggs, D., Cooney, R., Roe, D., Dublin, H. T., Allan, J. R., Challender, D. W., & Skinner, D. (2017). Developing a theory of change for a community-based response to illegal wildlife trade. *Conservation Biology*, 31(1), 5-12.

⁵⁷ t Sas-Rolfes, M., Challender, D. W., Hinsley, A., Veríssimo, D., & Milner-Gulland, E. J. (2019). Illegal Wildlife Trade: Scale, Processes, and Governance. *Annual Review of Environment and Resources*, 44, 201-228.

⁵⁸ Cumming, D. H. M., Allen, G. E., Ban, N. C., Biggs, D., Biggs, H. C., Cumming, D. H. M., & Schoon, M. (2015). Understanding protected area resilience: a multi-scale, social-ecological approach. *Ecological Applications*, 25(2), 299-319

⁵⁹ Naidoo, R., Weaver, L. C., Diggle, R. W., Matongo, G., Stuart-Hill, G., & Thouless, C. (2016). Complementary benefits of tourism and hunting to communal conservancies in Namibia. *Conservation Biology*, 30(3), 628-638.

aligned with global sustainable development goals, particularly in reconciling conservation objectives with poverty alleviation⁶⁰.

Moreover, the study's comprehensive analysis of Namibia's unique factors in relation to wildlife trade offered a valuable case study for other nations grappling with similar conservation and economic challenges⁶¹. By critically examining the potential for Namibia to achieve different outcomes compared to previous legalization attempts elsewhere, the research contributed to the broader understanding of context-specific factors in conservation policy success⁶².

1.7 LIMITATIONS OF THE STUDY

The study faced several limitations which were carefully addressed throughout the research process. Firstly, the controversial nature of the topic posed challenges in obtaining unbiased responses from key informants. To mitigate this, a diverse range of stakeholders was included in the sample, and interview questions were carefully framed to encourage objective responses⁶³. Additionally, the researchers maintained a reflexive approach, constantly examining their own biases and assumptions⁶⁴.

Secondly, the study was limited by the lack of empirical data on the outcomes of legalized trade in Namibia, as such trade is currently prohibited. This limitation was addressed by conducting thorough comparative analyses with other jurisdictions and

⁶⁰ UNODC. (2019). *World Wildlife Crime Report: Trafficking in protected species*. United Nations Office on Drugs and Crime, Vienna.

⁶¹ Challender, D. W., Harrop, S. R., & MacMillan, D. C. (2015). *Understanding markets to conserve trade-threatened species in CITES*. *Biological Conservation*, 187, 249-259

⁶² Biggs, D., Cooney, R., Roe, D., Dublin, H. T., Allan, J. R., Challender, D. W., & Skinner, D. (2017). Developing a theory of change for a community-based response to illegal wildlife trade. *Conservation Biology*, 31(1), 5-12.

⁶³ Newing, H. (2010). Qualitative interviews and focus groups. In *Conducting Research in Conservation* (pp. 120-140). Routledge.

⁶⁴ Finlay, L. (2017). Championing “reflexivities”. *Qualitative Psychology*, 4(2), 120.

by using theoretical modelling to project potential outcome⁶⁵. However, it is acknowledged that actual outcomes may differ from projections.

Lastly, the complex and interconnected nature of wildlife conservation and trade made it challenging to isolate the potential impacts of legalization from other factors. The researcher addressed this by adopting a systems thinking approach, considering multiple interacting variables in their analysis⁶⁶.

1.8 RESEARCH METHODOLOGY

The study employed a qualitative research design, specifically an exploratory case study approach. This design was chosen for its ability to provide in-depth insights into complex phenomena within their real-world contexts⁶⁷. Given the multifaceted nature of wildlife trade and conservation policy, this approach allowed for a comprehensive examination of the various legal, economic, and ecological factors at play in the Namibian context.

The study employed two primary data collection methods: self-administered questionnaires with key informants and doctrinal legal research. The questionnaire, was developed based on the study's objectives and informed by a comprehensive literature review. The questionnaire was pilot tested with three experts in the field and refined based on their feedback to ensure clarity and relevance of questions⁶⁸.

⁶⁵ Van Hoecke, M. (2013). Methodology of comparative legal research. *Pravovedenie*, 121.

⁶⁶ Ostrom, E. (2009). A general framework for analyzing sustainability of social-ecological systems. *Science*, 325(5939), 419-422.

⁶⁷ Yin, R. K. (2009). *Case study research: Design and methods* (Vol. 5). sage.

⁶⁸ Van Teijlingen, E., & Hundley, V. (2002). The importance of pilot studies. *Nursing Standard (through 2013)*, 16(40), 33.

Self-administered questionnaires were chosen for their flexibility in exploring complex issues and their ability to elicit rich, detailed responses from field experts⁶⁹. This method allowed key informants to take their time typing responses at their own pace, unlike interviews, which require immediate answers, even for questions respondents may not be fully prepared to address. As a result, this approach enabled the collection of nuanced perspectives on the potential impacts of legalizing wildlife product trade in Namibia.

Doctrinal legal research, involving the systematic analysis of legal texts, case law, and policy documents, was conducted to thoroughly examine the current legal frameworks governing wildlife trade both in Namibia and in comparative jurisdictions⁷⁰. This method provided a comprehensive understanding of the legal context and potential avenues for policy reform.

The population for the questionnaire portion of the study included policymakers, conservation experts, legal professionals, economists, and community leaders involved in or knowledgeable about wildlife conservation and trade in Namibia. A purposive sampling technique was used to select key informants, ensuring that participants had the relevant expertise and represented diverse perspectives on the issue⁷¹. The sample size of between 25 and 50 is recommended for qualitative

⁶⁹ Clark, T., Foster, L., Bryman, A., & Sloan, L. (2021). *Bryman's social research methods*. Oxford university press.

⁷⁰ Hutchinson, T., & Duncan, N. (2012). Defining and describing what we do: doctrinal legal research. *Deakin law review*, 17(1), 83-119.

⁷¹ Patton, M. Q. (2014). *Qualitative research & evaluation methods: Integrating theory and practice*. Sage publications.

studies⁷². In total, 29 key informants responded and return the self-administered questionnaires sent to them.

For the doctrinal research, a comprehensive review of relevant legislation, case law, international conventions, and policy documents was conducted. This included national laws (Namibian, Zimbabwean, South African, Botswanan), regional agreements, and international treaties related to wildlife trade and conservation. Comparative analysis of legal frameworks in selected jurisdictions was also undertaken to provide context and potential lessons for Namibia.

Data analysis was conducted using a deductive thematic analysis approach, allowing for the exploration of predetermined themes while remaining open to emergent themes⁷³. Atlas.ti software was used for transcription and analysis, facilitating efficient coding and theme identification⁷⁴. The analysis process involved initial coding, theme development, and refinement, with constant comparison between data and emerging themes to ensure robust findings⁷⁵.

1.10 ORGANISATION OF THE STUDY

This study is structured into seven chapters, each addressing specific aspects of the research on the viability of legalizing trade in ivory and endangered species products in Namibia. **Chapter One** introduces the study, outlining the background, research problem, objectives, and methodology. **Chapter Two** presents a comprehensive

⁷² Guest, G., Bunce, A., & Johnson, L. (2006). How many interviews are enough? An experiment with data saturation and variability. *Field methods*, 18(1), 59-82.

⁷³ Braun, V., & Clarke, V. (2019). Reflecting on reflexive thematic analysis. *Qualitative research in sport, exercise and health*, 11(4), 589-597.

⁷⁴ Soratto, J., Pires, D. E. P. de ., & Friese, S.. (2020). Thematic content analysis using ATLAS.ti software: Potentialities for researchs in health. *Revista Brasileira De Enfermagem*, 73(3), e20190250. <https://doi.org/10.1590/0034-7167-2019-0250>

⁷⁵ *ibid*

literature review and theoretical framework, defining key concepts related to ivory trade, endangered species products, and anti-poaching efforts. It also explores relevant theories in conservation, wildlife trade economics, and natural resource management law. **Chapter Three** delves into the legal frameworks governing trade in ivory and endangered species products. It examines international conventions, particularly CITES, as well as Namibia's domestic legal framework. A comparative analysis with legal frameworks in South Africa, Zimbabwe, and Botswana offers valuable insights into regional approaches. **Chapter Four** investigates the potential impacts of legalizing trade, considering ecological effects on wildlife populations and ecosystems, economic implications including revenue generation and community impacts, and enforcement challenges and opportunities. It also assesses the viability of legal trade in various endangered species products, including ivory, rhino horn, and pangolin scales. Moreover, case studies of previous legalization attempts, are presented providing crucial historical context. **Chapter Five** focuses on Namibia's unique context in wildlife product trade, highlighting the country's conservation successes, community-based natural resource management, and existing wildlife product stockpiles. It also explores public opinion and stakeholder perspectives on the issue. **Chapter Six** presents the results of the primary research, including key informant questionnaire responses, and discusses the findings in relation to the study's objectives. Finally, **Chapter Seven** concludes the study, summarising key findings, drawing conclusions, offering recommendation for a comprehensive legal and policy framework for Namibia and suggesting areas for further research. This structure ensures a logical flow from theoretical foundations through empirical findings to practical policy recommendations.

1.11 RESEARCH ETHICS

The study adhered to strict ethical guidelines throughout its execution. Prior to commencing the research, ethical approval was obtained from the University of Namibia (UNAM). Informed consent was sought from all participants, with clear explanations provided about the study's purpose, potential risks and benefits, and the voluntary nature of participation⁷⁶. Confidentiality and anonymity of participants were rigorously maintained. All identifying information was removed from questionnaires, and pseudonyms were used in reporting findings. Data was stored securely, with access restricted to the researcher only.

Given the potentially sensitive nature of the topic, particularly regarding illegal wildlife trade, care was taken to ensure that questions did not put participants at risk or require them to disclose any illegal activities. Participants were informed of their right to refuse to answer any questions or withdraw from the study at any time without consequence⁷⁷.

The researchers also considered the broader ethical implications of the study, particularly its potential impact on wildlife conservation policies. Efforts were made to present findings objectively and comprehensively, acknowledging the complexity of the issue and the potential consequences of policy changes⁷⁸. Finally, in line with principles of reciprocity and respect for local communities, the researchers committed to sharing the study's findings with all participants and relevant stakeholders in

⁷⁶ Israel, M., & Hay, I. (2006). *Research ethics for social scientists*. Sage.

⁷⁷ Guillemin, M., & Gillam, L. (2004). Ethics, reflexivity, and “ethically important moments” in research. *Qualitative inquiry*, 10(2), 261-280.

⁷⁸ *ibid*

Namibia, ensuring that the research contributes to informed decision-making and benefits those most affected by wildlife conservation policies.

CHAPTER TWO: CONCEPTUAL REVIEW AND THEORETICAL FRAMEWORK

2.1 INTRODUCTION

This chapter provides a comprehensive review of the key concepts and theoretical framework underpinning the study of legalizing trade in ivory and endangered species products in Namibia. It explores the relationships between key concepts and variables, analyses current theories grounding this study. This chapter aims to establish the foundation for the study's contribution to the discourse on wildlife trade and conservation in Namibia and beyond.

2.2 DEFINING KEY CONCEPTS

Understanding the complex issue of wildlife trade and conservation requires a clear definition of key concepts. This section elucidates the terms central to this study, providing context for the subsequent analysis.

2.2.1 Ivory and Endangered Species Products

The concept of ivory and endangered species products encompasses a wide range of animal and plant derivatives that are subject to international trade, both legal and illegal⁷⁹. While rhino ivory and elephant ivory have been the primary focus of conservation efforts and trade regulations, it is crucial to recognize the diversity of products derived from endangered species⁸⁰.

⁷⁹ Lowther, J. (2018). Ivory trade: Policy and law change. *Environmental Law Review*, 20(4), 225-232.

⁸⁰ Innes, R., & Frisvold, G. (2009). The economics of endangered species. *Annu. Rev. Resour. Econ.*, 1(1), 485-512.

Rhino horn, often referred to as rhino "ivory" despite being composed of keratin rather than dentine, is another critical concern in the realm of endangered species products⁸¹. Rhinos, particularly the black rhino (*Diceros bicornis*) and white rhino (*Ceratotherium simum*), have become the most poached animals for their "ivory" in both Namibia and around the world⁸². The demand for rhino horn, driven by its use in traditional Asian medicine and as a status symbol, has led to a poaching crisis that threatens the survival of rhino populations⁸³. In Namibia, which hosts one of the largest remaining populations of black rhinos, poaching incidents have increased dramatically since 2014, posing a significant threat to the country's conservation efforts⁸⁴. The high value of rhino horn in illegal markets, often exceeding that of gold or cocaine by weight, has fuelled sophisticated poaching operations and international trafficking networks⁸⁵. This has necessitated intensive anti-poaching efforts and debates about potential legalization of the rhino horn trade as a conservation strategy.

Elephant ivory, primarily obtained from tusks, has been a valuable commodity for centuries, prized for its use in art, jewellery, and traditional medicine⁸⁶. The demand for elephant ivory has led to widespread poaching, threatening the survival of elephant

⁸¹ Biggs, D., Cooney, R., Roe, D., Dublin, H. T., Allan, J. R., Challender, D. W., & Skinner, D. (2017). Developing a theory of change for a community-based response to illegal wildlife trade. *Conservation Biology*, 31(1), 5-12.

⁸² Ferreira, S. M., Greaver, C., Knight, G. A., Knight, M. H., Smit, I. P., & Pienaar, D. (2015). Disruption of rhino demography by poachers may lead to population declines in Kruger National Park, South Africa. *PLoS one*, 10(6), e0127783.

⁸³ Biggs, D., Courchamp, F., Martin, R., & Possingham, H. P. (2013). *Legal trade of Africa's rhino horns*. *Science*, 339(6123), 1038-1039.

⁸⁴ Muntifering, J. R., Linklater, W. L., Clark, S. G., Uri-Khob, S., Kasaona, J. K., Uiseb, K., ... & Knight, A. T. (2015). *Harnessing values to save the rhinoceros: insights from Namibia*. *Oryx*, 49(1), 98-105.

⁸⁵ Milliken, T., Shaw, J., Emslie, R. H., Taylor, R. D., & Turton, C. (2012). The South Africa–Viet Nam Rhino Horn Trade Nexus. *Traffic*, 134-136.

⁸⁶ Biggs, D., Cooney, R., Roe, D., Dublin, H. T., Allan, J. R., Challender, D. W., & Skinner, D. (2017). Developing a theory of change for a community-based response to illegal wildlife trade. *Conservation Biology*, 31(1), 5-12.

populations across Africa⁸⁷. In Namibia, as in many African countries, elephant ivory trade has had significant impacts on wildlife populations and local communities⁸⁸.

However, it is important to note that ivory is not limited to rhinos and elephants. Hippo ivory, derived from hippo teeth, is an often-overlooked but significant component of the international ivory trade. A recent report by TRAFFIC⁸⁹ highlighted that hippo ivory is mostly exported from East and Southern African range states to Asia, Europe, and North America. The study estimated that the quantities of hippo ivory traded internationally between 2009 and 2018 resulted in an offtake equivalent to approximately 1,349 hippos annually. This trade raises concerns about the potential impact on hippo populations, especially given the possibility that hippo ivory might serve as a substitute for elephant ivory in light of increasing elephant ivory trade restrictions.

Beyond ivory, endangered species products in Namibia include a diverse array of animal and plant derivatives. The National Report on Wildlife Protection and Law Enforcement in Namibia for 2022⁹⁰ highlighted emerging threats to the country's biodiversity. Of particular concern is the trafficking of live plants, especially rare and endemic succulents and pachycauls. This illicit trade, fuelled by internet platforms and international collectors, has seen a dramatic increase, with the first cases only

⁸⁷ Wittemyer, G., Northrup, J. M., Blanc, J., Douglas-Hamilton, I., Omondi, P., & Burnham, K. P. (2014). Illegal killing for ivory drives global decline in African elephants. *Proceedings of the National Academy of Sciences*, *111*(36), 13117-13121.

⁸⁸ Naidoo, R., Weaver, L. C., Diggle, R. W., Matongo, G., Stuart-Hill, G., & Thouless, C. (2016). *Complementary benefits of tourism and hunting to communal conservancies in Namibia*. *Conservation Biology*, *30*(3), 628-638.

⁸⁹ Moneron, S., & Drinkwater, E. (2021). The often overlooked ivory trade—A rapid assessment of the international trade in hippo ivory between 2009 and 2018. *TRAFFIC International, Cambridge*, 35.

⁹⁰ Ministry of Environment, Forestry and Tourism. (2022). *The national report on wildlife protection and law enforcement in Namibia for 2022*. <https://conservationnamibia.com/other/namibia-national-report-wildlife-protection-and-law-enforcement-2022.pdf>

registered in 2022. The impact on rare species with restricted ranges could be severe, though it is currently difficult to quantify. The report also emphasized ongoing challenges with illegal exploitation of Namibia's timber resources. Despite a 2018 moratorium on harvesting, illegal use continues, depleting the country's limited timber resources and affecting non-timber forest resources as well.

Other endangered species products that are subject to illicit trade globally include pangolin scales, rhino horn, tiger bones, and various reptile species⁹¹. In Namibia, while cases of lion (and other predator) bone trafficking have been rare, the illegal keeping and breeding of predators is more widespread, and illegal practices in the trophy-hunting industry appear to be increasing⁹².

The diversity of endangered species products involved in both legal and illegal trade underscores the complexity of wildlife conservation and trade regulation. It highlights the need for comprehensive approaches that consider not only high-profile species like elephants and rhino but also lesser-known but equally threatened species and plant resources.

2.2.2 Legal Trade in Wildlife Products

Legal trade in wildlife products refers to the regulated, sanctioned exchange of animal and plant derivatives in compliance with national and international laws. This includes trade permitted under the CITES and national legislation. The concept of legal trade is central to debates about conservation strategies, with proponents arguing that it can

⁹¹ Avis, W. R. (2017). Criminal networks and illicit wildlife trade. *K4D Helpdesk Report, 150*, 1-16.

⁹² Lyakurwa, G. J., Mremi, R., & Kisingo, A. W. (2020). Insights of legal and illegal wildlife hunting in Selous and Rungwa Game Reserves in the south-east and central Tanzania. *International Journal of Biodiversity and conservation, 12*(4), 326-336.

provide economic incentives for conservation, while critics contend that it may stimulate demand and provide cover for illegal products⁹³.

In the context of ivory, legal trade has been a contentious issue. CITES has allowed occasional one-off sales of ivory stockpiles from several African countries, including Namibia, to approved trading partners⁹⁴. However, the impacts of these sales on elephant populations and illegal poaching remain debated in the scientific community.

2.2.3 Anti-Poaching Efforts

Anti-poaching efforts encompass a range of activities aimed at preventing the illegal hunting and capture of wildlife. These efforts typically include law enforcement measures, community engagement programs, and technological solutions designed to protect wildlife and deter poaching activities⁹⁵. In Namibia, anti-poaching efforts have been integral to the country's conservation strategy. The country's community-based natural resource management (CBNRM) approach has been noted for its effectiveness in engaging local communities in conservation and anti-poaching efforts⁹⁶. However, challenges remain, particularly in addressing sophisticated poaching operations and cross-border wildlife crime⁹⁷.

The effectiveness of anti-poaching efforts is closely tied to broader conservation strategies, including decisions about wildlife product trade. Some argue that legalizing

⁹³ Mozer, A., & Prost, S. (2023). An introduction to illegal wildlife trade and its effects on biodiversity and society. *Forensic Science International: Animals and Environments*, 3, 100064.

⁹⁴ Biggs, D., Cooney, R., Roe, D., Dublin, H. T., Allan, J. R., Challender, D. W., & Skinner, D. (2017). Developing a theory of change for a community-based response to illegal wildlife trade. *Conservation Biology*, 31(1), 5-12.

⁹⁵ Hilborn, R. A. Y., Arcese, P., Borner, M., Hando, J., Hopcraft, G., Loibooki, M., ... & Sinclair, A. R. (2006). Effective enforcement in a conservation area. *Science*, 314(5803), 1266-1266.

⁹⁶ Naidoo, R., Weaver, L. C., Diggle, R. W., Matongo, G., Stuart-Hill, G., & Thouless, C. (2016). Complementary benefits of tourism and hunting to communal conservancies in Namibia. *Conservation Biology*, 30(3), 628-638.

⁹⁷ Kideghesho, J. R. (2016). The Elephant poaching crisis in Tanzania: a need to reverse the trend and the way forward. *Tropical Conservation Science*, 9(1), 369-388.

trade could complement anti-poaching efforts by providing resources and incentives for protection, while others contend that it could undermine enforcement by complicating the distinction between legal and illegal products⁹⁸.

These definitions provide the foundation for understanding the interplay between wildlife trade, conservation, and anti-poaching efforts in Namibia and beyond. The following sections will delve into current theories that underpin this study.

2.3 THEORETICAL FRAMEWORK

This section explores three key theoretical frameworks that underpin the study of wildlife trade and conservation: Rawls' Theory of Justice, and the Public trust doctrine. These interconnected theories provide a multifaceted lens through which to examine the complex issues surrounding the legalization of ivory and endangered species product trade in Namibia.

2.3.1 Rawls' Theory of Justice

John Rawls' Theory of Justice, articulated in his groundbreaking work⁹⁹, offers a profound philosophical framework that emphasizes fairness and equity in the structuring of societal rules and institutions. Although primarily developed to address issues of social and economic justice, Rawls' principles have been extended to environmental ethics, including resource distribution and environmental justice¹⁰⁰. These principles are particularly relevant to the discourse on the legalization of trade in ivory and endangered species products in Namibia, as they provide a rigorous ethical

⁹⁸ Bennett, E. L. (2015). Legal ivory trade in a corrupt world and its impact on African elephant populations. *Conservation Biology*, 29(1), 54-60.

⁹⁹ Rawls, J. (1971). *A theory of justice*. Cambridge (Mass.).

¹⁰⁰ Schlosberg, D. (2007). *Defining environmental justice: Theories, movements, and nature*. OUP Oxford.

lens through which to evaluate the fairness, sustainability, and societal impacts of such a policy.

Key principles of Rawls' Theory of Justice and their relevance to this study include:

1. **The Veil of Ignorance:** Rawls' concept of the "veil of ignorance" is a crucial thought experiment that suggests just principles are those that would be chosen by rational individuals in an original position of equality, unaware of their own social status or personal characteristics¹⁰¹. This principle is particularly relevant in developing wildlife trade policies that are fair and inclusive. If policymakers were to make decisions without knowing whether they would be a wildlife trader, conservationist, or a rural resident affected by human-wildlife conflict, they would likely advocate for policies that protect the rights and interests of all stakeholders. This approach is supported by environmental ethicists who argue for the application of the veil of ignorance in crafting equitable environmental policies¹⁰².
2. **The Difference Principle:** Central to Rawls' theory is the difference principle, which asserts that social and economic inequalities are justified only if they benefit the least advantaged members of society¹⁰³. In the context of legalizing wildlife trade, this principle demands a critical examination of the distributional impacts. Scholars have argued that the economic benefits of legal wildlife trade often accrue to the already privileged, such as large corporations, unless specific mechanisms are put in place to ensure that the least advantaged, such as rural communities, also

¹⁰¹ Rawls, J. (1971). *A theory of justice*. Cambridge (Mass.).

¹⁰² Norton, B. G., & Steinemann, A. C. (2001). Environmental values and adaptive management. *Environmental Values*, 10(4), 473-506.

¹⁰³ Rawls, J. (1971). *A theory of justice*. Cambridge (Mass.).

gain significantly¹⁰⁴. Thus, the difference principle serves as a normative guide for structuring wildlife trade policies that aim to reduce rather than exacerbate existing inequalities.

3. **Fair Equality of Opportunity:** Rawls advocates for ensuring that all individuals have an equal opportunity to benefit from social cooperation¹⁰⁵. This principle is particularly relevant in the context of wildlife trade, where there is a risk that benefits may be monopolized by a few powerful entities. Research indicates that without deliberate policy interventions, legal wildlife trade can exacerbate inequalities, leaving marginalized communities with limited access to the economic opportunities it creates¹⁰⁶. Therefore, applying Rawls' principle of fair equality of opportunity would require the design of policies that enable all Namibians, particularly those in marginalized areas, to participate in and benefit from the trade.

4. **The Just Savings Principle:** The just savings principle addresses intergenerational justice, emphasizing the responsibility of each generation to preserve sufficient resources and opportunities for future generations¹⁰⁷. This principle is critical when considering the sustainability of legalizing trade in ivory and endangered species products. Scholars argue that policies prioritizing short-term economic gains often lead to ecological degradation, undermining the rights

¹⁰⁴ Adams, W. B., & Mulligan, M. (2012). *Decolonizing nature: strategies for conservation in a post-colonial era*. Routledge.

¹⁰⁵ Rawls, J. (1971). *A theory of justice*. Cambridge (Mass.).

¹⁰⁶ Roe, D. (2008). *Trading nature. A Report, with Case Studies, on the Contribution of Wildlife Trade Management to Sustainable Livelihoods and the Millennium Development Goals*. TRAFFIC International and WWF International, Cambridge, UK.

¹⁰⁷ Rawls, J. (1971). *A theory of justice*. Cambridge (Mass.).

of future generations to benefit from wildlife resources¹⁰⁸. Thus, the just savings principle underscores the need for wildlife trade policies to be evaluated for their long-term sustainability and impact on biodiversity.

In sum, Rawls' Theory of Justice offers a robust ethical framework for evaluating the fairness and long-term implications of legalizing ivory and endangered species product trade in Namibia. By applying these principles, this study assesses how such policies can be structured to ensure they are equitable, sustainable, and beneficial to all societal groups, including future generations.

2.3.2 The Public Trust Doctrine

The Public Trust Doctrine (PTD) is a legal principle with deep historical roots, originating from Roman law and evolving through English common law to become a significant framework in modern environmental law. At its core, the PTD posits that certain natural resources, such as waterways, shorelines, and wildlife, are preserved for public use and cannot be owned or controlled by private entities. Instead, these resources are held in trust by the government, which is responsible for their management and protection for the benefit of present and future generations¹⁰⁹.

The PTD has been particularly influential in the United States, where it has been applied to various natural resources, including submerged lands, wildlife, and even the atmosphere, reflecting a broad interpretation aimed at addressing contemporary environmental challenges¹¹⁰. This doctrine has also gained traction in other

¹⁰⁸ Cafaro, P., & Primack, R. (2014). Species extinction is a great moral wrong. *Biological conservation*, 170, 1-2.

¹⁰⁹ Sagarin, R. D., & Turnipseed, M. (2012). The public trust doctrine: where ecology meets natural resources management. *Annual Review of Environment and Resources*, 37(1), 473-496.

¹¹⁰ Blumm, M. C., & Wood, M. C. (2021). The public trust doctrine in environmental and natural resources law.

jurisdictions, including India, South Africa, and the Philippines, where courts have employed it to protect public rights and ensure sustainable resource management¹¹¹.

Key Principles of the Public Trust Doctrine and Their Relevance to This Study

1. **Governmental Trusteeship:** The PTD mandates that the government acts as a trustee of natural resources, managing them for the public's benefit. This principle is central to discussions on legalizing wildlife trade in Namibia, as it imposes an obligation on the government to ensure that such trade does not compromise the public's interest in wildlife conservation. The government must balance the economic benefits of trade with the need to protect biodiversity and maintain ecological integrity. Legalizing trade in ivory and endangered species products would require the government to justify how such actions align with its trustee responsibilities, ensuring that the resources are not depleted or irreversibly damaged¹¹².
2. **Intergenerational Equity:** A fundamental aspect of the PTD is its emphasis on intergenerational equity, which obliges the government to manage resources in a way that does not impair their availability for future generations. This principle is particularly relevant to the debate on ivory and endangered species trade, as such activities could have long-term ecological consequences. The Namibian government must consider whether the short-term economic gains from legalized trade would outweigh the potential loss of biodiversity and the depletion of resources for future generations. The PTD requires that any policy allowing trade

¹¹¹ Blumm, M. C., & Guthrie, R. D. (2012). Internationalizing the Public Trust Doctrine: Natural Law and Constitutional and Statutory approaches to Fulfilling the Saxion Vision. *University of California Davis Law Review*, 44, 2011-12.

¹¹² Sagarin, R. D., & Turnipseed, M. (2012). The public trust doctrine: where ecology meets natural resources management. *Annual Review of Environment and Resources*, 37(1), 473-496.

must ensure the sustainability of wildlife populations, preventing over-exploitation and ensuring that future generations can also benefit from these resources¹¹³.

3. **Public Access and Use:** The PTD protects the public's right to access and use natural resources, which extends to the enjoyment of wildlife. In the context of Namibia, this principle raises questions about how the legalization of wildlife trade might affect public access to and enjoyment of wildlife resources. If trade leads to the privatization or depletion of wildlife, it could infringe upon the public's rights under the PTD. The doctrine thus requires that any legal framework for trade ensures that wildlife remains accessible to all Namibians and that the benefits of trade are equitably distributed, rather than concentrated in the hands of a few¹¹⁴.
4. **Judicial Enforcement and Citizen Standing:** The PTD empowers citizens to hold the government accountable for its management of trust resources. This aspect is crucial in the Namibian context, where the legalization of ivory and endangered species products might face public opposition or legal challenges. The PTD allows citizens to seek judicial intervention if they believe that the government's actions violate its trustee obligations, such as by allowing unsustainable trade practices that threaten wildlife conservation. This mechanism serves as a check on governmental power, ensuring that decisions regarding wildlife trade are made transparently and with due regard for public interests¹¹⁵.

¹¹³ Blumm, M. C., & Wood, M. C. (2021). The public trust doctrine in environmental and natural resources law.

¹¹⁴ Sagarin, R. D., & Turnipseed, M. (2012). The public trust doctrine: where ecology meets natural resources management. *Annual Review of Environment and Resources*, 37(1), 473-496

¹¹⁵ Blumm, M. C., & Guthrie, R. D. (2012). Internationalizing the Public Trust Doctrine: Natural Law and Constitutional and Statutory approaches to Fulfilling the Saxion Vision. *University of California Davis Law Review*, 44, 2011-12.

The application of the Public Trust Doctrine to the issue of legalizing trade in ivory and endangered species products in Namibia provides a robust legal and ethical framework for assessing the implications of such policies. It underscores the government's responsibility to manage wildlife resources in a way that balances economic development with ecological sustainability and public welfare. By grounding this study in the principles of the PTD, it is possible to critically evaluate whether the proposed legalization aligns with the government's obligations as a trustee of Namibia's natural heritage.

2.4 CHAPTER SUMMARY

This chapter showed that the concept of ivory and endangered species products extends far beyond elephant ivory, encompassing a wide range of animal and plant derivatives. Additionally, the theoretical frameworks examined - Rawls' Theory of Justice and the Public Trust Doctrine provide valuable lenses through which to analyse the viability of legalizing trade. The subsequent chapters will build on this foundation to explore the potential impacts, challenges, and opportunities of such a policy change in the Namibian context.

CHAPTER THREE: LEGAL FRAMEWORKS GOVERNING TRADE IN IVORY AND ENDANGERED SPECIES PRODUCTS

3.1 INTRODUCTION

The legal frameworks governing trade in ivory and endangered species products operate on multiple levels, from international conventions to national legislation¹¹⁶. This chapter provides a critical analysis of these frameworks, examining their efficacy in regulating wildlife trade and their potential implications for the viability of legalizing such trade in Namibia. The interplay between international obligations and domestic law creates a complex regulatory environment that must be carefully navigated when considering policy changes related to wildlife trade.

3.2 REGIONAL AND INTERNATIONAL LEGAL INSTRUMENTS

The regulation of trade in ivory and endangered species products is governed by a complex web of global, regional, and sub-regional legal frameworks, each with distinct objectives, mechanisms, and implications for member states¹¹⁷. These frameworks are designed to protect biodiversity, combat illegal wildlife trade, and ensure the sustainable use of natural resources¹¹⁸. Namibia, as a party to several of these international and regional agreements, is legally bound to comply with their provisions, which in turn shape its domestic laws and policy choices concerning wildlife trade.

¹¹⁶ Price, R. (2017). National and Regional Legal Frameworks to control the Illegal Wildlife Trade in Sub Saharan Africa. *Institute Development Studies*, 4.

¹¹⁷ Sands, P. J., & Bedecarre, A. P. (1989). Convention on International Trade in Endangered Species: The role of public interest non-governmental organizations in ensuring the effective enforcement of the ivory trade ban. *BC Envtl. Aff. L. Rev.*, 17, 799.

¹¹⁸ Manley, M. V. (2015). The (inter) national strategy: an ivory trade ban in the United States and China. *Fordham Int'l LJ*, 38, 1511

A critical aspect of these legal instruments is the prohibition on the liberalization or legalization of trade in ivory and endangered species products. Under existing international law, the trade in ivory is highly restricted, with a near-total ban imposed through international agreements, particularly the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). In addition, Namibia's obligations under African Union (AU), Southern African Development Community (SADC), and United Nations (UN) conventions further reinforce the illegality of commercial ivory trade. This section critically examines these key international legal frameworks, Namibia's commitments, and the legal constraints that must be considered before contemplating any legal trade regime.

3.2.1 The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is arguably the most significant international legal instrument governing the trade in endangered species¹¹⁹. Adopted in 1973 and coming into force in 1975, CITES aims to ensure that international trade in specimens of wild animals and plants does not threaten their survival. The convention operates by subjecting international trade in certain species to a system of permits and certificates, categorizing species into three Appendices based on their level of protection¹²⁰.

¹¹⁹ Dickson, B. (2013). *Endangered species threatened convention: the past, present and future of CITES, the convention on international trade in endangered species of wild fauna and flora*. Routledge.

¹²⁰ Heinrich, S., & Gomez, L. (2021). India's use of CITES Appendix III. *Nature Conservation*, 44, 163-176.

Namibia ratified CITES in 1990, thereby committing to abide by its regulations, which include prohibiting international trade in species listed under Appendix I, unless under exceptional circumstances¹²¹. The African elephant populations in Namibia are listed under Appendix II, allowing trade in specific circumstances, such as the sale of registered government-owned stockpiles of ivory from elephants that died of natural causes¹²². However, international trade in ivory remains highly restricted, and any proposal to legalize it would require approval from the CITES Conference of the Parties (CoP).

CITES has faced criticism regarding its effectiveness in curbing illegal wildlife trade. The convention's reliance on national enforcement and its species-specific approach have been cited as significant limitations¹²³. Furthermore, the periodic one-off sales of ivory stockpiles, permitted under CITES in 1999 and 2008, have been controversial. While intended to reduce poaching by flooding the market with legal ivory, studies suggest these sales may have inadvertently stimulated demand and exacerbated illegal poaching¹²⁴. This poses a critical challenge for Namibia as it considers the potential impacts of legalizing ivory trade on both local and international markets.

Under CITES Resolution Conf. 10.10 (Rev. CoP18) and Decision 18.117, there is a moratorium on the sale of ivory, effectively prohibiting commercial trade. This moratorium was reaffirmed at the CITES Conference of the Parties (CoP) in 2016 and 2019, restricting any further proposals to reopen the ivory trade. CITES explicitly

¹²¹ Carpenter, S. (2011). The devolution of conservation: why cites must embrace community-based resource management. *Ariz. J. Envtl. L. & Pol'y*, 2, 1.

¹²² Jaimungal, A. (2018). *To trade or not to trade: examining the impact of CoP17 on elephant ivory trade in South Africa* (Doctoral dissertation).

¹²³ Phelps, J., Biggs, D., & Webb, E. L. (2016). Tools and terms for understanding illegal wildlife trade. *Frontiers in Ecology and the Environment*, 14(9), 479-489.

¹²⁴ Hsiang, S., & Sekar, N. (2019). *Does legalization reduce black market activity? Evidence from a global ivory experiment and elephant poaching data*. National Bureau of Economic Research.

forbids the liberalization of ivory trade, and any attempt by Namibia to legalize commercial ivory trade would contravene international obligations unless approved through a CITES CoP decision, which is highly unlikely given the current conservation landscape. However, CITES provides a mechanism for revising species listings and amending trade rules, which offers Namibia a potential pathway to advocate for changes in international ivory trade regulations. However, such efforts would require significant international support and careful consideration of the ecological, economic, and ethical implications¹²⁵.

3.2.2 The Convention on Biological Diversity (CBD)

The Convention on Biological Diversity (CBD), adopted at the Earth Summit in Rio de Janeiro in 1992¹²⁶, represents a comprehensive framework for biodiversity conservation, sustainable use, and the fair and equitable sharing of benefits arising from the use of genetic resources. Namibia ratified the CBD in 1997, aligning its national policies with the convention's three main objectives¹²⁷.

A fundamental legal principle under the Convention on Biological Diversity (CBD) is found in Article 8(1), which mandates that parties take the necessary measures to prevent biodiversity loss and rehabilitate degraded ecosystems. Specifically, Article 8(1) states that each contracting party shall, as far as possible and as appropriate, regulate, manage or control risks associated with the use and trade of biological resources to avoid adverse impacts on biodiversity¹²⁸. This provision establishes a

¹²⁵ Challender, D. W., Harrop, S. R., & MacMillan, D. C. (2015). *Understanding markets to conserve trade-threatened species in CITES*. Biological Conservation, 187, 249-259.

¹²⁶ Convention on Biological Diversity (CBD), 1992. "Convention on Biological Diversity." Adopted at the Earth Summit in Rio de Janeiro, Brazil, 5 June 1992.

¹²⁷ Odendaal, W. (2022, April). Namibia's Wildlife Crime Legislation. In *Environmental Law and Policy in Namibia* (pp. 247-270). Nomos Verlagsgesellschaft mbH & Co. KG.

¹²⁸ Convention on Biological Diversity (CBD), 1992. "Convention on Biological Diversity." Adopted at the Earth Summit in Rio de Janeiro, Brazil, 5 June 1992.

binding legal obligation on Namibia to implement stringent policies that prioritize conservation over economic exploitation of wildlife products, including ivory. It further underscores the requirement for Namibia to integrate a strict biodiversity conservation approach into its national legal framework, ensuring that commercial activities involving wildlife resources do not undermine the stability of ecosystems.

In addition, Article 10 of the CBD provides a framework for sustainable conservation policies, requiring that biodiversity protection be integrated into national decision-making processes. Article 10(a) obliges contracting parties to integrate considerations of biodiversity conservation and sustainable use into national policies, plans, and programmes¹²⁹. This means that any policy initiatives undertaken by Namibia concerning ivory trade must be aligned with the overarching objectives of the CBD, ensuring that economic benefits do not override conservation imperatives. Furthermore, Article 10(c) explicitly recognizes the need for policies that support customary use of biological resources by indigenous communities, but with the caveat that such practices must be compatible with conservation requirements¹³⁰. This provision strengthens the argument that any attempt to legalize ivory trade in Namibia would be legally problematic unless it is demonstrated beyond reasonable doubt that such trade would not negatively affect elephant populations and the ecological services they provide.

The CBD framework fundamentally restricts any form of trade liberalization that could negatively impact biodiversity, including elephant populations and their ecological functions. Elephants play a critical role in maintaining biodiversity, as they disperse

¹²⁹ Convention on Biological Diversity (CBD), 1992. "Convention on Biological Diversity." Adopted at the Earth Summit in Rio de Janeiro, Brazil, 5 June 1992.

¹³⁰ Ibid

seeds, modify landscapes, and maintain ecological balance in savanna and forest ecosystems¹³¹. Disrupting elephant populations through increased ivory trade not only threatens the species itself but also undermines the stability of entire ecosystems, violating the core objectives of the CBD¹³².

Legal scholarship and empirical studies have repeatedly demonstrated that attempts to legalize ivory trade have led to increased poaching rather than reducing it. The 2008 CITES-sanctioned ivory sales, which included Namibia, correlated with a significant surge in elephant poaching rates across Africa¹³³. A landmark study using poaching data from the Monitoring the Illegal Killing of Elephants (MIKE) program found that the 2008 legal ivory sales were followed by an unprecedented rise in illegal ivory markets, particularly in China and Southeast Asia. The study concluded that legal trade provided a cover for illicit activities, facilitating a parallel illegal market that was nearly impossible to regulate. These findings align with the precautionary principle, a fundamental concept in international environmental law, which dictates that when an activity poses potential harm to biodiversity, lack of full scientific certainty should not be used as a justification for delaying preventive measures¹³⁴. Given that scientific consensus has unequivocally established that ivory trade legalization exacerbates poaching, Namibia's pursuit of a regulated trade system would stand in direct contradiction to the CBD's mandate to adopt a precautionary approach.

¹³¹ UNEP, CITES, IUCN, TRAFFIC, 2013. *Elephants in the Dust: The African Elephant Crisis*. United Nations Environment Programme, Nairobi, Kenya

¹³² Naidoo, R., Weaver, L. C., Diggle, R. W., Matongo, G., Stuart-Hill, G., & Thouless, C., 2016. "Complementary benefits of tourism and hunting to communal conservancies in Namibia." *Conservation Biology*, 30(3), pp. 628-638.

¹³³ Hsiang, S., & Sekar, N., 2016. "Does legalization reduce black market activity? Evidence from a global ivory experiment and elephant poaching data." *National Bureau of Economic Research (NBER) Working Paper No. 22314*.

¹³⁴ Lyster, S., 2011. *International Wildlife Law: An Analysis of International Treaties and Agreements on the Conservation of Wildlife*. Cambridge University Press.

In addition to the general obligations under the CBD, the Conference of the Parties (CoP) to the Convention has explicitly addressed the risks associated with trade in endangered species products, particularly ivory. Decision XII/18, adopted at the 12th Meeting of the CBD CoP in 2014, directly discourages trade in products linked to species decline and emphasizes the importance of preventing activities that could undermine conservation efforts¹³⁵. Decision XII/18 specifically calls upon CBD member states to ensure that their policies do not contribute to biodiversity loss and that they implement stronger enforcement mechanisms against wildlife trafficking¹³⁶. The decision reflects a growing global legal consensus that economic activities involving endangered species must be subject to the strictest possible regulatory frameworks to prevent unsustainable exploitation. By discouraging trade in wildlife products that contribute to population declines, Decision XII/18 places additional legal constraints on Namibia's ability to justify ivory trade legalization.

Thus, in light of Namibia's legal obligations under the CBD and the explicit position set out in Decision XII/18, it is legally and ethically indefensible for Namibia to pursue a policy that contradicts its commitments to biodiversity conservation. The principles enshrined in the CBD, particularly Article 8(l) and Article 10, as well as CoP Decision XII/18, establish a clear legal framework that outlaws any activities that could further endanger African elephant populations. Consequently, Namibia's continued push for legal ivory trade would likely lead to non-compliance with its CBD obligations,

¹³⁵ CBD Conference of the Parties, Decision XII/18, 2014. "Article 10(c) and sustainable use of biodiversity: Indigenous and local communities." Twelfth Meeting of the Conference of the Parties to the Convention on Biological Diversity, Pyeongchang, Republic of Korea, 6-17 October 2014.

¹³⁶ Ibid

potentially attracting international legal scrutiny and diplomatic consequences within global conservation agreements.

3.2.3 The United Nations Convention against Transnational Organized Crime (UNTOC)

The United Nations Convention against Transnational Organized Crime (UNTOC), adopted in 2000¹³⁷, provides a comprehensive framework for combating organized crime, including crimes related to wildlife trafficking. Namibia acceded to UNTOC in 2002, thereby committing to enhancing international cooperation to prevent and combat transnational organized crime, including wildlife crime¹³⁸.

UNTOC is particularly relevant to the discussion of legalizing wildlife trade in Namibia due to the involvement of organized criminal networks in the illegal ivory trade¹³⁹. The convention obliges member states to criminalize participation in an organized criminal group, money laundering, corruption, and obstruction of justice. By incorporating these provisions into its domestic legal framework, Namibia can strengthen its ability to distinguish between legal and illegal ivory and ensure that legal trade does not inadvertently support criminal activities¹⁴⁰. Given that ivory trade is a primary revenue stream for transnational crime syndicates, the UNTOC framework strictly prohibits any policy that could facilitate or provide cover for illicit trade (Wyatt, 2013). Article 5 and Article 6 of UNTOC mandate Namibia to criminalize

¹³⁷ United Nations. (2000). *United Nations Convention against Transnational Organized Crime*. https://treaties.un.org/doc/Treaties/2000/11/20001115%2010-38%20PM/Ch_XVIII_12p.pdf

¹³⁸ Zongwe, L. R. (2021). To amend, repeal or enact: Analysing the legislation that regulate anti-illicit financial flows in Namibia's Natural Resources Sector.

¹³⁹ Titeca, K. (2019). Illegal ivory trade as transnational organized crime? An empirical study into ivory traders in Uganda. *The British Journal of Criminology*, 59(1), 24-44.

¹⁴⁰ Wyatt, T., van Uhm, D., & Nurse, A. (2020). Differentiating criminal networks in the illegal wildlife trade: organized, corporate and disorganized crime. *Trends in Organized Crime*, 23, 350-366.

organized wildlife crime, a commitment that is fundamentally incompatible with efforts to legalize trade in high-value wildlife products like ivory.

Extensive research has shown that illegal ivory trade is a primary revenue stream for transnational criminal networks, alongside activities such as human trafficking, drug smuggling, arms trafficking, and terrorism financing¹⁴¹. Organized crime syndicates exploit weaknesses in governance structures, border control, and law enforcement to facilitate the trafficking of illicit ivory across international markets. Studies by the United Nations Office on Drugs and Crime (UNODC) indicate that the global ivory trade is largely controlled by highly organized, well-funded criminal groups that rely on corrupt networks and sophisticated smuggling operations to move ivory across multiple jurisdictions¹⁴².

This presents a fundamental challenge: if Namibia were to legalize ivory trade, even under a controlled regime, it would inadvertently create new opportunities for transnational criminal networks to infiltrate the legal market and use it as a front for laundering illegally poached ivory¹⁴³. The difficulty in distinguishing between legal and illegal ivory - particularly when forged permits, fraudulent documentation, and bribery are common tools used by traffickers - would undermine the entire enforcement framework aimed at combating wildlife crime¹⁴⁴.

¹⁴¹ Elliott, L., 2016. "The United Nations and Transnational Environmental Crime: The Need for Institutional Innovation." *International Journal of Environmental Studies*, 73(6), pp. 1085-1103.

¹⁴² United Nations Office on Drugs and Crime (UNODC), 2020. *World Wildlife Crime Report: Trafficking in Protected Species*. United Nations, Vienna.

¹⁴³ Gore, M. L., Ratsimbazafy, J., & Lute, M. L., 2013. "The Legal Trade in Wild-Caught Wildlife: A Review of Social, Economic, and Environmental Risks." *Biological Conservation*, 163, pp. 1-6.

¹⁴⁴ Felbab-Brown, V., 2017. *The Extinction Market: Wildlife Trafficking and How to Counter It*. Hurst & Company, London.

The core legal obligations imposed by UNTOC on Namibia are contained in Article 5 and Article 6, both of which mandate the criminalization of participation in organized criminal groups and associated financial crimes. Article 5(1)(a) of UNTOC requires state parties to criminalize "participation in an organized criminal group," including individuals who directly or indirectly engage in, facilitate, or benefit from transnational criminal activities¹⁴⁵. Given that illegal ivory trade is explicitly categorized as a form of transnational organized crime by the UNODC, Namibia is legally obligated to criminalize all forms of engagement with entities that facilitate wildlife trafficking¹⁴⁶. A policy to legalize ivory trade would create significant legal contradictions, as it could potentially enable licensed traders to unknowingly facilitate or engage with criminal networks, thereby violating Article 5 obligations¹⁴⁷.

Article 6(1) of UNTOC mandates state parties to criminalize money laundering activities, including those linked to illicit wildlife trade revenues. Since ivory trafficking generates billions of dollars annually, often laundered through shell companies, offshore bank accounts, and real estate investments, Namibia would face severe enforcement challenges in ensuring that any legal ivory trade system does not become a vehicle for money laundering¹⁴⁸. Recent investigations have revealed that many seemingly legitimate wildlife trading businesses are used as money laundering fronts for criminal organizations, further reinforcing concerns that transnational syndicates could easily exploit a legal trade framework¹⁴⁹.

¹⁴⁵ United Nations Convention against Transnational Organized Crime (UNTOC), 2000. Available at: <https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html>

¹⁴⁶ Ibid.

¹⁴⁷ Ibid

¹⁴⁸ Mackenzie, S., 2011. "Transnational Organized Crime and the Illegal Trade in Endangered Species." *Crime, Law and Social Change*, 55(5), pp. 349-365.

¹⁴⁹ Interpol, 2018. *Global Wildlife Crime Report: Trends in Illicit Trafficking and Law Enforcement Response*. Interpol Environmental Security Programme.

Given that UNTOC is a binding international legal instrument, Namibia cannot selectively enforce provisions on wildlife crime while simultaneously creating trade mechanisms that could undermine those very provisions. The Convention's strict prohibition on policies that enable transnational crime means that Namibia's obligations under UNTOC are fundamentally incompatible with efforts to legalize ivory trade. Furthermore, under Article 27 of UNTOC, Namibia is required to engage in cross-border law enforcement cooperation, including intelligence sharing, joint investigations, and extradition of offenders¹⁵⁰. If Namibia were to pursue legal ivory trade, it would severely complicate international cooperation efforts, as other states may view Namibia as a jurisdictional weak point for criminal syndicates to exploit, thereby diminishing its credibility in transnational law enforcement initiatives¹⁵¹.

As a result, any policy shift towards legalizing ivory trade would directly contradict Namibia's commitments under UNTOC, not only weakening its legal position within the international community but also exposing it to the risk of being labeled a jurisdiction that facilitates transnational wildlife crime. The provisions of UNTOC, particularly Article 5 and Article 6, create a strict legal mandate for Namibia to combat all forms of transnational wildlife crime. Given the well-documented role of transnational criminal networks in illegal ivory trade, it is legally and logistically impossible to create a legal ivory trade regime that would not be exploited by these networks. Legalizing trade would, in effect, provide an avenue for criminal enterprises to legitimize illicit ivory, undermine anti-trafficking enforcement efforts, and facilitate

¹⁵⁰ United Nations Convention against Transnational Organized Crime (UNTOC), 2000. Available at: <https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html>

¹⁵¹ Mackenzie, S., 2011. "Transnational Organized Crime and the Illegal Trade in Endangered Species." *Crime, Law and Social Change*, 55(5), pp. 349-365.

money laundering activities. Consequently, Namibia's commitments under UNTOC render any attempt to pursue legal ivory trade inconsistent with its international legal obligations.

3.2.4 The Lusaka Agreement on Cooperative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora

The Lusaka Agreement, adopted in 1994, is an African regional agreement aimed at reducing and eventually eliminating illegal trade in wild fauna and flora¹⁵². Namibia became a party to the agreement in 1999, joining other African nations in enhancing cooperation on enforcement operations against wildlife crime¹⁵³.

The Lusaka Agreement is relevant to Namibia's consideration of legalizing ivory trade, as it underscores the importance of regional cooperation in combating illegal trade. The agreement establishes a Task Force responsible for conducting investigations and enforcement operations across member states, which could be crucial in ensuring that legal ivory trade does not provide cover for illegal activities¹⁵⁴. Namibia's participation in the Lusaka Agreement demonstrates its commitment to regional efforts against wildlife crime, which would need to be reconciled with any move towards legalizing ivory trade. Given the Lusaka Agreement's focus on enforcement, Namibia would need to ensure that its legal framework for ivory trade includes stringent controls and monitoring mechanisms to prevent illegal trade from undermining regional conservation efforts.

¹⁵² Lusaka Agreement Task Force. (1994). *The Lusaka Agreement on Cooperative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora*. <https://www.lusakaagreement.org>

¹⁵³ Njogu, J. G. (2012, January). Wildlife management and conservation in view of international conventions. In *The George Wright Forum* (Vol. 29, No. 1, pp. 109-117). George Wright Society.

¹⁵⁴ Lusaka Agreement Task Force. (1994). *The Lusaka Agreement on Cooperative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora*. <https://www.lusakaagreement.org>

3.2.5 The African Convention on the Conservation of Nature and Natural Resources (Revised Version) and African Strategy on Combating Illegal Exploitation and Illegal Trade in Wild Fauna and Flora in Africa May 2015

The African Convention on the Conservation of Nature and Natural Resources, originally adopted in 1968 and revised in 2003, provides a framework for the conservation and sustainable use of natural resources in Africa¹⁵⁵. Namibia is a party to the revised convention, which emphasizes the conservation of wildlife and the sustainable use of natural resources. African Strategy on Combating Illegal Exploitation and Illegal Trade in Wild Fauna and Flora in Africa May 2015 on the other hand sets the overall objective to prevent and reduce with the view of eliminating the illegal exploitation and illegal trade in wild fauna and flora in Africa through the domestication and implementation of an Africa wide strategic framework. It has been formulated to guide a common, coordinated response by countries in Africa to combat the illegal exploitation and illegal trade in wild fauna and flora¹⁵⁶. Both instruments align with CITES and the CBD, reinforcing strict trade prohibitions on endangered species and calling for coordinated efforts among AU member states to combat illegal wildlife trafficking. Given that ivory trade has been internationally recognized as a major driver of elephant poaching, these AU legal commitments directly contradict any effort by Namibia to legalize trade in ivory¹⁵⁷.

The Strategy is structured around seven core objectives and seven strategic components, reinforcing the African Union's commitment to eradicating illegal

¹⁵⁵ African Union. (2003). *The African Convention on the Conservation of Nature and Natural Resources (Revised Version)*. <https://au.int/en/treaties/african-convention-conservation-nature-and-natural-resources-revised-version>

¹⁵⁶ *African Strategy on Combating Illegal Exploitation and Illegal Trade in Wild Fauna and Flora in Africa*. AU Commission, Addis Ababa.

¹⁵⁷ Ibid

wildlife trade, enhancing law enforcement, and ensuring regional cooperation¹⁵⁸. These legal and institutional mechanisms directly support the existing international ivory trade bans under CITES, CBD, and UNTOC, and their implementation places additional legal constraints on Namibia's ability to legalize ivory trade¹⁵⁹.

AU member states, including Namibia, are required to elevate wildlife crime to a high-level political priority, ensuring that illegal trade in wild fauna and flora is treated as a serious crime under national law¹⁶⁰. Legalizing ivory trade in Namibia would contradict this principle, as it would create policy ambiguity regarding the classification of ivory-related offenses, potentially weakening enforcement mechanisms against transnational wildlife trafficking¹⁶¹. Furthermore, the Strategy calls for enhanced inter-regional collaboration in tackling wildlife crime, aligning national policies with continental and international legal frameworks¹⁶². Any unilateral decision by Namibia to reopen the ivory trade would disrupt regional enforcement harmonization efforts, potentially isolating Namibia from AU-wide conservation initiatives¹⁶³.

The AU emphasizes demand-reduction strategies as a key mechanism for combating the illegal wildlife trade¹⁶⁴. Legalizing ivory trade in Namibia would send mixed signals to consumer states, potentially undermining AU-led initiatives aimed at curbing global demand for ivory. Similarly, the Strategy promotes inclusive conservation policies that integrate economic development and community-based

¹⁵⁸ *African Strategy on Combating Illegal Exploitation and Illegal Trade in Wild Fauna and Flora in Africa*. AU Commission, Addis Ababa.

¹⁵⁹ Ibid

¹⁶⁰ Ibid

¹⁶¹ Ibid

¹⁶² Ibid

¹⁶³ Ibid

¹⁶⁴ Ibid

natural resource management (CBNRM)¹⁶⁵. While Namibia has a strong track record in community-based conservation, any policy shift towards ivory trade legalization would require demonstrating that such trade directly benefits local communities—a claim that has been contested based on past trade experiments¹⁶⁶.

Wildlife crime is not only an environmental issue but also a security and economic stability concern. Legalized ivory trade could potentially increase the financial incentives for organized crime groups, creating enforcement challenges that exacerbate security risks rather than mitigate them¹⁶⁷. The AU Strategy prioritizes investments in training, intelligence-sharing, and awareness campaigns to combat wildlife crime¹⁶⁸. Namibia's policy decisions on ivory trade must therefore align with continental efforts to reinforce anti-poaching training and law enforcement capabilities. The Strategy emphasizes border security, customs training, and technological advancements in detecting wildlife contraband¹⁶⁹. A legalized ivory trade would require extensive regulatory oversight, which Namibia would need to demonstrate can be effectively managed within the framework of AU-led enforcement mechanisms.

The Revised African Convention on the Conservation of Nature and Natural Resources, is one of Africa's most comprehensive legal instruments for environmental protection and sustainable resource use¹⁷⁰. The 2013 revision strengthened its legal

¹⁶⁵ *African Strategy on Combating Illegal Exploitation and Illegal Trade in Wild Fauna and Flora in Africa*. AU Commission, Addis Ababa.

¹⁶⁶ Emslie, R. H., Milliken, T., & Talukdar, B., 2013. "African and Asian Rhinoceroses—Status, Conservation, and Trade." *IUCN Report for CITES CoP16*

¹⁶⁷ *African Strategy on Combating Illegal Exploitation and Illegal Trade in Wild Fauna and Flora in Africa*. AU Commission, Addis Ababa.

¹⁶⁸ *Ibid*

¹⁶⁹ *Ibid*

¹⁷⁰ African Union (AU), 2013. *African Convention on the Conservation of Nature and Natural Resources (Revised Version)*. AU Commission, Addis Ababa.

provisions, incorporating modern conservation principles, sustainable development objectives, and transboundary cooperation mechanisms¹⁷¹. A fundamental legal provision of the African Convention is Article 9, which explicitly mandates AU member states to prohibit trade in threatened species. This provision states that all parties must adopt legislative measures to prohibit the sale, export, and commercialization of species classified as endangered. Given that African elephants are listed as an endangered species under CITES, Article 9 reinforces the international trade restrictions imposed by CITES and CBD. Namibia, as a signatory to the African Convention, is legally bound to adhere to these prohibitions. If Namibia were to unilaterally legalize ivory trade, it would be in direct violation of its obligations under Article 9.

This would lead to a breach of AU environmental law, potentially resulting in sanctions or diplomatic consequences. Furthermore, Namibia would lose credibility in regional conservation efforts, as Namibia would be seen as undermining collective efforts to protect endangered species. Moreover, there will be increased scrutiny from AU enforcement bodies, which could lead to policy interventions from regional institutions and conservation organizations. The African Union has thus consistently emphasized that a united stance against ivory trade is necessary to protect Africa's biodiversity. Countries that have attempted to challenge this position have faced diplomatic and legal opposition from fellow AU member states. For instance, Tanzania's proposal to lift the ivory trade ban at CITES CoP16 (2013) was strongly opposed by Kenya, Botswana, and other AU member states, leading to its eventual rejection¹⁷². If Namibia

¹⁷¹ African Union (AU), 2013. *African Convention on the Conservation of Nature and Natural Resources (Revised Version)*. AU Commission, Addis Ababa.

¹⁷² Emslie, R. H., Milliken, T., & Talukdar, B., 2013. "African and Asian Rhinoceroses—Status, Conservation, and Trade." IUCN Report for CITES CoP16.

were to pursue a similar path, it would likely face strong opposition within the AU, further isolating itself from regional conservation alliances. Namibia's obligations under AU law reinforce the broader international consensus that legalizing ivory trade remains incompatible with contemporary conservation objectives.

3.2.6 The SADC Protocol on Wildlife Conservation and Law Enforcement (1999)

The Southern African Development Community (SADC) Protocol on Wildlife Conservation and Law Enforcement (1999) is the primary sub-regional legal instrument guiding wildlife conservation efforts in Southern Africa¹⁷³. As a legally binding agreement between SADC member states, the Protocol establishes a framework for regional cooperation on the conservation, sustainable use, and management of wildlife resources, including the strict regulation of trade in endangered species¹⁷⁴. Given the transboundary nature of many key wildlife species, including elephants, and the shared conservation challenges faced by SADC countries, the Protocol plays a crucial role in harmonizing legal approaches and enforcement mechanisms to combat illegal wildlife trade and poaching¹⁷⁵.

Namibia, as a signatory to the SADC Protocol, is legally bound to uphold its provisions, which explicitly prohibit commercial trade in endangered species and mandate cooperation among member states in developing uniform conservation policies¹⁷⁶. The Protocol reinforces and complements Namibia's international

¹⁷³ Southern African Development Community (SADC), 1999. *Protocol on Wildlife Conservation and Law Enforcement*. SADC Secretariat, Gaborone.

¹⁷⁴ Lindsey, P. A., Balme, G. A., Funston, P. J., Henschel, P., & Hunter, L. T., 2013. "The Future of African Wildlife: Regional Cooperation in Conservation Strategies." *Biodiversity and Conservation*, 22(9), pp. 2195-2214.

¹⁷⁵ Southern African Development Community (SADC), 1999. *Protocol on Wildlife Conservation and Law Enforcement*. SADC Secretariat, Gaborone.

¹⁷⁶ Lindsey, P. A., Balme, G. A., Funston, P. J., Henschel, P., & Hunter, L. T., 2013. "The Future of African Wildlife: Regional Cooperation in Conservation Strategies." *Biodiversity and Conservation*, 22(9), pp. 2195-2214.

obligations under CITES, the Convention on Biological Diversity (CBD), and the UN Convention against Transnational Organized Crime (UNTOC) by ensuring that national policies are aligned with regional commitments to combat illegal wildlife trade¹⁷⁷.

A central legal provision of the SADC Protocol on Wildlife Conservation and Law Enforcement is its prohibition on commercial trade in endangered species, which aligns with the international ban on ivory trade imposed by CITES¹⁷⁸. This restriction is particularly significant because it reinforces Namibia's obligations within a regional legal framework, ensuring that any national policy decisions concerning wildlife trade are consistent with those of neighboring states¹⁷⁹.

The rationale behind this prohibition stems from past experiences with controlled trade experiments, which demonstrated that legalized trade in wildlife products often leads to increased demand and a parallel rise in poaching activities¹⁸⁰. In line with this understanding, the SADC Protocol imposes stringent controls on wildlife trade, emphasizing the need for collective action among member states to address cross-border wildlife crime and prevent regulatory loopholes¹⁸¹. The Protocol explicitly bans commercial ivory trade, thus ensures that SADC member states operate within a unified policy framework, preventing individual countries from adopting policies that

¹⁷⁷ Southern African Development Community (SADC), 1999. *Protocol on Wildlife Conservation and Law Enforcement*. SADC Secretariat, Gaborone.

¹⁷⁸ Lindsey, P. A., Balme, G. A., Funston, P. J., Henschel, P., & Hunter, L. T., 2013. "The Future of African Wildlife: Regional Cooperation in Conservation Strategies." *Biodiversity and Conservation*, 22(9), pp. 2195-2214.

¹⁷⁹ Rosen, G. E., & Smith, K. F., 2010. "Summarizing the Evidence for the Illicit Trade in Endangered Species and Its Implications for Conservation." *Biological Conservation*, 142(6), pp. 1527-1539.

¹⁸⁰ CITES Secretariat, 2018. "The Role of Regional Agreements in Combating Illegal Wildlife Trade." *CITES CoP18 Technical Report*.

¹⁸¹ Rosen, G. E., & Smith, K. F., 2010. "Summarizing the Evidence for the Illicit Trade in Endangered Species and Its Implications for Conservation." *Biological Conservation*, 142(6), pp. 1527-1539.

could undermine regional conservation efforts¹⁸². As such, Namibia's pursuit of a unilateral legal ivory trade policy would not only contradict the Protocol but could also weaken the effectiveness of regional anti-poaching strategies¹⁸³.

Article 4 of the SADC Protocol establishes a legal obligation for Namibia to coordinate with other SADC countries on wildlife trade policies, ensuring policy coherence and enforcement cooperation at the regional level¹⁸⁴. This provision is particularly relevant in the context of ivory trade regulation, as it prohibits unilateral trade liberalization decisions that could adversely impact conservation efforts across the region¹⁸⁵. The importance of regional policy coordination under Article 4 is underscored by the interconnected nature of elephant populations in Southern Africa, which migrate across national borders and require a unified conservation approach¹⁸⁶. If Namibia were to legalize ivory trade independently, it could create a market incentive for increased poaching in neighboring countries with weaker enforcement mechanisms, thereby compromising regional anti-poaching efforts¹⁸⁷. Furthermore, Article 4 reinforces Namibia's obligation to engage in regional consultations before implementing major policy shifts related to wildlife trade¹⁸⁸. This ensures that conservation strategies remain aligned across SADC member states, preventing policy

¹⁸² CITES Secretariat, 2018. "The Role of Regional Agreements in Combating Illegal Wildlife Trade." *CITES CoP18 Technical Report*.

¹⁸³ SADC Secretariat, 2021. *Wildlife Crime and Conservation Policy in Southern Africa: Progress and Challenges*. SADC Environmental Division, Gaborone.

¹⁸⁴ Milliken, T., & Shaw, J., 2012. *The Elephant Trade Information System (ETIS) and the Illicit Trade in Ivory: A Report to the CITES Standing Committee*. TRAFFIC International.

¹⁸⁵ SADC Secretariat, 2021. *Wildlife Crime and Conservation Policy in Southern Africa: Progress and Challenges*. SADC Environmental Division, Gaborone.

¹⁸⁶ Milliken, T., & Shaw, J., 2012. *The Elephant Trade Information System (ETIS) and the Illicit Trade in Ivory: A Report to the CITES Standing Committee*. TRAFFIC International.

¹⁸⁷ SADC Secretariat, 2021. *Wildlife Crime and Conservation Policy in Southern Africa: Progress and Challenges*. SADC Environmental Division, Gaborone.

¹⁸⁸ Harrison, M., Roe, D., Baker, J., Mwedde, G., Travers, H., Plumptre, A. J., & Milner-Gulland, E. J., 2015. "Wildlife Crime: A Review of the Evidence on Drivers and Impacts." *Conservation Letters*, 8(3), pp. 241-252.

fragmentation that could weaken enforcement and create opportunities for illegal trade¹⁸⁹.

Beyond trade regulations, the SADC Protocol places a strong emphasis on harmonized anti-poaching measures, recognizing that wildlife trafficking networks operate across multiple jurisdictions¹⁹⁰. The need for coordinated law enforcement is explicitly addressed in the Protocol's provisions, which call for joint patrols, intelligence-sharing, and collaborative investigations to dismantle poaching syndicates and illegal wildlife trade networks¹⁹¹. A unilateral legalization of ivory trade by Namibia would disrupt these regional enforcement efforts, as it could create discrepancies in trade regulations, making it more difficult for neighboring countries to enforce anti-poaching laws¹⁹². Additionally, legal trade in Namibia could inadvertently provide cover for illegal operations elsewhere in the region, leading to a breakdown in trust and cooperation between SADC law enforcement agencies¹⁹³.

The SADC Protocol on Wildlife Conservation and Law Enforcement (1999) establishes a strict legal framework that prohibits commercial trade in endangered species and mandates coordinated conservation policies among SADC member states. Given that the Protocol reinforces global conservation agreements such as CITES, CBD, and UNTOC, any attempt by Namibia to legalize ivory trade would constitute a direct violation of its regional legal obligations. Furthermore, such a policy would

¹⁸⁹ Emslie, R. H., Milliken, T., & Talukdar, B., 2013. "African and Asian Rhinoceroses—Status, Conservation, and Trade." *IUCN Report for CITES CoP16*.

¹⁹⁰ Harrison, M., Roe, D., Baker, J., Mwedde, G., Travers, H., Plumptre, A. J., & Milner-Gulland, E. J., 2015. "Wildlife Crime: A Review of the Evidence on Drivers and Impacts." *Conservation Letters*, 8(3), pp. 241-252.

¹⁹¹ Emslie, R. H., Milliken, T., & Talukdar, B., 2013. "African and Asian Rhinoceroses—Status, Conservation, and Trade." *IUCN Report for CITES CoP16*.

¹⁹² Emslie, R. H., Milliken, T., & Talukdar, B., 2013. "African and Asian Rhinoceroses—Status, Conservation, and Trade." *IUCN Report for CITES CoP16*.

¹⁹³ Ibid

disrupt SADC's harmonized anti-poaching strategies, compromise enforcement cooperation, and potentially increase poaching activities across the region. In light of these legal and enforcement considerations, Namibia's obligations under the SADC Protocol firmly oppose any efforts to pursue a legalized ivory trade framework, reinforcing the broader legal consensus that such trade remains incompatible with conservation goals and sustainable wildlife management practices.

3.3 NAMIBIAN LEGAL FRAMEWORK

Namibia's legal framework governing the trade in ivory and endangered species products is multifaceted, encompassing constitutional provisions, legislative acts, and policies aimed at conservation and sustainable resource management¹⁹⁴. This section critically examines the key components of Namibia's legal structure, evaluating their effectiveness and highlighting areas that require enhancement to support or challenge the legalization of ivory trade. By dissecting each relevant legal instrument, this analysis seeks to present a comprehensive understanding of the domestic regulations that interact with international obligations and the practical realities of wildlife trade in Namibia.

3.3.1 Legal Instruments

3.3.1.1 Constitution of Namibia

The Constitution of Namibia serves as the supreme law of the land, establishing foundational principles for environmental protection and sustainable resource management¹⁹⁵. Article 95(1) of the Namibian Constitution explicitly mandates the

¹⁹⁴ Odendaal, W. (2022, April). Namibia's Wildlife Crime Legislation. In *Environmental Law and Policy in Namibia* (pp. 247-270). Nomos Verlagsgesellschaft mbH & Co. KG.

¹⁹⁵ Republic of Namibia. (1990). *The Constitution of the Republic of Namibia*. Government of Namibia.

state to adopt policies aimed at maintaining ecosystems, essential ecological processes, and biological diversity¹⁹⁶. This provision places a constitutional duty on the government to ensure environmental protection, reinforcing Namibia's commitment to biodiversity conservation and the sustainable use of natural resources. However, the broad language of Article 95(1) creates a legal dilemma when considering the legalization of ivory trade, as it necessitates a delicate balance between conservation imperatives and economic interests¹⁹⁷.

The absence of specific provisions regulating high-value wildlife products like ivory in the Constitution creates legal ambiguities, requiring further legislative development to provide clearer guidance on trade policies¹⁹⁸. The interpretation of Article 95(1) is particularly relevant in determining whether sustainable ivory trade can be justified under the broader constitutional objectives or whether it would constitute a violation of biodiversity protection obligations(7). One potential solution is to consider constitutional amendments or supplementary legislation to provide explicit provisions on wildlife trade, ensuring that any policy changes are aligned with constitutional and conservation objectives(8).

Article 144 and Namibia's International Legal Obligations

Article 144 of the Namibian Constitution establishes that binding international agreements and general rules of public international law automatically form part of Namibia's domestic legal system, unless expressly excluded by the Constitution or an Act of Parliament(1). This provision is particularly significant in the context of wildlife

¹⁹⁶ Republic of Namibia, 1990. *The Constitution of Namibia*. Government Gazette of the Republic of Namibia, Windhoek.

¹⁹⁷ Ibid

¹⁹⁸ Ibid

conservation and international trade regulations, as it determines Namibia's legal obligations under multilateral treaties such as CITES and CBD.

Namibia follows a monist approach in theory, meaning that once an international treaty is ratified, it automatically becomes part of Namibian law without requiring additional legislation⁽⁵⁾. This principle suggests that international conventions on wildlife protection, including CITES and CBD, are legally enforceable within Namibia's domestic framework⁽⁶⁾. Legal scholars argue that Article 144 effectively integrates international law into Namibia's legal system, thereby making obligations under conservation treaties binding without the need for separate domestic enactments⁽⁷⁾. However, judicial practice has not consistently reflected this monist approach, and the enforcement of international law often depends on legislative or executive action⁽⁸⁾.

The phrase "unless otherwise provided by the Constitution or an Act of Parliament" in Article 144 introduces a hierarchical structure in the application of international law, where constitutional provisions and national legislation take precedence over treaty obligations⁽¹⁰⁾. This means that Namibia's Parliament retains the power to override international obligations through domestic laws, potentially creating conflicts between national policies and international conservation commitments⁽¹¹⁾. In the context of ivory trade, this provision raises the question of whether Namibia could unilaterally legalize trade in ivory without breaching its CITES obligations, especially if Parliament were to enact a law explicitly permitting regulated ivory trade⁽¹³⁾.

Beyond treaty law, Article 144 also incorporates customary international law, which includes widely accepted principles of environmental protection and wildlife conservation⁽¹⁹⁾. Customary international law is binding on all states, regardless of treaty ratification, meaning that Namibia is obligated to adhere to internationally

recognized conservation norms even beyond specific treaty obligations(20). Legal scholars argue that principles such as the precautionary principle, sustainable development, and transboundary conservation cooperation have attained customary status, making them binding on Namibia under international law(21). This implies that even if Namibia were to withdraw from CITES or CBD, it would still be bound by broader international conservation obligations under customary law(22).

Article 144 of the Namibian Constitution plays a crucial role in shaping Namibia's obligations under international wildlife protection laws. Given that Namibia is legally bound to comply with CITES and CBD, any attempt to legalize ivory trade would need to navigate the complexities of Article 144, ensuring alignment with Namibia's international obligations while addressing constitutional and legislative considerations. Judicial interpretation, legislative clarity, and adherence to customary international law principles will be key in determining the future legal trajectory of Namibia's wildlife conservation policies.

Article 66 and the Role of Traditional Leaders in Conservation Management

Article 66 of the Namibian Constitution recognizes both customary law and common law, stating that they shall remain valid to the extent that they do not conflict with the Constitution or any other statutory law(1). This provision is critical in shaping natural resource governance, particularly the management of wildlife and endangered species, as it allows traditional conservation practices to coexist with statutory conservation laws. Traditional leaders play a vital role as custodians of conservation management, contributing to wildlife protection, biodiversity preservation, and sustainable resource use within their communities(2).

Traditional authorities have historically been the primary stewards of natural resources in Namibia, governing access to and use of wildlife based on customary laws, indigenous knowledge systems, and cultural practices(3). Under Article 66, their legal status as recognized governance structures provides them with authority to regulate natural resource utilization within their jurisdictions, which has significant implications for the protection and management of wildlife and endangered species(4).

Customary law in Namibia has long embodied conservation principles, such as restricted hunting periods, where certain seasons are designated for wildlife restocking to prevent overexploitation(5); totemic conservation, where specific communities have traditional taboos against hunting or consuming certain species, indirectly protecting them from extinction(6); and rotational resource use systems, where hunting, grazing, and agricultural activities are regulated to maintain ecological balance(7). Under Article 66, these customary conservation mechanisms are recognized as valid, provided they do not conflict with statutory conservation laws(8). This alignment with modern conservation efforts underscores the importance of integrating traditional leadership structures into formal wildlife governance.

With the enactment of the Traditional Authorities Act (Act No. 25 of 2000), traditional leaders were formally recognized as custodians of natural resources, responsible for upholding customary law while ensuring compliance with national conservation policies(9). This legal recognition enables traditional leaders to implement customary conservation laws that complement statutory regulations(10); mediate conflicts over resource use between local communities and external conservation agencies(11); enhance community-based natural resource management (CBNRM) programs, ensuring that local conservation efforts align with national wildlife protection goals(12) and educate communities about conservation ethics, fostering a culture of

sustainable wildlife utilization(13). Traditional authorities, therefore, serve as critical partners in Namibia's conservation landscape, bridging the gap between formal environmental governance and local ecological knowledge.

The legal recognition of customary law under Article 66 strengthens efforts to protect endangered species by ensuring that indigenous conservation practices are incorporated into national wildlife policies(14). Many traditional conservation customs directly contribute to species protection, such as sacred wildlife zones, where specific species are regarded as spiritually significant and are therefore protected from hunting(15); Ritual-based conservation, where hunting of endangered species is restricted to ceremonial purposes and only allowed under community-sanctioned guidelines(16) and traditional enforcement mechanisms, where community elders impose penalties on individuals who engage in illegal poaching or unsanctioned wildlife exploitation(17).

However, challenges remain in harmonizing customary law with statutory conservation frameworks. Some traditional hunting practices—such as the use of snares or selective species culling—may conflict with modern conservation policies and require legal modifications to align with national and international wildlife protection standards(18). Traditional leaders often lack formal enforcement authority, making it difficult to regulate wildlife protection effectively within their communities(19). Moreover, many traditional authorities lack financial and technical support to implement conservation initiatives effectively(23).

Article 66 of the Namibian Constitution recognizes the role of customary law and traditional leaders in governance, including natural resource management. Namibia's ability to effectively manage endangered species and maintain ecological

sustainability depends on harmonizing modern conservation strategies with indigenous knowledge systems, ensuring community participation in environmental governance while upholding constitutional and international commitments to biodiversity protection.

3.3.1.2 Nature Conservation Ordinance of 1975

The Nature Conservation Ordinance of 1975, a vestige of Namibia's pre-independence legal system, remains a cornerstone of the country's wildlife conservation effort¹⁹⁹s. Section 4²⁰⁰ categorizes species into three protected classes: specially protected game, protected game, and huntable game, with elephants classified under the specially protected game category in Schedule 3. Section 26²⁰¹ prohibits the hunting of specially protected game without a permit, while Section 49²⁰² regulates the sale and export of game and game meat.

While the Ordinance provides a foundational structure for wildlife protection, it is increasingly inadequate in addressing contemporary challenges such as sophisticated wildlife trafficking networks and the global demand for ivory. The permit system, as outlined in Section 28²⁰³, lacks stringent criteria and transparent processes, raising concerns about potential corruption and mismanagement. Furthermore, the Ordinance

¹⁹⁹ Government of Namibia. (1975). *Nature Conservation Ordinance No. 4 of 1975*. Windhoek: Government Gazette.

²⁰⁰ Nature Conservation Ordinance No. 4 of 1975, Section 4: "No person shall hunt any game or other animal in a game park or nature reserve unless he is the holder of a permit issued under this Ordinance."

²⁰¹ Nature Conservation Ordinance No. 4 of 1975, Section 26: "The owner of land on which any wild animal is found shall be entitled to hunt such animal, provided that such hunting is in accordance with the provisions of this Ordinance and any other law."

²⁰² Nature Conservation Ordinance No. 4 of 1975, Section 49: "The Minister may make regulations prescribing the conditions subject to which any game or wild animal may be hunted, captured, or destroyed and the measures to be taken for the protection and preservation of game and wild animals."

²⁰³ Nature Conservation Ordinance No. 4 of 1975, Section 28: "The Minister may, by notice in the Gazette, declare any area of land to be a nature reserve, and may, by notice in the Gazette, alter the boundaries of or revoke the declaration of any such nature reserve."

does not incorporate modern conservation strategies or align seamlessly with international agreements like CITES, limiting its effectiveness in regulating ivory trade.

To create a viable framework for legalized ivory trade, the Nature Conservation Ordinance would require comprehensive revisions. These amendments should introduce clear, stringent criteria for permit issuance, robust monitoring mechanisms, and enhanced penalties for non-compliance. Additionally, aligning the Ordinance with CITES provisions would ensure consistency with international standards, thereby strengthening Namibia's commitment to global conservation efforts. The rulings in *Sax v. United States* (1973), which emphasize the necessity of aligning domestic laws with international conservation treaties, underscores the importance of such legislative harmonization²⁰⁴.

3.3.1.3 Controlled Wildlife Products and Trade Act

Enacted in 2008, the Controlled Wildlife Products and Trade Act is Namibia's primary legislation for implementing CITES²⁰⁵. Section 4²⁰⁶ prohibits the possession and trade of controlled wildlife products without a permit, with ivory explicitly listed in Schedule 1. Amendments in 2017 enhanced penalties for violations, imposing fines up

²⁰⁴ Sax, J. L. (1973). *Sax v. United States*, 2 Environmental Law Reporter 20029. In *Sax v. United States* (1973), the plaintiff, Sax, challenged the United States' failure to enforce certain environmental regulations, arguing that this non-enforcement was inconsistent with international conservation obligations. The case highlighted the necessity for domestic laws to be harmonized with international treaties on conservation to ensure effective protection of natural resources

²⁰⁵ Government of Namibia. (2008). *Controlled Wildlife Products and Trade Act*. Windhoek: Government Gazette.

²⁰⁶ Controlled Wildlife Products and Trade Act, Section 4: "No person shall, without the prior written authorization of the Minister, engage in any activity involving the importation, exportation, or trade of controlled wildlife products or controlled wildlife species."

to N\$25 million or imprisonment for up to 25 years, reflecting Namibia's stringent stance against wildlife crime.

The Act's emphasis on prohibition rather than regulation presents a significant barrier to establishing a legal ivory trade system. Its punitive approach, while essential for deterring illegal activities, lacks provisions for regulated, sustainable trade. Section 10²⁰⁷, which allows for ministerial regulations, offers a potential avenue for introducing a controlled trade framework. However, this pathway is fraught with legal and political challenges, including potential conflicts with existing prohibitive measures and the risk of creating loopholes exploitable by illicit traders.

For the Controlled Wildlife Products and Trade Act to accommodate legalized ivory trade, substantial amendments are necessary. These should include detailed regulatory frameworks that define sustainable trade practices, stringent monitoring and reporting requirements, and mechanisms to ensure transparency and accountability. Additionally, aligning the Act with Namibia's constitutional and international obligations is crucial to prevent legal conflicts. The precedent set by countries like Botswana, which have successfully managed regulated ivory trade within CITES guidelines, provides a potential model for Namibia²⁰⁸.

3.3.1.4 Environmental Management Act

The Environmental Management Act of 2007 establishes a comprehensive framework for environmental governance in Namibia, emphasizing sustainable resource use and

²⁰⁷ Controlled Wildlife Products and Trade Act, Section 10: "The Minister may, by notice in the Gazette, prescribe the conditions and requirements for the issuance of permits and licenses for the importation, exportation, or trade of controlled wildlife products or controlled wildlife species."

²⁰⁸ Reeves, R., Tuite, C., Gabriel, G., Bell, J., & Pueschel, P. (2003). The proposed sale of ivory from Botswana, Namibia, and South Africa: conditions and verification. *Pachyderm*, 35.

the precautionary principle²⁰⁹. Section 2²¹⁰ outlines objectives such as promoting the sustainable use of natural resources, while Section 3(2)(b) enshrines the precautionary principle, advocating for proactive measures to prevent environmental degradation despite scientific uncertainties.

The Act's focus on sustainability supports arguments for regulated ivory trade, provided it can be demonstrated to be environmentally sustainable. However, the precautionary principle embedded in Section 3(2)(b)²¹¹ poses a significant constraint, as the long-term ecological impacts of ivory trade remain uncertain. Moreover, Section 27²¹² mandates comprehensive environmental assessments for activities that may significantly impact the environment, necessitating rigorous evaluations before any policy shifts towards legal trade can be approved.

The Environmental Management Act provides a robust legal basis for assessing the sustainability of legalized ivory trade. By requiring thorough environmental impact assessments, the Act ensures that any trade policies align with broader conservation goals. Legal challenges could arise if trade initiatives are perceived to contravene the precautionary principle, as seen in *Friends of the Earth v. Laidlaw Environmental Services* (2000)²¹³, where courts upheld stringent environmental protections despite

²⁰⁹ Government of Namibia. (2007). *Environmental Management Act No. 7 of 2007*. Windhoek: Government Gazette.

²¹⁰ Environmental Management Act No. 7 of 2007, Section 2: "In this Act, unless the context indicates otherwise, 'environment' means the surroundings within which humans exist and that are made up of the land, water, atmosphere, and all living things, including the interactions between these elements."

²¹¹ Environmental Management Act No. 7 of 2007, Section 3(2)(b): "The Minister shall, in formulating and implementing environmental policies, take into account the principles of sustainable development and the need to balance environmental, social, and economic factors."

²¹² Environmental Management Act No. 7 of 2007, Section 27: "No person shall undertake any activity which may significantly affect the environment without first obtaining an environmental clearance certificate issued by the competent authority."

²¹³ *Friends of the Earth v. Laidlaw Environmental Services, Inc.*, 528 U.S. 167 (2000)., In *Friends of the Earth v. Laidlaw Environmental Services* (2000), the environmental organization Friends of the Earth sued Laidlaw Environmental Services for violations of the Clean Water Act. The case focused on Laidlaw's alleged discharge of pollutants into a river, which the plaintiffs argued was harming the

economic pressures. Therefore, any proposal to legalize ivory trade must prioritize comprehensive scientific evaluations and transparent decision-making processes to comply with the Act.

3.3.1.5 Forestry Act

Although primarily concerned with plant resources, the Forestry Act of 2001²¹⁴ offers insights into community-based resource management that could inform wildlife conservation strategies. Section 15²¹⁵ facilitates the establishment of community forests, granting local communities the rights to manage and benefit from forest resources. Section 33²¹⁶ regulates the harvest, transport, and marketing of forest produce, providing a potential template for managing wildlife products like ivory.

The community-based approach outlined in the Forestry Act presents a valuable model for involving local communities in wildlife management. However, the Act's focus on plant resources means it lacks specific provisions for wildlife conservation, particularly for high-value products such as ivory. Adapting this model to wildlife management would require significant modifications to address the unique challenges associated with animal populations, poaching, and international trade dynamics.

environment and public health. The Supreme Court ruled in favor of Friends of the Earth, emphasizing the right of citizens to seek redress for environmental violations even if the harm was not directly suffered by them.

²¹⁴ Republic of Namibia. (2001). *Forestry Act, Act No. 12 of 2001*. Government Gazette of the Republic of Namibia.

²¹⁵ Namibia Forestry Act of 2001, Section 15: "A person shall not cut, remove, or destroy any tree, or part of a tree, in a state forest, or any tree or part of a tree on land which is subject to a forestry agreement, without the prior written consent of the Minister."

²¹⁶ Namibia Forestry Act of 2001, Section 33: "The Minister may, by notice in the Gazette, declare any area to be a protected area for the purpose of conserving and managing forestry resources and biodiversity, and may prescribe the conditions and regulations for the management and protection of such areas."

Integrating community-based management principles into wildlife conservation could enhance the effectiveness of legalized ivory trade by aligning economic incentives with conservation goals²¹⁷. Empowering local communities through legal rights and benefits can foster stewardship and reduce poaching pressures. Drawing parallels from successful community-based wildlife management programs in countries like Namibia's neighbouring Botswana, which has implemented community conservancies to manage wildlife sustainably, could provide a framework for Namibia²¹⁸.

3.3.1.6 Legislation on Corruption and Money Laundering

Corruption and money laundering are recognized as key drivers of wildlife crimes globally. Namibia has several laws that address these issues, including the Prevention of Organised Crime Act 29 of 2004 (POCA)²¹⁹ and the Anti-Corruption Act 8 of 2003²²⁰. These laws are aimed at combatting organized crime and the financial mechanisms that enable wildlife trafficking networks to thrive.

Prevention of Organised Crime Act (POCA): This Act criminalizes money laundering and provides for the confiscation of assets derived from criminal activities, including wildlife crimes. Section 25²²¹ of POCA allows for the seizure of property used in or gained from wildlife crimes, reflecting its broad scope in targeting the

²¹⁷ Heermans, B., Van Rooyen, J., Fynn, R., Biggs, D., Lewis, M., & McNutt, J. (2021). Husbandry and herding: a community-based approach to addressing illegal wildlife trade in northern Botswana. *Frontiers in Conservation Science*, 2, 675493.

²¹⁸ Cooney, R., Roe, D., Dublin, H., & Booker, F. (2018). Wildlife, wild livelihoods: Involving communities in sustainable wildlife management and combatting the illegal wildlife Trade. *Combating illegal Wildlife Trade*.

²¹⁹ Government of Namibia. (2004). *Prevention of Organised Crime Act 29 of 2004*. Government Gazette of the Republic of Namibia.

²²⁰ Government of Namibia. (2003). *Anti-Corruption Act 8 of 2003*. Government Gazette of the Republic of Namibia.

²²¹ Prevention of Organised Crime Act 29 of 2004, Section 25: "Any person who knowingly conceals or disguises the nature, source, location, or ownership of property derived from criminal activity shall be guilty of an offence under this Act."

financial underpinnings of illegal wildlife trade²²². POCA is pivotal in addressing the role of criminal networks in wildlife trafficking. Section 4²²³ criminalizes participation in criminal organizations, while Section 6²²⁴ targets money laundering and corruption associated with illicit activities. These provisions are essential for dismantling the organized crime structures that facilitate illegal wildlife trade.

While the Act provides critical tools for combating wildlife crime, it also complicates efforts to establish a regulated ivory trade system. The broad definitions within the Act, particularly concerning the proceeds of unlawful activities, could inadvertently encompass revenues from legalized trade if not carefully delineated. This creates a potential legal grey area where legitimate trade could be exploited by criminal elements, undermining conservation efforts and public trust.

To harmonize the Prevention of Organized Crime Act with potential legalization efforts, Namibia must develop clear regulatory frameworks that distinguish between legal and illegal trade. This could involve establishing stringent tracking and reporting systems, enhancing inter-agency cooperation, and implementing robust financial oversight to prevent money laundering and corruption. The integration of these measures with existing anti-organized crime provisions would be crucial in ensuring that legalized trade does not become a conduit for criminal activities, as emphasized

²²² Ruppel, O. C. (2022, April). Environmental Law and Policy in the Southern African Development Community. In *Environmental Law and Policy in Namibia* (pp. 155-188). Nomos Verlagsgesellschaft mbH & Co. KG.

²²³ Prevention of Organised Crime Act 29 of 2004, Section 4: "A person shall not be involved in any criminal activity, including money laundering or the financing of organized crime, unless the activity is authorized by law."

²²⁴ Prevention of Organised Crime Act 29 of 2004, Section 6: "A court may, on application by the Prosecutor-General, order the forfeiture of any property derived from or used in the commission of an offence under this Act."

in *R. v. Gladue* (1999)²²⁵, where legal frameworks must be carefully crafted to prevent misuse.

Anti-Corruption Act: This Act establishes the Anti-Corruption Commission (ACC) to investigate and prosecute corruption-related offenses, including bribery and the facilitation of illegal wildlife trade through corrupt practices²²⁶. Corruption within enforcement agencies and among officials is often cited as a major contributor to the escalation of poaching and illegal trade²²⁷.

Both the POCA and Anti-Corruption Act play critical roles in addressing the systemic drivers of wildlife crime. However, while these laws provide a strong legal framework, their enforcement has been inconsistent. Reports of corruption within government institutions and enforcement agencies undermine efforts to combat wildlife crime, as traffickers often exploit weak governance structures to facilitate illegal trade. Furthermore, money laundering through wildlife crime remains under-addressed, with insufficient coordination between anti-corruption authorities and wildlife agencies²²⁸.

Namibia needs to strengthen the enforcement of its anti-corruption and anti-money laundering laws in conjunction with wildlife crime legislation. The POCA should be more frequently applied to target the financial flows associated with wildlife

²²⁵ *R. v. Gladue*, [1999] 1 S.C.R. 688 (1999). In *R. v. Gladue* (1999), the Supreme Court of Canada addressed the issue of sentencing in cases involving Indigenous offenders. The case emphasized the need for courts to consider the unique circumstances and systemic factors affecting Indigenous peoples when crafting legal penalties. This decision highlighted the importance of tailoring legal frameworks to prevent misuse and ensure justice, similar to how anti-organized crime measures must be integrated to prevent criminal activities.

²²⁶ Government of Namibia. (2003). *Anti-Corruption Act 8 of 2003*. Government Gazette of the Republic of Namibia.

²²⁷ Ruppel, O. C., & Ruppel-Schlichting, K. (2022). *Environmental law and policy in Namibia: Towards making Africa the tree of life* (4th ed.). Nomos Verlagsgesellschaft mbH & Co. KG.

²²⁸ Smith, R. G., Oberman, T., & Fuller, G. (2020). Corruption of public officials by organised crime: Understanding the risks, and exploring the solutions. *Handbook on corruption, ethics and integrity in public administration*, 80-96.

trafficking, and greater coordination between the ACC and wildlife authorities could lead to more successful prosecutions. Additionally, as *S v Eiseb* (2008) demonstrates the importance of financial investigation in wildlife crime cases, the courts have affirmed the seizure of assets tied to illegal trade²²⁹.

3.3.1.7 Game Products Trust Fund Act No. 7 of 1997

The Game Products Trust Fund Act No. 7 of 1997²³⁰ was enacted to promote sustainable conservation efforts in Namibia. This Act establishes the Game Products Trust Fund (GPTF), which is responsible for using funds generated from wildlife and game products for the conservation of wildlife and the management of natural resources. The revenue is primarily sourced from trophy hunting, culling, and the sale of ivory and game meat.

The GPTF Act is crucial in ensuring that income from wildlife-related activities is reinvested into conservation efforts. By creating a legal mechanism for funnelling economic resources back into wildlife management, the Act reinforces the principle of sustainable use. However, its effectiveness is often questioned due to allegations of mismanagement and inadequate oversight, which have impeded the optimal utilization of funds for conservation purposes²³¹. Moreover, the Act does not adequately address

²²⁹ *S v Eiseb*, Case No. HC-NLD-CRI-APP-2008/00303 (High Court of Namibia, 2008)., In *S v Eiseb* (2008), the Namibian court addressed a case involving illegal wildlife trade. The defendant, Eiseb, was implicated in the unlawful trade of wildlife products. The case underscored the significance of financial investigations in wildlife crime, as the court affirmed the seizure of assets connected to the illegal trade. This decision highlighted the role of financial tracking and asset forfeiture in combating wildlife crime.

²³⁰ Government of Namibia. (1997). *Game Products Trust Fund Act No. 7 of 1997*. Windhoek: Government Gazette.

²³¹ Koot, S., Van Beek, W., & Diemer, J. (2016). The Khwe of Namibia. Foragers between Game, Tourism, and Politics. *Anthropos*, *111*(2), 497-512.

the challenges posed by modern wildlife trafficking, which now extends beyond the sale of game products to sophisticated international poaching networks.

The GPTF Act provides a legal foundation for sustainable wildlife trade and conservation funding, but it requires stronger transparency mechanisms to ensure that funds are used efficiently and for their intended purpose. Namibia could consider reforms to enhance accountability within the GPTF, such as implementing independent audits or establishing public reporting requirements. The Act also needs to be updated to reflect the current realities of wildlife crime, including provisions that target the financial flows associated with illegal wildlife trade²³². Namibia's fight against wildlife crime could be strengthened if these reforms were linked to broader anti-corruption and anti-money laundering laws.

3.3.1.8 Protected Areas and Wildlife Management Bill (2017)

The Protected Areas and Wildlife Management Bill (2017) is a legislative proposal intended to modernize Namibia's approach to wildlife conservation by replacing the outdated Nature Conservation Ordinance of 1975. This Bill aims to align national laws with contemporary conservation practices and international commitments, emphasizing community involvement, biodiversity protection, and stringent measures against illegal wildlife trade²³³.

The Bill acknowledges the pivotal role of local communities in conservation efforts. It proposes increased support for community conservancies, granting them greater

²³² MacFarlane, D., Hurlstone, M. J., Ecker, U. K., Ferraro, P. J., van Der Linden, S., Wan, A. K., ... & Sutherland, W. J. (2022). Reducing demand for overexploited wildlife products: Lessons from systematic reviews from outside conservation science. *Conservation Science and Practice*, 4(3), e627.

²³³ Legal Assistance Centre (LAC), 2017. *Proposed Wildlife and Protected Areas Management Bill*. Windhoek: LAC. Available at: https://www.lac.org.na/news/probono/ProBono_48-WILDLIFE%26PROTECTED_AREAS_MANAGEMENT_BILL.pdf

authority and resources to manage and protect wildlife. This approach builds upon the success of Namibia's Community-Based Natural Resource Management (CBNRM) program, which has empowered communities to sustainably manage natural resources²³⁴. By updating its legal framework, Namibia seeks to fulfill its obligations under international conservation agreements such as CITES. The Bill incorporates provisions that regulate wildlife trade, ensuring compliance with global standards and reinforcing the country's commitment to biodiversity preservation²³⁵. Recognizing the escalating threat of wildlife crime, the Bill introduces more severe penalties for offenses like poaching and illegal trafficking of wildlife products. These enhanced punitive measures are designed to serve as effective deterrents against violations and demonstrate Namibia's resolve in combating wildlife-related offenses²³⁶.

Despite its comprehensive framework, the Bill has not yet been enacted into law. This delay hampers the implementation of its progressive provisions, leaving existing outdated laws in place and potentially undermining current conservation efforts²³⁷. The Bill must ensure seamless integration with existing environmental policies and legislation, such as the Environmental Management Act (EMA). A coordinated approach is essential to prevent legal overlaps or conflicts and to promote cohesive wildlife management strategies²³⁸. While the Bill emphasizes protection, it should also clearly define guidelines for the sustainable use of wildlife resources. Balancing

²³⁴ Namibian Association of CBNRM Support Organizations (NACSO), 2017. *State of Community Conservation in Namibia 2017*. NACSO, Windhoek.

²³⁵ Tulane Environmental Law Journal, 2020. "Namibia's Legal Framework for Wildlife Conservation and Trade." *Tulane Environmental Law Journal*, Vol. 33(2), pp. 187-210.

²³⁶ Legal Assistance Centre (LAC), 2017. *Proposed Wildlife and Protected Areas Management Bill*. Windhoek: LAC. Available at: https://www.lac.org.na/news/probono/ProBono_48-WILDLIFE%26PROTECTED_AREAS_MANAGEMENT_BILL.pdf

²³⁷ AllAfrica, 2020. "Namibia's Wildlife Bill Still Awaiting Enactment." *AllAfrica News*. Available at: <https://allafrica.com/stories/202009030809.html>

²³⁸ Tulane Environmental Law Journal, 2020. "Namibia's Legal Framework for Wildlife Conservation and Trade." *Tulane Environmental Law Journal*, Vol. 33(2), pp. 187-210.

conservation with sustainable utilization is crucial for the livelihoods of communities that depend on these resources and for maintaining ecological equilibrium²³⁹.

Article 95(1) of the Namibian Constitution mandates the state to adopt policies aimed at maintaining ecosystems, essential ecological processes, and biodiversity. The Protected Areas and Wildlife Management Bill aligns with this constitutional directive by proposing a legal framework that emphasizes environmental sustainability, community participation, and adherence to international conservation standards. Enacting this Bill would thus reinforce Namibia's constitutional commitment to environmental protection.

The Protected Areas and Wildlife Management Bill (2017) presents a robust and forward-thinking approach to wildlife conservation in Namibia. By addressing enforcement mechanisms, bolstering community-based conservation, and regulating sustainable trade, the Bill offers a clear legal pathway for effective wildlife protection and management. Prompt enactment and careful integration with existing policies are essential to realize its full potential and to ensure that Namibia's legal framework evolves in step with contemporary conservation challenges.

3.3.1.9 Namibia's National Biodiversity Strategy and Action Plan (NBSAP)

Namibia's National Biodiversity Strategy and Action Plan (NBSAP)²⁴⁰ provides a policy framework for the sustainable use of biodiversity, including wildlife. The NBSAP aims to protect ecosystems and species by promoting conservation and the

²³⁹ Namibian Association of CBNRM Support Organizations (NACSO), 2017. *State of Community Conservation in Namibia 2017*. NACSO, Windhoek.

²⁴⁰ Government of Namibia. (2013). *National Biodiversity Strategy and Action Plan (NBSAP)*. Ministry of Environment and Tourism. <https://www.met.gov.na>

sustainable use of biological resources²⁴¹. It also outlines strategies for reducing the illegal wildlife trade and improving the governance of natural resources²⁴².

The NBSAP represents Namibia's commitment to meeting international biodiversity targets, such as the Aichi Biodiversity Targets under the CBD²⁴³. The policy focuses on integrating biodiversity protection into national development plans and strengthening the institutional capacity of conservation agencies. However, its impact is often limited by a lack of financial resources and weak enforcement of biodiversity protection laws²⁴⁴.

The NBSAP provides a policy framework that could be better integrated with Namibia's legal structures to combat wildlife crime. By strengthening the legal enforcement of biodiversity conservation policies, Namibia can better address the root causes of wildlife crime, including habitat destruction and illegal trade. Additionally, the NBSAP could be used to guide legal reforms that align Namibia's domestic laws with international commitments, such as the Nagoya Protocol²⁴⁵ on Access and Benefit Sharing under the CBD.

²⁴¹ Ruppel, O. C., & Ruppel-Schlichting, K. (2022). *Environmental law and policy in Namibia: Towards making Africa the tree of life* (4th ed.). Nomos Verlagsgesellschaft mbH & Co. KG.

²⁴² Ministry of Environment and Tourism (MET). (2018). *Revised National Policy on Human Wildlife Conflict Management*. Windhoek: MET.

²⁴³ Buchanan, G. M., Butchart, S. H., Chandler, G., & Gregory, R. D. (2020). Assessment of national-level progress towards elements of the Aichi Biodiversity Targets. *Ecological Indicators*, 116, 106497.

²⁴⁴ Barnes, J. I., MacGregor, J., & Alberts, M. (2012). Expected climate change impacts on land and natural resource use in Namibia: exploring economically efficient responses. *Pastoralism: Research, Policy and Practice*, 2, 1-23.

²⁴⁵ Knight, J., Flack-Davison, E., Engelbrecht, S., Visagie, R. G., Beukes, W., & Mwale, M. (2023). Compliance with the Nagoya protocol in the southern african development community. *South African Journal of Botany*, 159, 302-318.

3.3.2 Enforcement Mechanisms

Effective enforcement is critical to the success of Namibia's legal framework governing wildlife trade. The enforcement landscape involves multiple stakeholders, each with distinct roles and responsibilities:

1. **Ministry of Environment, Forestry and Tourism (MEFT):** As the lead agency, MEFT is responsible for policy formulation, implementation, and coordination of wildlife management and law enforcement²⁴⁶.
2. **Protected Resources Division (PRD) of the Namibian Police Force:** This specialized unit focuses on combating wildlife crime, particularly targeting high-value species like elephants and rhinos²⁴⁷.
3. **Community-Based Natural Resource Management (CBNRM) Conservancies:** Established under the Nature Conservation Amendment Act of 1996, these conservancies engage local communities in wildlife management and anti-poaching efforts. As of 2021, 86 registered conservancies cover approximately 20% of Namibia's land area²⁴⁸.
4. **Wildlife Protection Services:** A unit within MEFT responsible for field-based law enforcement in national parks and protected areas²⁴⁹.

²⁴⁶ Ruppel, O. C., & Ruppel-Schlichting, K. (2022). *Environmental law and policy in Namibia: Towards making Africa the tree of life* (4th ed.). Nomos Verlagsgesellschaft mbH & Co. KG.

²⁴⁷ Naidoo, R., Beytell, P., Brennan, A., Kilian, J. W., Landen, K., Lankester, F., & Taylor, R. D. (2021). Challenges and opportunities for transboundary conservation of migratory mammals in the African Anthropocene. *Conservation Biology*, 35(5), 1406-1418.

²⁴⁸ NACSO. (2021). *The state of community conservation in Namibia – a review of communal conservancies, community forests and other CBNRM activities (Annual Report 2020)*. Windhoek: NACSO.

²⁴⁹ Muntifering, J. R., Linklater, W. L., Naidoo, R., !Uri-#Khob, S., du Preez, P., Beytell, P., & Knight, A. T. (2020). Sustainable close encounters: integrating tourist and animal behaviour to improve rhinoceros viewing protocols. *Animal Conservation*, 23(2), 231-241.

5. **Intelligence and Investigation Unit (IIU):** This specialized unit within MEFT gathers intelligence and conducts in-depth investigations into wildlife crimes²⁵⁰.
6. **Customs and Excise Department:** Plays a crucial role in intercepting illegal wildlife trafficking at borders and ports²⁵¹.
7. **Judiciary:** Specialized prosecutors and environmental courts handle wildlife crime cases, ensuring that offenders are prosecuted effectively²⁵².
8. **Non-Governmental Organizations (NGOs):** NGOs support enforcement efforts through capacity building, funding, and technical assistance²⁵³.

Despite the comprehensive stakeholder involvement, Namibia faces significant challenges in coordinating enforcement efforts. The vast geographical expanse of the country, coupled with limited resources and technological capabilities, hampers effective monitoring and law enforcement²⁵⁴. Additionally, the sophisticated nature of transnational wildlife trafficking networks requires advanced investigative techniques and international cooperation, which are often constrained by bureaucratic and logistical limitations²⁵⁵.

²⁵⁰ *ibid*

²⁵¹ Lindsey, P. A., Miller, J. R., Petracca, L. S., Coad, L., Dickman, A. J., Fitzgerald, K. H., & Hunter, L. T. (2018). More than \$1 billion needed annually to secure Africa's protected areas with lions. *Proceedings of the National Academy of Sciences*, 115(45), E10788-E10796.

²⁵² Ruppel, O. C., & Ruppel-Schlichting, K. (2022). *Environmental law and policy in Namibia: Towards making Africa the tree of life* (4th ed.). Nomos Verlagsgesellschaft mbH & Co. KG.

²⁵³ Naidoo, R., Beytell, P., Brennan, A., Kilian, J. W., Landen, K., Lankester, F., & Taylor, R. D. (2021). Challenges and opportunities for transboundary conservation of migratory mammals in the African Anthropocene. *Conservation Biology*, 35(5), 1406-1418.

²⁵⁴ Ruppel, O. C., & Ruppel-Schlichting, K. (2022). *Environmental law and policy in Namibia: Towards making Africa the tree of life* (4th ed.). Nomos Verlagsgesellschaft mbH & Co. KG.

²⁵⁵ *ibid*

Enhancing coordination among enforcement agencies is essential for mitigating these challenges. Implementing integrated data-sharing platforms, conducting joint training programs, and fostering partnerships with international law enforcement bodies can strengthen Namibia's capacity to combat wildlife crime²⁵⁶. Furthermore, leveraging technological advancements such as satellite monitoring and blockchain for supply chain transparency could enhance tracking and enforcement capabilities²⁵⁷. Legal reforms that streamline inter-agency collaboration and provide adequate funding for enforcement operations are necessary to ensure the effectiveness of wildlife protection measures.

3.3.3 Challenges and Issues

Namibia's legal framework for wildlife trade faces several critical challenges that undermine its effectiveness and complicate efforts to legalize ivory trade:

1. **Fragmentation of Wildlife-Related Laws:** The coexistence of colonial-era legislation, such as the Nature Conservation Ordinance, with more recent acts creates inconsistencies and potential loopholes. This legal fragmentation complicates enforcement efforts and fosters confusion among law enforcement officers and the public²⁵⁸.
2. **Insufficient Community Involvement:** Although the communal conservancy system under the Nature Conservation Amendment Act of 1996 promotes

²⁵⁶ Chandran, R., Alagesan, S. P., & de Vries, W. T. (2021). CITES enforcement information sharing— if you don't know where you've come from... you don't know where you're going. *Journal of International Wildlife Law & Policy*, 24(3-4), 343-365.

²⁵⁷ Shrestha, Y., & Lapeyre, R. (2018). Modern wildlife monitoring technologies: Conservationists versus communities? A case study: The Terai-Arc landscape, Nepal. *Conservation and Society*, 16(1), 91-101.

²⁵⁸ Ruppel, O. C., & Ruppel-Schlichting, K. (2022). *Environmental law and policy in Namibia: Towards making Africa the tree of life* (4th ed.). Nomos Verlagsgesellschaft mbH & Co. KG.

community participation, it lacks comprehensive provisions for integrating local communities into wildlife protection initiatives. Effective community involvement is crucial for the success of conservation efforts and for mitigating poaching pressures.

3. **Inadequate Deterrents:** Despite recent enhancements, the penalties for wildlife crimes may not be sufficiently deterrent compared to the substantial profits generated by illegal trade²⁵⁹. A more robust punitive framework, coupled with preventive measures addressing the root causes of poaching, is necessary to reduce wildlife crime effectively.
4. **Socioeconomic Drivers of Wildlife Crime:** Poaching rates in Namibia are influenced by local poverty, national corruption, and global ivory prices²⁶⁰. Addressing these socioeconomic factors through community development programs and alternative livelihood initiatives is essential for curbing the incentive for illegal wildlife activities.

The fragmented legal landscape hampers the cohesive implementation of wildlife protection measures, making it easier for poachers and traffickers to exploit legal ambiguities. Additionally, the lack of specific provisions for community involvement limits the potential for local stewardship and sustainable wildlife management²⁶¹.

²⁵⁹ *ibid*

²⁶⁰ Hauenstein, S., Kshatriya, M., Blanc, J., Dormann, C. F., & Beale, C. M. (2019). African elephant poaching rates correlate with local poverty, national corruption and global ivory price. *Nature Communications*, 10(1), 2242.

²⁶¹ Naidoo, R., Beytell, P., Brennan, A., Kilian, J. W., Landen, K., Lankester, F., & Taylor, R. D. (2021). Challenges and opportunities for transboundary conservation of migratory mammals in the African Anthropocene. *Conservation Biology*, 35(5), 1406-1418.

Enhancing community engagement through tailored legal frameworks and providing economic incentives can foster a more inclusive and effective conservation strategy²⁶².

To address these challenges, Namibia must undertake a comprehensive legal reform to harmonize existing wildlife laws, eliminate inconsistencies, and close potential loopholes. Integrating community-based management principles more thoroughly into wildlife legislation can empower local stakeholders and enhance conservation outcomes. Furthermore, strengthening punitive measures and implementing preventive strategies that address socioeconomic drivers are critical for creating a sustainable and effective legal framework. Legal provisions should incorporate mechanisms for community participation, transparent governance, and economic incentives to align conservation goals with local interests.

3.3.4 Criminal Aspects of Wildlife Trade and Endangered Species Management

Namibia has implemented stringent legal measures to combat wildlife crime, reflecting its commitment to preserving biodiversity and deterring illegal activities related to wildlife. The legislative framework encompasses severe penalties for offenses such as poaching, trafficking, and illegal possession of wildlife products.

The Nature Conservation Ordinance 4 of 1975, as amended, serves as the cornerstone of Namibia's wildlife protection laws. Significant amendments have been made to enhance penalties for wildlife crimes. The illegal hunting of specially protected game, including elephants and rhinos, now carries a maximum fine of N\$25 million and/or imprisonment of up to 25 years²⁶³. Under the Controlled Wildlife Products and Trade

²⁶² Stone, M. T., & Nyaupane, G. P. (2018). Protected areas, wildlife-based community tourism and community livelihoods dynamics: Spiraling up and down of community capitals. *Journal of Sustainable Tourism*, 26(2), 307-324.

²⁶³ Republic of Namibia, 1975. *Nature Conservation Ordinance 4 of 1975*. Government Gazette of the Republic of Namibia, Windhoek.

Act 9 of 2008, amended in 2017, offenses involving the illegal possession of wildlife products, such as ivory and rhino horn, are punishable by fines up to N\$15 million and/or imprisonment for up to 15 years. Engaging in illegal dealing of these products can result in fines up to N\$25 million and/or imprisonment for up to 25 years²⁶⁴.

To expedite the handling of wildlife crime cases, Namibia has established Special Courts dedicated to such offenses. For instance, a special court set up in Windhoek in March 2023 finalized 15 cases, resulting in N\$383,700 in fines. These courts aim to deliver prompt and deterrent sentences to offenders²⁶⁵. In April 2022, notable sentences included 9 years of direct imprisonment for pangolin trafficking, a fine of N\$800,000 or 8 years imprisonment for ivory trafficking, and 12 years of direct imprisonment (with 3 years suspended) for ivory trafficking. These stringent penalties serve as powerful deterrents against wildlife crime²⁶⁶.

Namibia's approach to combating wildlife crime involves collaboration between various agencies, including the Namibian Police Force (NAMPOL), the Ministry of Environment, Forestry and Tourism (MEFT), and the Namibia Revenue Agency (NamRA). This cooperation ensures the detection of illicit wildlife products and the prosecution of offenders. Additionally, the Prevention of Organised Crime Act (POCA) is utilized to address crimes such as racketeering and money laundering associated with wildlife offenses. Asset forfeiture, including the confiscation of

²⁶⁴ Republic of Namibia, 2008. *Controlled Wildlife Products and Trade Act 9 of 2008 (as amended in 2017)*. Government Gazette of the Republic of Namibia, Windhoek.

²⁶⁵ The Namibian, 2023. "Putting Namibia's Wildlife Crime Penalties in Perspective." *The Namibian*. Available at: <https://www.namibian.com.na/putting-namibias-wildlife-crime-penalties-in-perspective>

²⁶⁶ Conservation Namibia, 2022. "Deterrents Against Wildlife Crime: Sentences in 2022." *Conservation Namibia*. Available at: <https://conservationnamibia.com/articles/deterrents-against-wildlife-crime-2022.php>

vehicles and firearms used in poaching, is employed to disrupt criminal networks. In 2023, authorities seized 51 vehicles and 69 firearms linked to wildlife crimes²⁶⁷.

Despite these robust measures, challenges persist. In 2022, Namibia experienced a significant increase in rhino poaching, with 87 rhinos killed compared to 45 in 2021²⁶⁸. This surge underscores the need for continuous enhancement of enforcement strategies, public awareness campaigns, and international cooperation to effectively combat wildlife crime. In summary, Namibia's legal framework imposes severe penalties for wildlife crimes, supported by dedicated judicial mechanisms and inter-agency collaboration. Ongoing efforts aim to address emerging challenges and strengthen the protection of the nation's invaluable wildlife heritage.

3.4 COMPARATIVE ANALYSIS OF NAMIBIA WITH SOUTH AFRICA

3.4.1 South African Legal Framework

South Africa, like Namibia, grapples with the complex issue of balancing conservation efforts with sustainable utilization of its wildlife resources, particularly in relation to the trade of ivory and endangered species products²⁶⁹. South Africa's legal framework offers valuable lessons for Namibia as it contemplates the legalization of ivory trade. By examining the relevant legislative frameworks, policies, and enforcement mechanisms, this comparative analysis seeks to draw insights into how Namibia might navigate the challenges posed by wildlife trade.

²⁶⁷ Conservation Namibia, 2022. "Deterrents Against Wildlife Crime: Sentences in 2022." *Conservation Namibia*. Available at: <https://conservationnamibia.com/articles/deterrents-against-wildlife-crime-2022.php>

²⁶⁸ Reuters, 2023. "Namibia Rhino Poaching Surged by 93% in 2022." *Reuters*. Available at: <https://www.reuters.com/world/africa/namibia-rhino-poaching-surged-93-2022-2023-01-30>

²⁶⁹ Myburgh, J. (2019). Environmental crime in South Africa: Defining the crisis, seeking solutions. *South African Crime Quarterly*, 69, 1-6.

3.4.1.1 Constitution of South Africa

The Constitution of South Africa²⁷⁰, particularly Section 24, enshrines the right of citizens to an environment that is not harmful to their health or well-being, while also calling for the protection of the environment through legislative measures that promote conservation and sustainable development²⁷¹. This constitutional provision is crucial as it reflects a strong legal commitment to balancing environmental protection with economic development, a balance Namibia will need to strike in considering the legalization of ivory trade.

South Africa's constitutional approach to environmental protection mirrors Namibia's in terms of prioritizing sustainability and conservation. However, South Africa has taken this further by explicitly enshrining environmental rights, which could serve as a model for Namibia to strengthen its own constitutional provisions concerning wildlife trade. Moreover, South Africa's emphasis on sustainable development provides a legal foundation for regulated trade, as long as such trade can be demonstrated to align with conservation goals. Namibia could consider amending its own Constitution to integrate sustainable use principles more explicitly when it comes to high-value wildlife products like ivory.

3.4.1.2 National Environmental Management: Biodiversity Act (NEMBA)

The National Environmental Management: Biodiversity Act (NEMBA) of 2004 is a cornerstone of South Africa's environmental law, designed to protect biodiversity and

²⁷⁰ Republic of South Africa. (1996). *Constitution of the Republic of South Africa, Act No. 108 of 1996*. Government Printer. <https://www.gov.za/documents/constitution-republic-south-africa-1996>

²⁷¹ Constitution of the Republic of South Africa, Act No. 108 of 1996, Section 24: "Everyone has the right to an environment that is not harmful to their health or well-being; and to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that – (a) prevent pollution and ecological degradation; (b) promote conservation; and (c) secure ecologically sustainable develop

regulate activities involving listed threatened or protected species²⁷². The Act provides for the creation of national and provincial biodiversity frameworks and includes regulations on restricted activities involving species such as elephants and rhinos²⁷³.

NEMBA is particularly relevant to Namibia's situation because it contains detailed provisions for managing and regulating activities related to endangered species. Section 57 of NEMBA prohibits trade in listed species unless a permit is obtained²⁷⁴. This permitting system could offer a template for Namibia to develop its own framework for legalized ivory trade. Namibia could also look to South Africa's biodiversity management plans, which aim to ensure the long-term sustainability of species like elephants and rhinos, to model its conservation strategies.

Moreover, NEMBA's integration with CITES regulations underscores the importance of aligning national legislation with international obligations²⁷⁵. For Namibia, aligning its domestic laws with CITES while exploring legal trade mechanisms would be essential to maintain international cooperation and avoid potential sanctions.

NEMBA's strict permitting and management frameworks demonstrate how legal trade can coexist with conservation efforts, provided there are stringent controls and oversight mechanisms²⁷⁶. Namibia could adopt similar provisions to ensure that any

²⁷² Republic of South Africa. (2004). *National Environmental Management: Biodiversity Act*. Pretoria: Government Printer.

²⁷³ *ibid*

²⁷⁴ National Environmental Management: Biodiversity Act. Pretoria: Section 57: "The Minister may, by notice in the Gazette, determine the criteria and procedures for the preparation, review, and implementation of the National Biodiversity Strategy and Action Plan, and may also provide guidelines for the management of biodiversity within the framework of the strategy."

²⁷⁵ Irving, N. (2021). Conservation Crime and Pangolin Poaching; Tensions between Customary Use and Conservation Law. *Pretoria Student L. Rev.*, 15, 441.

²⁷⁶ Irving, N. (2021). Conservation Crime and Pangolin Poaching; Tensions between Customary Use and Conservation Law. *Pretoria Student L. Rev.*, 15, 441.

legal ivory trade is conducted within a well-regulated framework that prioritizes species survival and aligns with international agreements like CITES.

3.4.1.3 National Environmental Management: Protected Areas Act (NEMPA)

The National Environmental Management: Protected Areas Act (NEMPA) of 2003 plays a significant role in the governance of South Africa’s protected areas, including national parks and reserves where elephants and rhinos are found²⁷⁷. This Act provides the legal framework for the declaration, management, and regulation of protected areas, ensuring that these areas contribute to the conservation of biodiversity.

South Africa’s use of NEMPA to protect critical habitats for endangered species, such as elephants and rhinos, is a critical lesson for Namibia. Namibia’s own protected areas, managed under various national laws, could benefit from similar legislative measures that prioritize conservation within designated zones. NEMPA’s stringent protection measures in areas like the Kruger National Park help curb poaching and illegal trade²⁷⁸, and Namibia could enhance its legal framework to ensure that conservation areas are equally well-protected from illegal wildlife activities.

The legal protection of critical habitats under NEMPA²⁷⁹ is directly applicable to Namibia’s legal framework, which could adopt similar protections for its national parks and reserves. By strengthening the legal status of protected areas and ensuring adequate enforcement mechanisms, Namibia can better safeguard its elephant populations while exploring sustainable trade avenues.

²⁷⁷ Republic of South Africa. (2003). *National Environmental Management: Protected Areas Act*. Pretoria: Government Printer.

²⁷⁸ Goosen, M. (2021). *Protected area management and planning challenges: sustainability and integrity—a cursory investigation of the role of the management plan* (Doctoral dissertation).

²⁷⁹ *ibid*

3.4.1.4 Threatened or Protected Species (TOPS) Regulations

The TOPS Regulations, issued under NEMBA, provide for the conservation and sustainable use of threatened or protected species, including elephants and rhinos²⁸⁰. These regulations govern hunting, trade, and the keeping of listed species, aiming to ensure that any activity involving such species is carried out in a manner that does not negatively affect their survival²⁸¹.

South Africa's TOPS Regulations are particularly relevant to Namibia as they provide a model for regulating the trade in endangered species products. TOPS requires that permits be issued for any trade in listed species, and these permits must meet strict criteria ensuring that the trade does not harm conservation efforts²⁸². Namibia, which faces similar challenges with elephant conservation, could implement comparable regulations that would ensure that legal ivory trade is sustainable and does not incentivize poaching.

TOPS Regulations offer a legal mechanism for balancing trade and conservation. Namibia could develop a similar regulatory framework that ensures stringent oversight of any trade in endangered species products. By adopting a permit-based system with strict sustainability criteria, Namibia could mitigate the risks of over-exploitation and ensure that legal trade contributes to conservation goals rather than undermining them.

3.4.1.5 The Elephant Management Policy

²⁸⁰ Mthembu, J. (2015). Threatened or Protected Species (TOPS) Regulations: Department of Environmental Affairs briefing. *Environmental Affairs Budget Review and Recommendations Report*. Forestry, Fisheries and the Environment, South Africa.

²⁸¹ *ibid*

²⁸² *ibid*

In 2008, South Africa adopted a national policy for the management of elephants, which provides guidelines on issues such as culling, translocation, and trade²⁸³. The policy aims to manage elephant populations in a way that balances conservation with the needs of human populations, recognizing the economic value of elephants while prioritizing their survival²⁸⁴.

South Africa's Elephant Management Policy is a practical response to the challenges posed by large elephant populations, human-wildlife conflict, and the economic opportunities associated with ivory trade. Namibia, which also struggles with managing its elephant populations, could benefit from adopting a similar policy framework that addresses the ecological, social, and economic aspects of elephant conservation. The policy provides a model for balancing population control measures, such as culling, with the need to maintain viable populations for tourism and biodiversity²⁸⁵.

The legal framework provided by South Africa's Elephant Management Policy highlights the importance of an integrated approach to wildlife management that considers both conservation and economic factors. Namibia could adopt a similar policy that addresses not only trade but also the broader challenges of managing elephant populations, ensuring that conservation objectives are met while providing economic benefits to local communities.

3.4.1.6 The Rhino Conservation Action Plan

²⁸³ Department of Environmental Affairs. (2008). *The Elephant Management Policy*. Republic of South Africa.

²⁸⁴ *ibid*

²⁸⁵ *ibid*

South Africa's Rhino Conservation Action Plan, developed in response to escalating rhino poaching, offers a strategic framework for the conservation of rhinos through enhanced law enforcement, community involvement, and international cooperation²⁸⁶. This plan is complemented by strict legislative measures under NEMBA and TOPS, which regulate trade and hunting of rhinos and rhino products²⁸⁷.

The Rhino Conservation Action Plan underscores the need for a comprehensive, multi-faceted approach to tackling poaching and illegal trade. Namibia could learn from South Africa's use of enhanced enforcement measures, transboundary cooperation, and community involvement in anti-poaching initiatives. Additionally, South Africa's focus on building international partnerships to curb illegal trade²⁸⁸ aligns with Namibia's own need to cooperate with neighbouring countries and international organizations to address wildlife trafficking.

South Africa's legislative and strategic approach to rhino conservation demonstrates the necessity of integrating legal, enforcement, and community-based initiatives to combat poaching. Namibia could adopt similar strategies, ensuring that its legal framework for ivory and endangered species trade is backed by strong enforcement mechanisms and international collaboration. Furthermore, adopting a detailed conservation action plan for elephants, akin to South Africa's rhino plan, could help Namibia protect its elephant populations while navigating the complexities of legal trade.

²⁸⁶ Department of Environmental Affairs. (2011). *National Rhino Conservation Action Plan*. Republic of South Africa.

²⁸⁷ *ibid*

²⁸⁸ Mbzibain, A., & Mohsen Mohamed, H. (2020). Tackling the global challenge of illegal wildlife trafficking and trade. *Information Note*. Centre for International Development & Training (CIDT), University of Wolverhampton.

3.4.1.7 The Draft National Integrated Strategy to Combat Wildlife Trafficking (NISCWT)

South Africa's Draft National Integrated Strategy to Combat Wildlife Trafficking (NISCWT) was introduced to address the escalating crisis of wildlife trafficking through an integrated, multi-agency approach²⁸⁹. The strategy emphasizes improved collaboration between law enforcement agencies, civil society, and the private sector. The NISCWT is particularly relevant for Namibia, as it demonstrates how multi-agency cooperation can strengthen enforcement efforts to combat poaching and illegal trade.

The strategy also proposes stronger international partnerships, which is crucial for Namibia, given the transnational nature of wildlife crimes²⁹⁰. Namibia could adopt similar frameworks that ensure cohesive collaboration between stakeholders, both domestically and internationally, particularly as wildlife trafficking syndicates often operate across borders.

3.4.2 Enforcement Mechanisms in South Africa

South Africa has developed a multi-agency enforcement approach to tackle wildlife poaching and the illegal trade in ivory and endangered species products. Several key bodies work together to address these challenges:

1. **Department of Environment, Forestry and Fisheries (DEFF):** DEFF plays a central role in formulating and coordinating environmental and wildlife conservation policies. The department oversees the implementation of laws such

²⁸⁹ Department of Environmental Affairs. (2017). *Draft National Integrated Strategy to Combat Wildlife Trafficking*. Republic of South Africa

²⁹⁰ Warchol, G. (2022). Policing wildlife crimes: A historical analysis of the development and impact of wildlife ranger units in sub-Saharan Africa. In *Policing the Global South* (pp. 353-366). Routledge.

as NEMBA and TOPS, ensuring that trade in ivory and endangered species complies with legal and sustainable frameworks. DEFF's Environmental Management Inspectorate, also known as the "Green Scorpions," is pivotal in monitoring compliance with environmental laws and regulations²⁹¹.

2. **South African Police Service (SAPS):** SAPS, through its Endangered Species Unit, investigates wildlife crimes, apprehends suspects, and works in collaboration with customs officials to prevent illegal trafficking²⁹². The unit has been instrumental in combating organized criminal networks that smuggle ivory and rhino horn across international borders²⁹³.
3. **South African National Parks (SANParks):** As the body responsible for managing national parks, SANParks plays a critical role in anti-poaching efforts within protected areas. Its ranger units, particularly those in high-risk areas like Kruger National Park, are often the first line of defence against poaching²⁹⁴. Namibia could learn from SANParks' integration of technology, such as drone surveillance and real-time data tracking, to strengthen anti-poaching operations.
4. **National Prosecuting Authority (NPA):** South Africa has created specialized Environmental Courts under the NPA to expedite the prosecution of wildlife crimes²⁹⁵. These courts aim to improve conviction rates and send a strong deterrent message. Namibia, which has faced difficulties in prosecuting wildlife crimes,

²⁹¹ Department of Environment, Forestry and Fisheries. (2021). *Environmental Management Inspectorate (Green Scorpions) Annual Report*. Republic of South Africa.

²⁹² Geldenhuys, K. (2016). SAPS investigations to rhino poaching cases in the Kruger National Park. *Servamus Community-based Safety and Security Magazine*, 109(9), 44-46.

²⁹³ Warchol, G. (2022). Policing wildlife crimes: A historical analysis of the development and impact of wildlife ranger units in sub-Saharan Africa. In *Policing the Global South* (pp. 353-366). Routledge.

²⁹⁴ Kuchy, A. (2021). *Crimes Against Rhinoceros: Exploring Attitudes and Perceptions of Stakeholders in South Africa*. South Africa, , South Africa, (Administrative Boundary): Oregon State University.

²⁹⁵ Myburgh, J. (2019). Environmental crime in South Africa: Defining the crisis, seeking solutions. *South African Crime Quarterly*, 69, 1-6.

could benefit from creating specialized courts that focus on environmental law, ensuring that cases are handled efficiently and effectively.

5. **Customs and Border Control:** Collaboration between customs and wildlife authorities has become critical, especially given South Africa's role as a transit hub for international wildlife trafficking. The deployment of sniffer dogs, X-ray scanners, and increased intelligence sharing between agencies has helped intercept illegal ivory shipments²⁹⁶. Namibia could explore more sophisticated cross-border collaboration mechanisms with its neighbours to combat wildlife trafficking.

6. **The South African National Biodiversity Institute (SANBI)**

The South African National Biodiversity Institute (SANBI) plays a critical role in implementing South Africa's biodiversity conservation strategies. Established under NEMBA, SANBI conducts research and provides scientific evidence for the management of species, ecosystems, and protected areas²⁹⁷. Namibia could benefit from establishing a similar institution or enhancing existing ones, ensuring scientific backing to policy decisions around wildlife trade and conservation efforts.

SANBI's research-driven approach allows for informed decision-making on matters such as the sustainability of trade in ivory and endangered species products. Namibia's legal framework could also be bolstered by a research-oriented body that can assess the impact of legal trade on species populations, ensuring that any trade is ecologically sustainable.

²⁹⁶ Vigne, L. (2020). *The rhino horn and ivory trade, 1980-2020* (Doctoral dissertation, Oxford Brookes University).

²⁹⁷ Poole, C. J., Skowno, A. L., Currie, J. C., Sink, K. J., Daly, B., & von Staden, L. (2023). Taking state of biodiversity reporting into the information age—a south African perspective. *Frontiers in Ecology and Evolution, 11*, 1107956.

7. The Role of Traditional Knowledge and Indigenous Communities

South Africa recognizes the role of indigenous knowledge systems in biodiversity conservation. The Biodiversity Act of 2004 incorporates provisions for the protection of traditional knowledge and the fair distribution of benefits derived from biodiversity²⁹⁸. Namibia's communal conservancy model has already integrated local communities into wildlife management, but the inclusion of traditional knowledge in legal frameworks could be enhanced.

Learning from South Africa's legal provisions could help Namibia ensure that local communities not only benefit economically from wildlife trade but also play a meaningful role in managing conservation efforts. This integration can foster stronger community buy-in, which is essential for reducing poaching and ensuring the sustainability of any legal wildlife trade.

3.4.3 Challenges and Issues in South Africa

Despite significant efforts, South Africa faces numerous challenges in enforcing wildlife conservation laws and curbing illegal trade:

1. **Sophisticated Criminal Networks:** Wildlife trafficking in South Africa is controlled by highly organized, transnational criminal syndicates, making enforcement exceedingly difficult²⁹⁹. For instance, rhino horn and ivory poaching have been linked to networks that operate across Africa and Asia, often with connections to major black-market players in Vietnam and China³⁰⁰. These

²⁹⁸ Crouch, N. R., & Smith, G. F. (2011). Informing and influencing the interface between biodiversity science and biodiversity policy in South Africa. *Botanical Journal of the Linnean Society*, 166(3), 301-309.

²⁹⁹ Kuchy, A. (2021). *Crimes Against Rhinoceros: Exploring Attitudes and Perceptions of Stakeholders in South Africa*. South Africa, , South Africa, (Administrative Boundary): Oregon State University.

³⁰⁰ Rademeyer, J. (2019). *Pushing boundaries: Wildlife, crime and corruption in South Africa*. Global Initiative Against Transnational Organized Crime.

syndicates exploit weak borders and corrupt officials, posing significant challenges to law enforcement agencies.

2. **Corruption:** Corruption within law enforcement agencies is another major obstacle. South Africa has experienced cases where police officers, customs officials, and even park rangers have been implicated in poaching and trafficking activities³⁰¹. In 2018, two SAPS officers were arrested for aiding a rhino horn trafficking ring in Mpumalanga province³⁰². This underscores the need for anti-corruption measures and rigorous oversight in Namibia's future wildlife enforcement strategies.
3. **Resource Constraints:** Despite notable funding increases, enforcement agencies remain under-resourced. Kruger National Park, which spans nearly 20,000 square kilometres, has only 400 rangers to patrol the area³⁰³. The scale of the park, combined with limited personnel and equipment, makes it difficult to effectively combat poaching. Namibia, with its vast protected areas, faces similar resource challenges, indicating that a more community-based conservation approach might be beneficial to supplement the efforts of law enforcement.
4. **Legislative Gaps:** Although South Africa has a comprehensive legal framework, gaps remain in effectively addressing emerging challenges. For example, the captive lion breeding industry has been linked to illegal wildlife trade, particularly

³⁰¹ Smillie, S. (2018, June 14). Two cops arrested for alleged rhino horn trafficking. *Times Live*. <https://www.timeslive.co.za/news/south-africa/2018-06-14-two-cops-arrested-for-alleged-rhino-horn-trafficking/>

³⁰² *ibid*

³⁰³ Kuchy, A. (2021). *Crimes Against Rhinoceros: Exploring Attitudes and Perceptions of Stakeholders in South Africa*. South Africa, , South Africa, (Administrative Boundary): Oregon State University.

in lion bones, which are sold to East Asian markets³⁰⁴. This highlights the need for stronger regulations and enforcement mechanisms around captive breeding, a potential issue for Namibia as well, should it consider similar wildlife trade policies.

5. **Lack of Community Engagement:** While South Africa has made strides in engaging local communities in conservation efforts, particularly through ecotourism, there remain instances where poverty drives locals to support poaching operations. Communities living near Kruger National Park, for example, are often recruited by poachers as scouts or hunters, due to the lack of alternative livelihoods³⁰⁵. Namibia's communal conservancy system, which integrates local communities into wildlife management, offers a more effective model for reducing poaching incentives by providing economic alternatives.

3.4.4 Comparison with Namibia

When comparing South Africa's approach to Namibia's, several key distinctions emerge that could guide Namibia's considerations regarding the legalization of trade in ivory and endangered species products:

1. **Legislative Framework:** South Africa's legislative approach is more modern and integrated than Namibia's, particularly with NEMBA and TOPS regulations providing a strong legal basis for wildlife management³⁰⁶. Namibia's Controlled Wildlife Products and Trade Act of 2008 and Nature Conservation Ordinance of

³⁰⁴ Williams, V. L., Loveridge, A. J., Newton, D. J., & Macdonald, D. W. (2021). A roaring trade? The legal trade in *Panthera leo* bones from Africa to East-Southeast Asia. *PloS one*, 16(2), e0249306.

³⁰⁵ Hübschle, A. M. (2017). The social economy of rhino poaching: Of economic freedom fighters, professional hunters and marginalized local people. *Current Sociology*, 65(3), 427447.

³⁰⁶ Department of Environment, Forestry and Fisheries. (2021). *Environmental Management Inspectorate (Green Scorpions) Annual Report*. Republic of South Africa.

1975, while significant, would benefit from modernization to address new trends in wildlife trafficking and to better align with international standards like CITES. Namibia might consider strengthening its legislation by incorporating elements of South Africa's biodiversity frameworks and protected species regulations³⁰⁷.

2. **Community-Based Conservation:** Namibia's communal conservancy model, established under the Nature Conservation Amendment Act of 1996, is one of the world's most successful community-based conservation frameworks³⁰⁸. It directly involves local communities in the management and benefits of wildlife resources, providing both economic incentives and local stewardship of wildlife³⁰⁹. This differs from South Africa, where community involvement is less integrated into wildlife governance structures. Namibia's success in reducing poaching through this system is something South Africa could potentially learn from, especially in areas where poverty drives local participation in poaching.
3. **Enforcement Structure:** South Africa's enforcement efforts are more centralized, with national agencies such as DEFF and SAPS playing a dominant role in anti-poaching effort³¹⁰. Namibia's more decentralized approach, which includes local conservancy-led enforcement, offers a potentially more flexible and responsive model for on-the-ground conservation. This localized enforcement structure could

³⁰⁷ Biggs, D., Cooney, R., Roe, D., Dublin, H. T., Allan, J. R., Challender, D. W., & Skinner, D. (2017). Developing a theory of change for a community-based response to illegal wildlife trade. *Conservation Biology*, 31(1), 5-12.

³⁰⁸ Naidoo, R., Weaver, L. C., Diggle, R. W., Matongo, G., Stuart-Hill, G., & Thouless, C. (2016). Complementary benefits of tourism and hunting to communal conservancies in Namibia. *Conservation Biology*, 30(3), 628-638.

³⁰⁹ *ibid*

³¹⁰ Warchol, G. (2022). Policing wildlife crimes: A historical analysis of the development and impact of wildlife ranger units in sub-Saharan Africa. In *Policing the Global South* (pp. 353-366). Routledge.

allow Namibia to address poaching more effectively in remote areas, though it requires adequate support and funding to be fully effective³¹¹.

4. **Scale of the Poaching Crisis:** The scale of South Africa's rhino poaching crisis far exceeds that of Namibia. In 2019 alone, South Africa lost 594 rhinos to poaching, compared to Namibia's 52³¹². This stark difference highlights the varying pressures faced by each country. Namibia's less severe poaching crisis gives it a unique opportunity to implement pre-emptive and strategic reforms before poaching reaches crisis levels, such as reinforcing community-based conservancies and strengthening legislative measures to combat illegal trade.
5. **International Scrutiny and Policy Influences:** South Africa, due to its larger wildlife populations and high-profile species like rhinos, faces more intense international scrutiny from conservation organizations and CITES³¹³. This has led to contentious debates over legalizing rhino horn trade and captive lion breeding, both of which have attracted global criticism³¹⁴. Namibia, although also a CITES signatory, operates under less global pressure, giving it more flexibility in crafting policies that reflect its specific conservation needs. However, Namibia must carefully navigate international relations to avoid the risk of sanctions if it chooses to pursue legal ivory trade.

³¹¹ Muntifering, J. R., Linklater, W. L., Naidoo, R., !Uri-#Khob, S., Du Preez, P., Beytell, P., & Knight, A. T. (2020). Sustainable close encounters: integrating tourist and animal behaviour to improve rhinoceros viewing protocols. *Animal Conservation*, 23(2), 231-241.

³¹² IUCN. (2020). *African Rhino Specialist Group report*. Gland, Switzerland: IUCN.

³¹³ Poole, C. J., Skowno, A. L., Currie, J. C., Sink, K. J., Daly, B., & von Staden, L. (2023). Taking state of biodiversity reporting into the information age—a south African perspective. *Frontiers in Ecology and Evolution*, 11, 1107956.

³¹⁴ Bauer, H., Nowell, K., Sillero-Zubiri, C., & Macdonald, D. W. (2022). Lions in the modern arena of CITES. *Conservation Letters*, 15(1), e12843.

While South Africa has a more sophisticated and centralized enforcement system, Namibia's community-based approach offers a model for fostering local stewardship over wildlife resources, which has proven effective in reducing poaching. South Africa's legal framework, including its emphasis on permitting and strict conservation controls, could serve as a model for Namibia's legislation, particularly in relation to the sustainable management of high-value species like elephants and rhinos. Both countries face significant challenges related to corruption, resource constraints, and organized crime, but Namibia has an opportunity to adapt lessons from South Africa's more comprehensive enforcement mechanisms while leveraging its unique communal conservancy system to create a robust, locally engaged framework for managing wildlife trade.

3.5 COMPARATIVE ANALYSIS OF NAMIBIA WITH BOTSWANA

Botswana is frequently lauded for its wildlife conservation success, hosting the largest population of elephants in Africa, which contributes significantly to its economy through tourism³¹⁵. However, the country faces challenges related to illegal wildlife trade and poaching, particularly targeting elephants and rhinos. This comparative analysis focuses on Botswana's legal framework, enforcement mechanisms, challenges, and how these experiences can inform Namibia's considerations on legalizing ivory and endangered species trade.

3.5.1 Legal Framework

Botswana has developed a robust legal and policy framework aimed at conserving its wildlife resources, especially given its vast elephant population and the importance of

³¹⁵ Mbaiwa, J. E., & Hambira, W. L. (2023). Can the subaltern speak? Contradictions in trophy hunting and wildlife conservation trajectory in Botswana. *Journal of Sustainable Tourism*, 31(5), 1107-1125.

wildlife to its tourism industry³¹⁶. Several key legislative instruments and policies govern the protection, management, and sustainable use of wildlife in Botswana. These laws not only regulate hunting and trade in ivory and endangered species but also integrate community participation and ensure compliance with international agreements like CITES.

3.5.1.1 Wildlife Conservation and National Parks Act (1992)

The Wildlife Conservation and National Parks Act is the cornerstone of Botswana's wildlife protection framework³¹⁷. This Act regulates hunting, the management of national parks, and trade in wildlife products. Elephants and rhinos are listed as partially protected species, meaning they can be hunted or traded only with a valid permit³¹⁸. The Act also includes provisions for managing human-wildlife conflict and outlines penalties for illegal hunting or trafficking in wildlife products³¹⁹.

This Act provides a solid regulatory framework for conservation and sustainable use. By permitting controlled hunting and trade in ivory and rhino horn under a licensing system, Botswana has historically aligned its policies with a sustainable-use model of wildlife management³²⁰. However, the growing demand for ivory and increased poaching in recent years suggest that this law's provisions may need to be revisited. In particular, the lack of specific regulations on modern wildlife trafficking networks,

³¹⁶ Mbaiwa, J. E., & Hambira, W. L. (2023). Can the subaltern speak? Contradictions in trophy hunting and wildlife conservation trajectory in Botswana. *Journal of Sustainable Tourism*, 31(5), 1107-1125.

³¹⁷ Government of Botswana. (1992). *Wildlife Conservation and National Parks Act*. Gaborone: Government Printer.

³¹⁸ *ibid*

³¹⁹ *ibid*

³²⁰ Stone, M. T., Lenao, M., & Moswete, N. (2020). Natural resource management, tourism and community-based development in Botswana: A review. *Botswana Notes and Records*, 52, 6477.

which use advanced technology and methods, calls for legislative updates that reflect the complexity of the current illegal trade landscape³²¹.

The permitting system under this Act demonstrates an attempt to balance conservation with economic use, yet the increase in poaching incidents since 2018 highlights its limitations³²². Botswana could strengthen its legal framework by introducing more stringent regulations for issuing permits and enhancing monitoring mechanisms. Namibia can learn from Botswana's experience, especially in ensuring that any potential legalization of ivory trade is accompanied by rigorous checks to prevent misuse. Furthermore, by aligning with international standards under CITES, this Act provides a basis for regulating ivory trade, but legal reforms are necessary to address modern conservation challenges.

3.5.1.2 Botswana Environmental Assessment Act (2011)

The Botswana Environmental Assessment Act provides a broader environmental governance framework, addressing sustainable development and environmental protection³²³. It emphasizes the precautionary principle, requiring that environmental impact assessments (EIAs) be conducted for any development or activity that may negatively affect biodiversity. The Act's overarching goal is to integrate environmental management into all sectors of the economy, ensuring that conservation objectives are achieved alongside economic development³²⁴.

³²¹ Heermans, B., Van Rooyen, J., Fynn, R., Biggs, D., Lewis, M., & McNutt, J. (2021). Husbandry and herding: a community-based approach to addressing illegal wildlife trade in northern Botswana. *Frontiers in Conservation Science*, 2, 675493.

³²² *ibid*

³²³ Government of Botswana. (2011). *Environmental Assessment Act*. Gaborone: Government Printer.

³²⁴ *ibid*

This Act is pivotal in ensuring that any changes to wildlife trade policies, such as legalizing ivory trade, are preceded by comprehensive environmental assessments. The Act's emphasis on the precautionary principle is particularly relevant in a context where the long-term ecological impacts of legalizing ivory trade remain uncertain³²⁵. However, the Act's broad scope means that wildlife-specific concerns might not always receive the focused attention they require, particularly in areas such as poaching and wildlife trafficking.

The Environmental assessment Act could be used to justify a precautionary approach to wildlife trade, ensuring that any decisions regarding ivory trade are backed by scientific evidence and careful environmental assessments. Namibia, in considering its own wildlife trade policies, should similarly integrate environmental impact assessments as a legal requirement, ensuring that trade decisions do not jeopardize long-term conservation efforts. Botswana's experience suggests that a rigorous legal approach to environmental management is essential when navigating the complexities of wildlife conservation and trade.

3.5.1.3 CITES (Conservation) Regulations (2006)

As a signatory to CITES, Botswana has implemented CITES (Conservation) Regulations to domestically enforce the international treaty's provision³²⁶s. These regulations govern the import, export, and re-export of endangered species, including

³²⁵ Botswana Environmental Assessment Act , **Section 13**. This section mandates that all environmental assessments must consider the precautionary principle, ensuring that if there is uncertainty about potential environmental harm, protective measures should be taken to prevent degradation, even if full scientific certainty about the impact is lacking

³²⁶ Abensperg-Traun, M. (2009). CITES, sustainable use of wild species and incentive-driven conservation in developing countries, with an emphasis on southern Africa. *Biological Conservation*, 142(5), 948-963.

elephants and rhinos, and their products³²⁷. Any trade in ivory or rhino horn must comply with CITES' stringent permitting and reporting requirements, ensuring that international trade does not threaten species' survival.

Botswana's alignment with CITES regulations reflects its commitment to international conservation standards. However, tensions arise when Botswana's national policies, which have previously advocated for sustainable ivory trade, conflict with CITES' global stance on banning ivory trade³²⁸. The regulations themselves are effective in monitoring legal trade, but they may fall short in addressing the complexities of illegal trade and transboundary poaching networks, which require enhanced international cooperation and enforcement capabilities.

While Botswana's CITES regulations provide a legal basis for controlling international wildlife trade, the nation's ongoing debates over ivory stockpiles and requests to lift the trade ban highlight the need for nuanced domestic policies that balance conservation with economic realities³²⁹. Namibia can look to Botswana's implementation of CITES as a model but should be wary of the challenges associated with reconciling national interests with international obligations. Ensuring that domestic legislation complements international agreements like CITES is critical for maintaining global cooperation on wildlife conservation.

3.5.1.4 Community-Based Natural Resource Management (CBNRM) Policy (2007)

³²⁷ *ibid*

³²⁸ Mogotsi, K., Nyangito, M. M., & Nyariki, D. M. (2016). The role of drought among agropastoral communities in a semi-arid environment: The case of Botswana. *Journal of Arid Environments*, 124, 35-38.

³²⁹ Heermans, B., Van Rooyen, J., Fynn, R., Biggs, D., Lewis, M., & McNutt, J. (2021). Husbandry and herding: a community-based approach to addressing illegal wildlife trade in northern Botswana. *Frontiers in Conservation Science*, 2, 675493.

Botswana's CBNRM Policy promotes the devolution of natural resource management to local communities, allowing them to benefit economically from conservation efforts³³⁰. This policy has been key in fostering community buy-in for wildlife conservation and reducing poaching in areas where communities directly profit from wildlife tourism, regulated hunting, and eco-tourism³³¹.

The CBNRM model is one of Botswana's most successful conservation strategies. By granting local communities rights over wildlife resources, Botswana has created economic incentives for conservation³³². However, while the policy has been effective in many areas, it has faced challenges, particularly when the benefits of conservation are outweighed by the costs, such as crop destruction by elephants or loss of livestock to predators³³³. This underscores the need for balancing community incentives with adequate compensation mechanisms for human-wildlife conflict.

The success of CBNRM in Botswana suggests that Namibia could adopt similar community-based models to ensure that local populations are stakeholders in wildlife conservation and benefit from any legal ivory trade. Integrating community participation into Namibia's legal framework for wildlife management would align

³³⁰ Government of Botswana. (2007). *Community-Based Natural Resource Management Policy*. Gaborone: Ministry of Environment, Wildlife, and Tourism

³³¹ Botswana Community-Based Natural Resource Management Policy *Section 5.1* emphasizes the importance of devolving rights over natural resources to local communities, granting them the authority to manage and benefit from these resources, including wildlife, for economic gain through sustainable use

³³² Botswana Community-Based Natural Resource Management Policy, *Section 5.3* highlights that communities are encouraged to derive economic benefits from conservation activities, such as wildlife tourism, regulated hunting, and eco-tourism ventures, fostering a sense of ownership and responsibility for conservation.

³³³ Botswana Community-Based Natural Resource Management Policy, *Section 6.2* addresses the need for adequate compensation mechanisms in cases of human-wildlife conflict, acknowledging the economic costs communities face due to issues like crop destruction by elephants or loss of livestock to predators. This section stresses the importance of finding a balance between conservation benefits and addressing the costs incurred by local communities..

economic incentives with conservation goals, reducing the risk of poaching and enhancing local support for legal trade initiatives.

3.5.1.5 National Elephant Management Plan and Action Plan (NEMAP) (2021–2026)

The NEMAP is Botswana’s response to its large elephant population and the challenges of human-wildlife conflict, habitat degradation, and poaching. This plan outlines strategies for managing elephant populations through relocation, controlled hunting, and, when necessary, culling³³⁴. NEMAP also emphasizes the importance of ensuring that communities living alongside elephants benefit from their presence through eco-tourism and other economic opportunities³³⁵.

The NEMAP is a pragmatic approach to managing Botswana’s elephant population, which is the largest in Africa. The plan’s focus on both population control and economic incentives for communities demonstrates a balanced approach to conservation. However, its reliance on culling and regulated hunting remains controversial, particularly in the international conservation community³³⁶. Financial

³³⁴ Government of Botswana. (2021). *National Elephant Management Plan and Action Plan (2021–2026)*. Gaborone: Ministry of Environment, Natural Resources Conservation, and Tourism.

³³⁵ National Elephant Management Plan and Action Plan (NEMAP) 2021–2026, Section 3.2 addresses the growing elephant population and the resulting human-wildlife conflicts, including damage to crops and infrastructure. It outlines the need for mitigation strategies like physical barriers and compensation mechanisms to reduce the impact on communities

³³⁶ National Elephant Management Plan and Action Plan (NEMAP) 2021–2026, Section 4.1 discusses methods such as relocation, controlled hunting, and culling to manage elephant populations. These measures aim to maintain ecological balance while reducing the pressure on habitats and minimizing conflicts with human activities.

constraints have also limited the full implementation of the plan, which has affected its overall effectiveness³³⁷.

Botswana's NEMAP provides a legal and policy framework that Namibia could adapt, particularly in managing its own elephant populations. By integrating controlled trade and hunting with conservation strategies, Namibia could ensure that any legal trade in ivory contributes to both species protection and community livelihoods. However, Namibia must carefully navigate the ethical and legal challenges associated with population control measures, ensuring that they align with both national conservation objectives and international norms.

3.5.2 Enforcement in Botswana

Botswana's enforcement of its wildlife laws is heavily militarized, with the Botswana Defence Force (BDF) playing a central role in anti-poaching efforts. The BDF has been involved in wildlife protection since the 1980s, particularly in high-poaching areas like the Okavango Delta.³³⁸ The Shoot-to-Kill policy has been a controversial yet effective deterrent against poaching, though it has also caused diplomatic tensions with neighboring countries.

- **Botswana Defence Force (BDF) Anti-Poaching Unit:** The BDF operates in high-risk areas, and its militarized approach has been critical in reducing poaching rates. The force is equipped with advanced weaponry and has been

³³⁷ National Elephant Management Plan and Action Plan (NEMAP) 2021–2026, Section 6.5 highlights the financial limitations that have affected the full implementation of NEMAP. It stresses the need for adequate funding and international support to ensure the plan's effectiveness and address the concerns related to controversial practices such as culling and regulated hunting.

³³⁸ Penny, S. G. (2019). *The impact of dehorning on the white rhinoceros (Ceratotherium simum) and the evaluation of novel anti-poaching tactics* (Doctoral dissertation, University of Brighton).

authorized to use lethal force, which has successfully deterred many poachers³³⁹.

The militarization of wildlife enforcement has been effective in Botswana but raises human rights and diplomatic concerns, particularly regarding cross-border poaching³⁴⁰. Namibia's enforcement approach, which relies more on community conservancies and local law enforcement, is less aggressive but may benefit from incorporating more military or paramilitary support in areas with high poaching rates. Botswana's enforcement mechanisms demonstrate the effectiveness of combining military force with conservation strategies³⁴¹. However, Namibia must carefully consider the political and ethical implications of adopting a similarly aggressive approach. Legal safeguards must be in place to ensure that any militarized enforcement respects human rights and fosters international cooperation rather than conflict.

3.5.3 Challenges and Issues in Botswana

Despite Botswana's reputation as a leader in wildlife conservation, the country faces several critical challenges that threaten the effectiveness of its legal and policy frameworks.

1. **Surge in Rhino Poaching:** Although Botswana experienced relatively low levels of rhino poaching for many years, the situation drastically worsened from 2018 onwards, with a significant rise in rhino deaths³⁴². The increase in poaching has been attributed to several factors, including the relocation of

³³⁹ Mogomotsi, G. E., & Mogomotsi, P. K. (2022). Militarisation of conservation and 'shoot to kill' policies: An analysis of the rights of African states to protect and conserve wildlife. In *Protected Areas and Tourism in Southern Africa* (pp. 218-231). Routledge.

³⁴⁰ *ibid*

³⁴¹ Mogomotsi, G. E., & Madigele, P. K. (2017). Live by the gun, die by the gun: Botswana's 'shoot-to-kill' policy as an anti-poaching strategy. *South African Crime Quarterly*, 60, 51-59.

³⁴² *ibid*

rhinos from other countries where poaching was rampant, making Botswana's rhino population a new target for organized crime syndicates³⁴³. The sudden escalation in poaching underscores the limitations of existing anti-poaching measures, particularly the challenges in adapting to changing tactics of poachers who are increasingly sophisticated and well-funded.

The surge in poaching highlights the vulnerability of even well-protected populations when faced with determined poaching syndicates. This situation reveals the necessity for dynamic and adaptable enforcement strategies, as well as enhanced intelligence-sharing and regional cooperation.³⁴⁴ The challenges faced by Botswana in containing this poaching crisis illustrate the difficulties in relying solely on militarized responses without complementary strategies, such as demand reduction, stronger regional partnerships, and enhanced law enforcement training focused on countering sophisticated poaching networks³⁴⁵.

Botswana's experience with increased rhino poaching suggests that legal frameworks need to be continually updated to address evolving threats. Strengthening laws related to anti-poaching and enhancing penalties for wildlife crimes are crucial. Additionally, there is a need for more robust international collaboration, particularly in areas such as intelligence-sharing and tracking illegal wildlife trade across borders. Namibia, facing similar threats, could benefit from establishing stronger legal provisions that

³⁴³ Rakenosi, M. M. (2020). *Illegal trade in wildlife products as a threat to Botswana's national security* (Doctoral dissertation, University of Botswana, www. ub. bw).

³⁴⁴ *ibid*

³⁴⁵ Ferreira, S., & Okita-Ouma, B. (2012). A proposed framework for short-, medium-and long-term responses by range and consumer states to curb poaching for African rhino horn. *Pachyderm*, 51, 52-59.

facilitate such cooperation, ensuring that its legal framework is resilient against the shifting dynamics of wildlife crime.

2. **Human-Wildlife Conflict:** Botswana's large elephant population, while a source of national pride and tourism revenue, also poses significant challenges, particularly in rural areas where elephants frequently come into conflict with human activities. Elephants often damage crops, destroy property, and occasionally pose direct threats to human safety. Managing this conflict is a critical challenge, as it directly impacts community support for conservation initiatives and can lead to retaliatory killings or increased poaching.

The human-wildlife conflict in Botswana is exacerbated by the size of its elephant population and the proximity of human settlements to wildlife habitats³⁴⁶. While Botswana's National Elephant Management Plan (NEMAP) addresses these issues through strategies such as relocation and controlled culling, the implementation of these strategies is hampered by financial and logistical constraints. Moreover, the effectiveness of conflict mitigation strategies is often limited by the slow response times and inadequate compensation mechanisms, which can lead to frustration and reduced tolerance among local communities³⁴⁷.

Addressing human-wildlife conflict requires a legal framework that not only allows for swift action to protect human lives and property but also ensures that communities are adequately compensated for losses. Botswana's experience highlights the importance of integrating legal provisions for conflict mitigation with community-

³⁴⁶ Mbaiwa, J. E., & Hambira, W. L. (2023). Can the subaltern speak? Contradictions in trophy hunting and wildlife conservation trajectory in Botswana. *Journal of Sustainable Tourism*, 31(5), 1107-1125.

³⁴⁷ *ibid*

based conservation strategies, ensuring that local populations are active participants in and beneficiaries of wildlife conservation. Namibia, with its own significant elephant population, should consider adopting similar legal frameworks that emphasize community involvement and provide clear, enforceable mechanisms for managing human-wildlife conflicts.

- 3. Financial and Logistical Constraints:** Despite the robustness of its legal frameworks, Botswana faces significant financial and logistical challenges in fully implementing its conservation strategies³⁴⁸. The costs associated with anti-poaching efforts, wildlife management, and human-wildlife conflict mitigation are substantial, and securing sufficient funding remains an ongoing struggle. Additionally, the logistics of managing vast and remote conservation areas pose significant challenges, particularly in terms of monitoring and enforcement³⁴⁹.

The financial constraints faced by Botswana underscore the limitations of conservation efforts that rely heavily on government funding and external donations. While Botswana has sought to address these issues through initiatives like regulated hunting and eco-tourism, these revenue streams are often insufficient to cover the full costs of conservation³⁵⁰. The logistical challenges of managing large, remote areas also mean that many illegal activities go undetected, and response times to poaching incidents or human-wildlife conflicts can be slow.

³⁴⁸ Makaba, L. P., & Munyati, C. (2018). Strategic Environmental Assessment implementation and effectiveness bottlenecks: Lessons from Botswana. *Environmental Development*, 26, 86-99.

³⁴⁹ *ibid*

³⁵⁰ Van der Weyde, L. K., Horgan, J., Ramsden, N., Thamage, D., & Klein, R. (2020). Conservation challenges, resource management and opportunities to sustain wildlife biodiversity in the Kalahari: insights from a local NGO, Cheetah Conservation Botswana. *Sustainability in Developing Countries: Case Studies from Botswana's journey towards 2030 Agenda*, 243-263.

The financial and logistical challenges in Botswana suggest the need for more sustainable funding mechanisms for conservation³⁵¹. Legal frameworks should provide for the creation of dedicated conservation funds, potentially financed through wildlife-related tourism, hunting licenses, and international grants. Additionally, Namibia could learn from Botswana's experience by incorporating legal provisions that facilitate public-private partnerships and international cooperation in conservation financing, ensuring that adequate resources are available to support its wildlife protection initiatives.

4. **Controversy over the Shoot-to-Kill Policy:** Botswana's Shoot-to-Kill policy, while effective in deterring poaching, has generated significant controversy both domestically and internationally. Critics argue that the policy raises serious human rights concerns, particularly regarding the potential for abuse and the lack of due process.³⁵² Additionally, the policy has strained relations with neighbouring countries, as many poachers killed under this policy are foreign nationals.

The Shoot-to-Kill policy is a double-edged sword: it acts as a powerful deterrent against poaching but also risks alienating local and international communities, potentially undermining broader conservation goals³⁵³. The policy's reliance on lethal force as a primary deterrent also risks overshadowing other, more sustainable

³⁵¹ Van der Weyde, L. K., Horgan, J., Ramsden, N., Thamage, D., & Klein, R. (2020). Conservation challenges, resource management and opportunities to sustain wildlife biodiversity in the Kalahari: insights from a local NGO, Cheetah Conservation Botswana. *Sustainability in Developing Countries: Case Studies from Botswana's journey towards 2030 Agenda*, 243-263.

³⁵² Mogomotsi, G. E., & Mogomotsi, P. K. (2022). Militarisation of conservation and 'shoot to kill' policies: An analysis of the rights of African states to protect and conserve wildlife. In *Protected Areas and Tourism in Southern Africa* (pp. 218-231). Routledge.

³⁵³ Mogomotsi, G. E., & Madigele, P. K. (2017). Live by the gun, die by the gun: Botswana's 'shoot-to-kill' policy as an anti-poaching strategy. *South African Crime Quarterly*, 60, 51-59.

approaches to conservation, such as community engagement, demand reduction, and international cooperation.

While the Shoot-to-Kill policy may have short-term benefits, its long-term sustainability and legality are questionable³⁵⁴. Namibia should consider these issues carefully before adopting similar measures, ensuring that any enforcement policies are balanced with human rights considerations and that non-lethal alternatives are fully explored. Legal provisions should also emphasize accountability and oversight, ensuring that enforcement actions are transparent and subject to judicial review.

3.5.4 Comparison with Namibia

When comparing Botswana's legal and enforcement frameworks with those of Namibia, several similarities and differences emerge, offering valuable lessons for Namibia as it considers the potential legalization of ivory and endangered species products trade.

1. **Legal Frameworks:** Both Botswana and Namibia have robust legal frameworks aimed at wildlife conservation, but Botswana's laws, such as the Wildlife Conservation and National Parks Act and the CITES (Conservation) Regulations, are more explicitly geared towards the sustainable use and regulated trade of wildlife products. Botswana's legal framework also integrates international obligations under CITES more directly into its national legislation, whereas Namibia's laws, while comprehensive, may benefit from more explicit alignment with international standards.

³⁵⁴ Ferreira, S., & Okita-Ouma, B. (2012). A proposed framework for short-, medium-and long-term responses by range and consumer states to curb poaching for African rhino horn. *Pachyderm*, 51, 52-59.

Namibia could strengthen its legal framework by adopting more explicit provisions for the sustainable use of wildlife resources, similar to Botswana's approach. This includes clearer guidelines on the issuance of permits for hunting and trade, as well as enhanced legal mechanisms for aligning national policies with CITES regulations. Additionally, Namibia might consider integrating more community-based management principles into its legal framework, drawing from Botswana's experience with the CBNRM Policy.

2. **Enforcement Strategies:** Botswana's use of the military, particularly the Botswana Defence Force (BDF), in anti-poaching efforts is more aggressive than Namibia's approach, which relies more on community involvement and local law enforcement. The Shoot-to-Kill policy in Botswana has been effective in deterring poaching but has also led to significant human rights concerns and diplomatic tensions³⁵⁵. Namibia's enforcement strategy, which is less militarized, may avoid some of these issues but could benefit from enhanced support for enforcement agencies in high-risk areas.

Namibia should weigh the potential benefits of a more militarized enforcement strategy against the risks of human rights violations and international backlash. While Botswana's approach has had success in reducing poaching, it has also created challenges that Namibia may want to avoid³⁵⁶. Instead, Namibia could focus on strengthening community-based enforcement and enhancing cooperation with neighbouring countries to address transboundary poaching more effectively.

³⁵⁵ Mogomotsi, G. E., & Madigele, P. K. (2017). Live by the gun, die by the gun: Botswana's 'shoot-to-kill' policy as an anti-poaching strategy. *South African Crime Quarterly*, 60, 51-59

³⁵⁶ *ibid*

3. **Challenges in Human-Wildlife Conflict:** Both countries face significant challenges related to human-wildlife conflict, particularly with elephants. Botswana's National Elephant Management Plan (NEMAP) addresses these issues through strategies such as relocation and controlled culling, but the financial and logistical constraints have limited its full implementation³⁵⁷. Namibia, which also deals with significant human-wildlife conflict, particularly in rural areas, could benefit from adopting similar strategies but must ensure that adequate funding and community support mechanisms are in place.

Namibia could enhance its approach to human-wildlife conflict by adopting similar legal and policy measures to those in Botswana, such as a comprehensive elephant management plan. However, Namibia must ensure that these strategies are supported by sufficient financial resources and that they are tailored to the specific contexts of its rural communities. Additionally, Namibia might explore innovative funding mechanisms, such as conservation levies or eco-tourism revenue, to support these initiatives.

4. **Community-Based Conservation:** Botswana's CBNRM Policy has been a significant success in integrating local communities into conservation efforts, providing them with economic incentives to protect wildlife³⁵⁸. This approach has helped reduce poaching and increase local support for conservation. Namibia's conservancy model shares similarities with Botswana's CBNRM, but there may be

³⁵⁷ Makaba, L. P., & Munyati, C. (2018). Strategic Environmental Assessment implementation and effectiveness bottlenecks: Lessons from Botswana. *Environmental Development*, 26, 86-99.

³⁵⁸ Mbaiwa, J. E., & Hambira, W. L. (2023). Can the subaltern speak? Contradictions in trophy hunting and wildlife conservation trajectory in Botswana. *Journal of Sustainable Tourism*, 31(5), 1107-1125.

opportunities for Namibia to further enhance community involvement, particularly in areas where poaching remains a significant threat.

Namibia's conservancy model could benefit from adopting more of the principles found in Botswana's CBNRM Policy, particularly those related to devolving more rights and responsibilities to local communities. By increasing the economic benefits to communities from wildlife conservation, Namibia could reduce poaching pressures and enhance the sustainability of its conservation efforts.

Botswana's experience in wildlife conservation provides valuable lessons for Namibia as it considers legalizing ivory and endangered species trade. While Botswana's legal frameworks and militarized enforcement have been effective, they also highlight the need for constant adaptation to evolving threats, sustainable financing mechanisms, and a balanced approach to human-wildlife conflict. Namibia can learn from Botswana's successes while tailoring its own legal and enforcement strategies to ensure that conservation efforts remain effective, equitable, and sustainable.

3.6 COMPARATIVE ANALYSIS OF NAMIBIA WITH ZIMBABWE

3.6.1 Legal Framework

Zimbabwe has developed a robust legal framework to manage wildlife conservation and address the challenges of illegal wildlife trade, particularly ivory and rhino horn. The legal structures promote sustainable use of wildlife resources while ensuring protections for endangered species. This section critically discusses Zimbabwe's key legislation, enforcement mechanisms, and their implications for wildlife conservation, with comparisons to Namibia.

3.6.1.1 Parks and Wildlife Act (Chapter 20:14)

The Parks and Wildlife Act (1975, amended) is the cornerstone of Zimbabwe's wildlife management system, regulating the conservation, hunting, and trade of wildlife³⁵⁹. Elephants and rhinos, categorized as specially protected under the Sixth Schedule, receive heightened protections. Sections 65³⁶⁰ and 66³⁶¹ of the Act outline specific requirements for obtaining permits for hunting and trade, while Section 81³⁶² stipulates strict penalties for violations, including imprisonment or significant fines.

The Act also provides for the establishment of safari areas and national parks where wildlife conservation and controlled hunting coexist. Section 35³⁶³ allows for the issuance of hunting quotas to private landowners under stringent conditions, aligning with Zimbabwe's sustainable use policy. This regulated system has historically allowed the country to generate revenue from trophy hunting, particularly from elephants and rhinos, while maintaining some of Africa's largest populations of these species.

While the Parks and Wildlife Act enables a framework for balancing conservation and economic benefits, enforcement remains a major challenge. Poaching levels have increased despite the protective measures due to cross-border wildlife crime networks, particularly in areas adjacent to Zambia and Mozambique. The legislation provides a

³⁵⁹ Government of Zimbabwe. (1975). *Parks and Wildlife Act (Chapter 20:14), as amended*. Harare: Government Printer.

³⁶⁰ Zimbabwe Parks and Wildlife Act (Chapter 20:14), as amended. Section 65: "The owner or occupier of private land may apply to the Minister for a declaration of such land as a private wildlife conservancy, subject to compliance with the requirements prescribed by the Minister."

³⁶¹ Zimbabwe Parks and Wildlife Act (Chapter 20:14), as amended. Section 66: "In every case where a person is convicted of an offence involving the unlawful hunting or capturing of wildlife, the court may order the forfeiture of any animals or weapons used in connection with the offence."

³⁶² Zimbabwe Parks and Wildlife Act (Chapter 20:14), as amended. Section 81: "The Minister may issue regulations for the proper management and conservation of national parks, wildlife reserves, and other protected areas, and for the control of any activities that may affect the wildlife therein."

³⁶³ Zimbabwe Parks and Wildlife Act (Chapter 20:14), as amended. Section 35: "No person shall, without a permit, hunt, capture, or kill any specially protected species, or possess, sell, or dispose of any such animal or part thereof."

solid legal structure for prosecuting offenders, but enforcement efforts are undermined by limited resources, corruption, and political instability.

The effectiveness of the Act is further complicated by ambiguities in its implementation. For example, while Section 45 of the Act allows for dehorning rhinos as an anti-poaching measure, the logistics and ethical implications of such practices have been contentious³⁶⁴. Dehorning is costly, requires regular interventions, and risks harming the animals if not conducted properly³⁶⁵. However, given Zimbabwe's severe poaching crisis, this strategy has been embraced as a necessary compromise.

Zimbabwe's permitting system, particularly for trophy hunting and trade, offers lessons for Namibia as it considers regulated trade in wildlife products. Namibia should adopt Zimbabwe's principle of sustainable use but refine it by addressing enforcement weaknesses. Namibia's wildlife laws, under the Nature Conservation Ordinance (1975), already impose strict penalties on illegal hunting, but incorporating more comprehensive permitting systems, like those in Zimbabwe, could enhance the regulatory framework. Additionally, Namibia must learn from Zimbabwe's enforcement struggles by bolstering anti-poaching units and increasing transparency in the permit system to avoid abuses seen in Zimbabwe.

3.6.1.2 Environmental Management Act (Chapter 20:27)

The Environmental Management Act (2002)³⁶⁶, administered by the Environmental Management Agency (EMA), complements the Parks and Wildlife Act by mandating

³⁶⁴ Zimbabwe Parks and Wildlife Act (Chapter 20:14), as amended. Section 81: "The Minister may issue regulations for the proper management and conservation of national parks, wildlife reserves, and other protected areas, and for the control of any activities that may affect the wildlife therein."

³⁶⁵ *ibid*

³⁶⁶ Government of Zimbabwe. (2002). Environmental Management Act. Harare: Government Printer.

Environmental Impact Assessments (EIAs) for activities affecting natural resources, including wildlife habitats. Section 97³⁶⁷ of the Act stipulates that any proposed project, such as the development of tourism infrastructure or game ranching, must undergo an EIA to assess potential ecological impacts. This ensures that development does not undermine conservation goals.

In addition to regulating development, the Act includes provisions that indirectly influence wildlife trade. Section 108³⁶⁸ emphasizes sustainable land management, promoting land use practices that support conservation. While the Act does not directly tackle wildlife trafficking, its requirement for sustainable development influences decisions related to wildlife management, particularly in the context of eco-tourism and game ranching.

The Environmental Management Act introduces an important layer of oversight for projects that may affect wildlife, particularly by requiring comprehensive EIAs. However, the Act's scope regarding wildlife trade and trafficking remains indirect. It focuses more broadly on environmental sustainability rather than on the specific challenges of illegal wildlife trade. Moreover, enforcement of the Act has been criticized for being inconsistent, particularly in rural areas where economic pressures often lead to non-compliance³⁶⁹.

³⁶⁷ Zimbabwe Environmental Management Act, Section 97: "No person shall discharge or emit any pollutants into the environment in excess of the prescribed levels, and any person responsible for such pollution shall be liable for the cost of removing the pollutant and restoring the environment to its original state."

³⁶⁸ Zimbabwe Environmental Management Act, Section 108: "The Minister may make regulations for the establishment of an Environmental Fund to provide financial resources for the implementation of environmental conservation programs and the restoration of areas degraded by human activities."

³⁶⁹ Chitakira, M., & Nyikadzino, B. (2020). Effectiveness of environmental management institutions in sustainable water resources management in the upper Pungwe River basin, Zimbabwe. *Physics and Chemistry of the Earth, Parts A/B/C*, 118, 102885.

In practice, EIAs have been effective in regulating large-scale projects but are less impactful in addressing localized wildlife management issues. For instance, eco-tourism ventures that rely on wildlife often face less stringent EIA requirements than mining or infrastructural developments, despite their potential impact on local wildlife populations³⁷⁰. This uneven application of environmental oversight has raised concerns about the Act's ability to protect wildlife effectively.

Namibia could benefit from adopting a similar requirement for EIAs before legalizing any trade in wildlife products, such as ivory. The Namibian government should ensure that any proposed changes to its wildlife trade policies undergo comprehensive environmental scrutiny to assess the potential ecological and economic impacts. Zimbabwe's experience demonstrates the importance of having robust environmental oversight mechanisms to balance development and conservation. However, Namibia must avoid the pitfalls of inconsistent enforcement by integrating more targeted regulations specifically addressing wildlife trade.

3.6.1.3 Communal Areas Management Programme for Indigenous Resources (CAMPFIRE)

The CAMPFIRE program, established in 1989, is Zimbabwe's most prominent community-based conservation initiative. It allows rural communities to manage wildlife and benefit economically from their conservation efforts³⁷¹. Communities are granted rights over wildlife on communal lands and generate income through eco-tourism, trophy hunting, and the sale of animal products. The legal foundation for

³⁷⁰ Saurombe, H. A., du Plessis, Y., & Swanepoel, S. (2018). An integrated managerial framework towards implementing an ecotourism culture in Zimbabwe. *Journal of Ecotourism*, 17(2), 107-122.

³⁷¹ Dzvimbo, M. A., Monga, M., & Magijani, F. (2018). The dilemma on reconceptualising natural resources in Campfire areas in Zimbabwe. *Advances in Social Sciences Research Journal*, 5(8), 522-533.

CAMPFIRE lies in the amendment to the Parks and Wildlife Act, which devolved authority over wildlife to local communities³⁷².

CAMPFIRE has been hailed as a success story for integrating conservation with rural development. Communities have used the proceeds from wildlife management to build schools, clinics, and other infrastructure, creating strong local incentives to protect wildlife³⁷³. The program has been particularly effective in areas where human-wildlife conflict is prevalent, as it offers tangible economic benefits to communities living alongside dangerous animals like elephants and lions³⁷⁴.

While CAMPFIRE has been successful in many respects, the program has faced significant challenges in recent years. Economic instability, mismanagement, and the rise in poaching have undermined its effectiveness³⁷⁵. Revenue from trophy hunting, which forms a large part of the program's income, has declined due to international pressure against hunting and trade in wildlife products, particularly in light of campaigns targeting the global ivory trade³⁷⁶.

Additionally, CAMPFIRE's success is unevenly distributed, with some communities benefitting more than others³⁷⁷. Corruption and poor governance have eroded trust in the program in certain areas, leading to reduced local participation in conservation

³⁷² Dzvimbo, M. A., Monga, M., & Magijani, F. (2018). The dilemma on reconceptualising natural resources in Campfire areas in Zimbabwe. *Advances in Social Sciences Research Journal*, 5(8), 522-533.

³⁷³ Tchakatumba, P. K., Gandiwa, E., Mwakiwa, E., Clegg, B., & Nyasha, S. (2019). Does the CAMPFIRE programme ensure economic benefits from wildlife to households in Zimbabwe?. *Ecosystems and people*, 15(1), 119-135.

³⁷⁴ *ibid*

³⁷⁵ Tichaawa, T. M., & Mhlanga, O. S. W. A. L. D. (2015). Community perceptions of a community-based tourism project: A case study of the CAMPFIRE programme in Zimbabwe. *African Journal for Physical Health Education, Recreation and Dance*, 21(sup-2), 55-67.

³⁷⁶ *ibid*

³⁷⁷ *ibid*

efforts. This has, in turn, exacerbated poaching in some regions as communities become disillusioned with the benefits of wildlife conservation.

Namibia's community-based natural resource management (CBNRM) model closely mirrors CAMPFIRE, offering valuable lessons in both the successes and failures of devolving wildlife management to local communities. Namibia should strengthen legal safeguards to ensure that community revenues from wildlife conservation are transparently managed and equitably distributed. Moreover, as Namibia considers expanding its wildlife trade policies, it must carefully monitor how changes in global markets for ivory and other products might impact the sustainability of community-based conservation initiatives.

3.6.2 Enforcement in Zimbabwe

Zimbabwe's wildlife enforcement framework is primarily managed by the Zimbabwe Parks and Wildlife Management Authority (ZPWMA) and supported by military and police forces. Due to rampant poaching, particularly for rhino horn and ivory, Zimbabwe has implemented a range of militarized anti-poaching strategies³⁷⁸s.

Operation Stronghold

Introduced in the 1980s, Operation Stronghold was Zimbabwe's response to the increasing poaching crisis, particularly in areas like the Zambezi Valley and Hwange National Park³⁷⁹. This militarized anti-poaching initiative deployed armed units to patrol national parks and safari areas, using a controversial "shoot-to-kill" policy for

³⁷⁸ Bertolini, B. (2023). *Preventing poaching: innovative strategies in the fight against wildlife crime* (Doctoral dissertation, North-West University (South Africa)).

³⁷⁹ Hill, K. A. (1991). Zimbabwe's wildlife conservation regime: Rural farmers and the state. *Human Ecology*, 19, 19-34.

poachers caught in the act³⁸⁰. The policy, still in place today, is intended to act as a severe deterrent to poachers, targeting both local offenders and international syndicates.

While Operation Stronghold has had some success in curbing poaching, it has also drawn significant criticism for human rights violations. The shoot-to-kill approach raises ethical concerns, particularly when non-violent offenders or mistakenly accused individuals are targeted³⁸¹. Furthermore, cross-border poaching, especially from Zambia and Mozambique, remains a persistent problem, which militarized approaches alone have failed to address comprehensively. Poachers, often backed by sophisticated criminal networks, continue to evade these enforcement efforts.

The reliance on militarized tactics also risks alienating local communities, particularly in areas where poachers are seen as acting out of economic desperation. This may lead to reduced cooperation between law enforcement and the communities living near wildlife areas, undermining long-term conservation efforts. In contrast, community policing and intelligence-led strategies may prove more effective, creating trust between authorities and local populations.

Zimbabwe's use of militarized enforcement highlights the limits of force-based approaches to wildlife crime. Namibia, with its more community-oriented CBNRM program, should avoid relying solely on militarized tactics and instead focus on strengthening legal cooperation with neighbouring countries. Namibia should also increase investment in intelligence-led anti-poaching strategies, incorporating

³⁸⁰ Mushonga, T. (2018). Militarisation of conservation, violence and local people: the case of Sikumi Forest Reserve in Zimbabwe.

³⁸¹ *ibid*

technologies such as drones and satellite tracking to monitor wildlife and apprehend poachers without resorting to lethal force³⁸². CITES provides frameworks for international cooperation on wildlife crime, and Namibia can use this as a legal basis for coordinated anti-poaching efforts with Zimbabwe and other regional partners.

3.6.3 Challenges and Issues in Zimbabwe

Despite its comprehensive legal frameworks, Zimbabwe faces several challenges that undermine its wildlife conservation efforts:

Increased Poaching of Rhinos and Elephants

Zimbabwe has experienced a significant increase in poaching, particularly of rhinos and elephants. This rise is largely driven by demand for ivory and rhino horn in Asian markets, where these products are valued for their supposed medicinal properties. The Parks and Wildlife Act provides for strict penalties for poaching, but enforcement is hampered by resource constraints, corruption, and inadequate border security.

The increase in poaching, especially near border areas like Hwange National Park, illustrates the challenges Zimbabwe faces in managing transboundary wildlife crime³⁸³. The failure to fully secure borders has allowed poachers to exploit weak enforcement and smuggle illegal wildlife products into neighbouring countries³⁸⁴. Corruption, particularly among law enforcement and border officials, further

³⁸² Pimm, S. L., Alibhai, S., Bergl, R., Dehgan, A., Giri, C., Jewell, Z., ... & Loarie, S. (2015). Emerging technologies to conserve biodiversity. *Trends in Ecology & Evolution*, 30(11), 685-696.

³⁸³ Muzhingi, D. T. (2021). *Environmental Niche Modelling of Elephant Poaching Sites in the Matusadona National Park, Zimbabwe*. University of Johannesburg (South Africa).

³⁸⁴ *ibid*

exacerbates the problem, with some officers accepting bribes to ignore poaching activities³⁸⁵.

Namibia faces similar challenges but has been more successful in curbing poaching through its Anti-Poaching Unit (APU) and collaborative efforts with local communities. Namibia's use of modern technologies like drone surveillance and partnerships with regional law enforcement agencies offers a potential solution for Zimbabwe, which has lagged behind in adopting such methods.

Human-Wildlife Conflict

Zimbabwe's large elephant population presents significant challenges, particularly in rural areas where elephants frequently destroy crops and property. While the CAMPFIRE program has provided economic incentives for communities to coexist with wildlife, the program's recent struggles have reduced its effectiveness in mitigating human-wildlife conflict³⁸⁶.

Human-wildlife conflict remains a major obstacle to wildlife conservation in Zimbabwe, particularly in areas surrounding national parks³⁸⁷. As elephants increasingly encroach on farmland, local communities are left vulnerable, often retaliating against wildlife or turning to poaching as a means of protecting their livelihoods. CAMPFIRE's failure to distribute benefits equitably, coupled with

³⁸⁵ Ngorima, A., Brown, A., & Biggs, D. (2020). Local community benefits from elephants: Can willingness to support anti-poaching efforts be strengthened?. *Conservation Science and Practice*, 2(12), e303.

³⁸⁶ *ibid*

³⁸⁷ Muzhingi, D. T. (2021). Environmental Niche Modelling of Elephant Poaching Sites in the Matusadona National Park, Zimbabwe. University of Johannesburg (South Africa).

political and economic instability, has diminished local support for conservation efforts, increasing the risk of illegal wildlife killings³⁸⁸.

Namibia has faced similar challenges but has managed human-wildlife conflict more effectively through well-funded compensation schemes and community-based programs that emphasize local participation in conservation decisions. Namibia's success in reducing conflict offers a model for Zimbabwe, where stronger legal protections for community revenues and more transparent governance structures could reinvigorate the CAMPFIRE initiative.

Ivory and Rhino Horn Stockpiles

Zimbabwe holds large stockpiles of ivory and rhino horn, accumulated from natural deaths, culling operations, and seizures from poachers³⁸⁹. The international ban on ivory trade under CITES, however, has prevented Zimbabwe from selling these stockpiles, leading to financial strain on its conservation programs³⁹⁰. Zimbabwe has advocated for controlled sales of its stockpiles to fund conservation efforts, but this has been met with strong international opposition³⁹¹.

The debate over Zimbabwe's ivory and rhino horn stockpiles reflects broader tensions between conservation and economic necessity. While Zimbabwe argues that selling these stockpiles under strict regulation could provide much-needed funds for anti-poaching efforts and wildlife management, critics contend that such sales would fuel

³⁸⁸ Muzhingi, D. T. (2021). Environmental Niche Modelling of Elephant Poaching Sites in the Matusadona National Park, Zimbabwe. University of Johannesburg (South Africa).

³⁸⁹ Cox, C. (2022). International organisations and the ivory sales ban debate: The case of Zimbabwe, Namibia and Botswana. In *Protected Areas and Tourism in Southern Africa* (pp. 175-187). Routledge.

³⁹⁰ *ibid*

³⁹¹ *ibid*

demand and potentially increase poaching³⁹². Namibia faces a similar dilemma, holding its own stockpiles of ivory and rhino horn and advocating for a limited sale under international supervision. However, global resistance to lifting the ivory trade ban has remained strong, with conservation groups fearing the consequences for elephant and rhino populations across Africa.

3.6.4 Comparison with Namibia

Zimbabwe and Namibia share similar challenges in wildlife conservation, particularly in managing poaching, human-wildlife conflict, and stockpiled wildlife products. However, the two countries differ significantly in their enforcement approaches and the degree of community involvement in conservation efforts.

Legal Frameworks

Both Zimbabwe and Namibia have established strong legal frameworks for wildlife conservation, but Zimbabwe's Parks and Wildlife Act is more permissive regarding regulated hunting and trade. Namibia's Nature Conservation Ordinance (1975) is stricter, with tighter controls on hunting quotas and trade in endangered species. Namibia could consider adopting elements of Zimbabwe's flexible permitting system to create a balance between sustainable use and strict protections for endangered species³⁹³. However, Namibia's enforcement efforts must avoid the pitfalls seen in Zimbabwe, where corruption and weak governance have undermined legal protections.

³⁹² Washaya, Y. Y., & Kurebwa, J. (2020). Effectiveness of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) in Curbing Elephant Poaching in Zimbabwe. *Canadian Social Science*, 16(6), 53-64.

³⁹³ Ngorima, A., Brown, A., & Biggs, D. (2020). Local community benefits from elephants: Can willingness to support anti-poaching efforts be strengthened?. *Conservation Science and Practice*, 2(12), e303.

Enforcement Strategies

Zimbabwe's reliance on militarized enforcement, exemplified by Operation Stronghold, contrasts with Namibia's community-driven approach. Namibia's CBNRM program emphasizes local involvement in wildlife protection, reducing the need for heavy-handed tactics. However, Namibia could strengthen its border security and intelligence-sharing efforts, learning from Zimbabwe's struggles with cross-border poaching. Moreover, Namibia's legal framework could be expanded to include provisions for greater international cooperation, particularly in the context of the Southern African Development Community (SADC) protocols on wildlife crime.

Community-Based Conservation

Zimbabwe's CAMPFIRE program and Namibia's CBNRM model share similar goals of empowering rural communities through wildlife management. However, Namibia's program has been more successful in maintaining local support, likely due to stronger legal safeguards ensuring transparent management and equitable distribution of revenues. Zimbabwe's challenges with mismanagement and political instability have weakened CAMPFIRE's effectiveness, a cautionary tale for Namibia as it seeks to expand its community-based conservation efforts³⁹⁴.

Zimbabwe's experience in wildlife conservation offers both positive lessons and cautionary tales for Namibia. While Zimbabwe's legal framework is comprehensive and supports sustainable use of wildlife resources, its enforcement struggles and community conservation challenges highlight the need for robust governance and

³⁹⁴ Tichaawa, T. M., & Mhlanga, O. S. W. A. L. D. (2015). Community perceptions of a community-based tourism project: A case study of the CAMPFIRE programme in Zimbabwe. *African Journal for Physical Health Education, Recreation and Dance*, 21(sup-2), 55-67.

transparent management. Namibia, by comparison, has demonstrated more success in maintaining local involvement in conservation through the CBNRM program and by using innovative technologies for anti-poaching efforts. As Namibia contemplates the legalization of trade in ivory and other endangered species products, it must learn from Zimbabwe's experiences—emphasizing strong legal protections, community involvement, and international cooperation to ensure that economic benefits do not come at the cost of conservation objectives.

3.7 CHAPTER SUMMARY

Chapter 3 presents an in-depth analysis of the legal frameworks governing trade in ivory and endangered species products. The chapter explores international conventions such as CITES, CBD) and the Lusaka Agreement. Namibian legal instruments, including the Constitution of Namibia, Nature Conservation Ordinance, and Controlled Wildlife Products and Trade Act, are evaluated. A comparative analysis with South Africa, Zimbabwe and Botswana is conducted to assess Namibia's position in the regional and international contexts.

CHAPTER FOUR: IMPACTS AND VIABILITY OF LEGALIZING TRADE IN IVORY AND ENDANGERED SPECIES PRODUCTS

4.1 INTRODUCTION

The debate surrounding the legalization of trade in ivory and endangered species products is multifaceted and complex, involving ecological, economic, and legal considerations³⁹⁵. This chapter critically examines the potential impacts of such legalization, with a particular focus on the Namibian context. By analysing various aspects of this controversial issue, we aim to provide a comprehensive understanding of the potential consequences of legalizing trade in these products. The discussion will draw on empirical evidence, legal frameworks, and case studies to present a nuanced view of this complex issue.

4.2 POTENTIAL ECOLOGICAL IMPACTS

The ecological impacts of legalizing trade in ivory and endangered species products are central to the debate³⁹⁶. This section explores these potential effects in detail, considering both the direct impacts on wildlife populations and the broader ecosystem consequences.

4.2.1 Effects on Wildlife Populations

The legalization of trade in ivory and endangered species products could have significant implications for wildlife populations, particularly elephants and rhinos in

³⁹⁵ Washaya, Y. Y., & Kurebwa, J. (2020). Effectiveness of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) in Curbing Elephant Poaching in Zimbabwe. *Canadian Social Science*, 16(6), 53-64.

³⁹⁶ Gillson, L., & Lindsay, K. (2003). Ivory and ecology—changing perspectives on elephant management and the international trade in ivory. *Environmental Science & Policy*, 6(5), 411-419.

the case of Namibia³⁹⁷. The effects of legalization on poaching rates and overall population dynamics are complex and often counterintuitive.

Proponents of legalization argue that it could potentially reduce poaching pressure by satisfying demand through legal channels³⁹⁸. This argument is based on the economic theory that increasing supply will lower prices, thereby reducing the incentive for poaching. However, critics contend that legalization might stimulate demand and lead to increased poaching³⁹⁹.

Crucially, empirical evidence from TRAFFIC (the wildlife trade monitoring network) provides a more nuanced picture. Following the 2008 CITES-approved one-off sale of ivory stockpiles, TRAFFIC's analysis showed varying effects on elephant poaching rates across different countries⁴⁰⁰. Contrary to some expectations, certain countries experienced a decrease in poaching following the sale. For instance, the Monitoring the Illegal Killing of Elephants (MIKE) program reported that poaching levels in southern Africa, including Namibia, remained relatively stable or even decreased slightly in the years immediately following the 2008 sale⁴⁰¹. However, it is important to note that these effects were not uniform across all regions. East Africa, for example, saw an increase in poaching rates during the same period⁴⁰². This variability underscores the complexity of the issue and the need for context-specific analyses.

³⁹⁷ Gillson, L., & Lindsay, K. (2003). Ivory and ecology—changing perspectives on elephant management and the international trade in ivory. *Environmental Science & Policy*, 6(5), 411-419.

³⁹⁸ Biggs, D., Courchamp, F., Martin, R., & Possingham, H. P. (2013). Legal trade of Africa's rhino horns. *Science*, 339(6123), 1038-1039.

³⁹⁹ Bennett, E. L. (2015). Legal ivory trade in a corrupt world and its impact on African elephant populations. *Conservation Biology*, 29(1), 54-60.

⁴⁰⁰ Weru, S. (2016). Wildlife protection and trafficking assessment in Kenya: Drivers and trends of transnational wildlife crime in Kenya and its role as a transit point for trafficked species in East Africa. TRAFFIC Report, Cambridge, UK.

⁴⁰¹ CITES. (2016). Report on Monitoring the Illegal Killing of Elephants (MIKE). CoP17 Doc. 57.5.

⁴⁰² Stiles, D. (2009). CITES-approved ivory sales and elephant poaching. *Pachyderm*, 45, 150-153.

From a legal perspective, it is essential to consider the provisions of Namibia's Nature Conservation Ordinance 4 of 1975, particularly Section 36⁴⁰³, which deals with the protection of specially protected game. To legalize trade, this section would need to be amended to include provisions for legal hunting or harvesting of specially protected game for trade purposes. The case of *S v Namweya*⁴⁰⁴ and Others is particularly relevant here. This case demonstrates the current legal stance on protected wildlife in Namibia and highlights the significant shift in judicial approach that would be necessary if trade were to be legalized.

4.2.2 Ecosystem Consequences

The ecological impacts of legalizing trade extend beyond individual species to entire ecosystems. Elephants and rhinos, often referred to as 'keystone species', play crucial roles in shaping their habitats⁴⁰⁵. Elephants, for instance, are known as "ecosystem engineers." They create clearings in forests, disperse seeds over long distances, and maintain water holes that benefit other species⁴⁰⁶. A study in Kenyan savannas found that the loss of elephants led to a doubling of tree cover, dramatically altering the habitat for other species⁴⁰⁷. In Namibia, the unique desert-adapted elephant populations play a vital role in maintaining biodiversity in arid ecosystems. These

⁴⁰³ Namibia's Nature Conservation Ordinance 4 of 197, Section 36 "No person other than the lawful holder of a permit granted by the Minister shall hunt any specially protected game."

⁴⁰⁴ *S v Namweya and Others* (CC 12/2009) [2010] NAHC 91 (9 August 2010). In this case, the High Court of Namibia dealt with charges of illegal hunting of elephants. The court emphasized the seriousness of offenses against protected wildlife, stating: "Offences involving protected game, especially elephants, are viewed in a very serious light by the courts because of the devastating effect that these offences have on the wildlife population of this country."

⁴⁰⁵ Ripple, W. J., Newsome, T. M., Wolf, C., Dirzo, R., Everatt, K. T., Galetti, M., ... & Van Valkenburgh, B. (2015). Collapse of the world's largest herbivores. *Science Advances*, 1(4), e1400103.

⁴⁰⁶ Campos-Arceiz, A., & Blake, S. (2011). Megagardeners of the forest—the role of elephants in seed dispersal. *Acta Oecologica*, 37(6), 542-553.

⁴⁰⁷ Coverdale, T. C., Kartzinel, T. R., Grabowski, K. L., Shriver, R. K., Hassan, A. A., Goheen, J. R., ... & Pringle, R. M. (2016). Elephants in the understory: opposing direct and indirect effects of consumption and ecosystem engineering by megaherbivores. *Ecology*, 97(11), 3219-3230.

elephants create pathways through the desert that act as water channels during rare rain events, supporting a wide variety of flora and fauna.

Legalization of trade, if not carefully managed, could lead to overexploitation and subsequent ecological imbalances⁴⁰⁸. The precautionary principle, a key tenet of environmental law, suggests that in cases of potential serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation⁴⁰⁹.

4.3 ECONOMIC IMPLICATIONS

The economic aspects of legalizing trade in ivory and endangered species products are central to the debate⁴¹⁰. This section explores the potential economic impacts, both in terms of revenue generation and effects on local communities, with a particular focus on the Namibian context.

4.3.1 Revenue Generation Potential from Ivory

Proponents of legalization often cite the potential for significant revenue generation as a key argument. The one-off sales of ivory stockpiles authorized by CITES provide concrete examples of the potential revenues involved. In the 2008 CITES-approved sale, Namibia, along with Botswana, South Africa, and Zimbabwe, sold a total of 102 tonnes of ivory to China and Japan⁴¹¹. The sale generated approximately \$15.4 million

⁴⁰⁸ Coverdale, T. C., Kartzinel, T. R., Grabowski, K. L., Shriver, R. K., Hassan, A. A., Goheen, J. R., ... & Pringle, R. M. (2016). Elephants in the understory: opposing direct and indirect effects of consumption and ecosystem engineering by megaherbivores. *Ecology*, *97*(11), 3219-3230.

⁴⁰⁹ Glazewski, J., & Plit, L. (2015). Towards the application of the precautionary principle in South African law. *Stellenbosch Law Review*, *26*(1), 190-219.

⁴¹⁰ Harvey, R. (2016). Risks and fallacies associated with promoting a legalised trade in Ivory. *Politikon*, *43*(2), 215-229.

⁴¹¹ Stiles, D. (2009). CITES-approved ivory sales and elephant poaching. *Pachyderm*, *45*, 150-153.

USD, with prices ranging from \$157 to \$180 per kilogram⁴¹². Namibia's share of this sale was 9 tonnes, earning the country approximately \$1.5 million USD⁴¹³.

These figures, while substantial, need to be considered in the broader context of Namibia's conservation funding needs and overall economy. For comparison, Namibia's total environmental protection expenditure in 2008 was approximately 1.4 billion Namibian dollars (about \$175 million USD at the time) (Namibia Statistics Agency, 2010).

In evaluating the economic viability of legal ivory trade in Namibia, it is crucial to consider the country's unique ecological and socio-economic circumstances. Namibia has been grappling with persistent drought conditions for the past five years, which has had significant impacts on both wildlife populations and human communities⁴¹⁴. This situation creates a compelling argument for considering limited, regulated ivory sales as a means of generating revenue and addressing multiple challenges simultaneously.

The prolonged drought has led to increased mortality among elephant and hippo populations due to starvation. Additionally, wildlife management authorities have been forced to cull some animals to prevent further suffering and to provide food for communities facing food insecurity⁴¹⁵. As a result, Namibia's ivory stockpiles have been growing steadily, creating storage and security challenges for the government.

⁴¹² *ibid*

⁴¹³ *ibid*

⁴¹⁴ Schwieger, D. A. M. (2023). Overcoming Namibia's worst drought in the last 40 years: Ethnographic insights from Okakarara constituency. *Journal of Namibian Studies: History Politics Culture*, 33, 31-56.

⁴¹⁵ Kilwany, M. A. (2023). *Animal Culling and the One Health Approach-Some Ethical Considerationsts* (Doctoral dissertation, University of Nairobi).

In light of these circumstances, there is a case to be made for allowing the sale of at least a portion of these accumulating stockpiles. The potential revenue from such sales could be substantial. As previously mentioned, it is estimated that Namibia's ivory stockpile could be worth over US\$40 million if sold internationally⁴¹⁶. Given the increased stockpiles due to drought-related mortalities and necessary culling, this figure could be even higher today.

The argument for limited ivory sales in this context is multifaceted:

1. Revenue Generation: Funds raised from ivory sales could be reinvested in conservation efforts, drought mitigation measures, and community support programs. This aligns with the principles of Namibia's CBNRM approach, which aims to create economic incentives for conservation.
2. Reducing Storage Burden: The growing stockpiles represent a significant logistical and financial burden for the Namibian government. Secure storage facilities are costly to maintain, and the risk of theft or corruption increases as stockpiles grow.
3. Mitigating Corruption Risks: Large stockpiles of a valuable commodity like ivory can be targets for corruption, with organized crime rings potentially bribing officials for access. Regulated sales could potentially reduce these risks by decreasing the size of stockpiles and creating transparent, legal channels for trade.
4. Ethical Considerations: Given that some of this ivory is derived from necessary culling operations aimed at reducing animal suffering and supporting food-

⁴¹⁶ Stiles, D. (2009). CITES-approved ivory sales and elephant poaching. *Pachyderm*, 45, 150-153.

insecure communities, there is an argument that using this ivory to generate conservation and community development funds is more ethical than simply storing it indefinitely.

However, it is important to note that any move towards legal ivory sales would face significant legal and diplomatic hurdles. The international trade in ivory is currently prohibited under CITES, with African elephants listed in Appendix I for most range states. While Namibia's elephant population is listed in Appendix II, annotation 2 to this listing explicitly prohibits trade in ivory⁴¹⁷. To allow for international trade in stockpiled ivory, Namibia would need to propose an amendment to this annotation at a CITES Conference of the Parties (CoP).

There is a legal precedent for such amendments as in 2002, CITES approved a one-off sale of ivory stockpiles from Botswana, Namibia, and South Africa. This was done through an amendment to the Appendix II listing annotations at CoP12. Namibia could potentially argue for a similar exception based on its current drought conditions and wildlife management needs. From a constitutional law perspective, Article 95(1) of the Namibian Constitution could potentially be used to argue for the sale of stockpiles as a means of sustainable utilization of natural resources for the benefit of Namibians, particularly if the revenues are directed towards conservation and community development.

Given these complexities, a possible approach could be to advocate for a carefully regulated, one-off sale of stockpiled ivory derived specifically from drought-related mortalities and necessary culling operations. This could be framed as an emergency

⁴¹⁷ CITES. (2019). Consideration of Proposals for Amendment of Appendices I and II. CoP18 Prop. 11.

measure to address the unique challenges posed by prolonged drought conditions. Such a proposal would need to be accompanied by robust systems for tracking ivory from source to market, stringent anti-poaching measures, and transparent mechanisms for revenue distribution to conservation and community development efforts.

Ultimately, while the potential for revenue generation from ivory sales in Namibia's current context is significant, any move in this direction would need to carefully balance short-term economic benefits against long-term conservation goals and international obligations.

4.3.2 Revenue generation potential from Pangolin Scales Trade

The trade in pangolin scales presents another complex case in the debate over endangered species product legalization. Pangolins are considered the world's most trafficked mammal, with all eight species listed in CITES Appendix I, prohibiting international commercial trade⁴¹⁸.

In Namibia, pangolins are protected under the Nature Conservation Ordinance 4 of 1975, which prohibits their hunting without a permit. However, enforcement challenges persist, with pangolins consistently among the most seized species in wildlife crime cases in Namibia⁴¹⁹.

The argument for legalizing pangolin scale trade is perhaps the weakest among the species considered in this chapter. Unlike rhinos, pangolins cannot be "harvested" for their scales without killing the animal. Furthermore, pangolins reproduce slowly, with

⁴¹⁸ CITES. (2016). Report on Monitoring the Illegal Killing of Elephants (MIKE). CoP17 Doc. 57.5.

⁴¹⁹ Martens, C., & Berstermann, S. (2023). The Plight of the Pangolin. Key patterns enabling the illegal wildlife trade of pangolins in Namibia - a multi-perspective case study. Master of Science in International Development and Management (Lund University).

females typically giving birth to only one offspring per year, making sustainable offtake challenging⁴²⁰.

From a legal perspective, legalizing pangolin scale trade would require significant amendments to both domestic and international law. At the domestic level, the Nature Conservation Ordinance and the Controlled Wildlife Products and Trade Act would need to be amended to allow for legal trade. Internationally, Namibia would need to secure a downlisting of pangolins from CITES Appendix I to Appendix II, a proposition that seems unlikely given current international sentiment.

Given these factors, the ecological and enforcement risks of legalizing pangolin scale trade appear to significantly outweigh any potential economic benefits. Strengthening enforcement of existing bans and focusing on demand reduction strategies may be more viable approaches to pangolin conservation.

4.3.3 Revenue from Other Endangered Species Products

While ivory, rhino horn, and pangolin scales often dominate discussions of endangered species product trade, several other species and their derivatives merit consideration in the Namibian context. This section examines the viability of legal trade in products from species such as predatory cats, reptiles, and rare plants, analyzing the legal, economic, and ecological implications of potential trade legalization.

Predatory Cat Products

Namibia is home to several species of large predatory cats, including lions, leopards, and cheetahs. These species are protected under the Nature Conservation Ordinance 4

⁴²⁰ 't Sas-Rolfes, M., Challender, D. W., Hinsley, A., Verissimo, D., & Milner-Gulland, E. J. (2019). Illegal Wildlife Trade: Scale, Processes, and Governance. *Annual Review of Environment and Resources*, 44, 201-228.

of 1975, with Section 26 classifying them as "specially protected game." The international trade in products from these species is generally prohibited under CITES, with most large cat species listed in Appendix I⁴²¹.

However, Namibia does allow limited trophy hunting of predatory cats, which generates significant revenue for conservation efforts. For instance, in 2019, Namibia's Ministry of Environment and Tourism reported that trophy hunting, including of predatory cats, contributed approximately N\$43 million (about US\$2.9 million) to communal conservancies⁴²².

The potential for expanding legal trade in predatory cat products, such as skins or bones, is limited by both ecological and legal constraints. From an ecological perspective, these species generally have low population densities and slow reproductive rates, making sustainable offtake challenging⁴²³.

Legally, any expansion of trade would require amendments to both domestic legislation and CITES listings. At the domestic level, the Nature Conservation Ordinance would need to be amended to allow for commercial trade beyond current trophy hunting allowances. Internationally, downlisting these species from CITES Appendix I to Appendix II would be necessary, a move likely to face significant opposition from the international community.

The case of South Africa's lion bone trade provides a cautionary tale. In 2018, South Africa established an export quota for lion skeletons, allowed under the country's

⁴²¹ CITES. (2019). Consideration of Proposals for Amendment of Appendices I and II. CoP18 Prop. 11.

⁴²² NACSO. (2020). The state of community conservation in Namibia - a review of communal conservancies, community forests and other CBNRM initiatives (2019 Annual Report). NACSO, Windhoek.

⁴²³ Packer, C., Loveridge, A., Canney, S., Caro, T., Garnett, S. T., Pfeifer, M., & Polasky, S. (2013). Conserving large carnivores: dollars and fence. *Ecology letters*, 16(5), 635-641.

CITES Appendix II listing for captive-bred lions⁴²⁴. However, this decision was successfully challenged in the case of National Council of SPCAs v Minister of Environmental Affairs and Others [2019] ZAGPPHC 367. The High Court ruled that the quota was unlawful and unconstitutional, citing a lack of consideration for animal welfare and the potential impact on wild lion populations. Given these factors, expanding legal trade in predatory cat products beyond current trophy hunting arrangements appears to have limited viability in Namibia.

Reptile Products

Namibia hosts a diverse array of reptile species, some of which are sought after in the international pet trade and for their skins. The Controlled Wildlife Products and Trade Act 9 of 2008 regulates the trade in reptile products, with many species listed in its schedules as controlled wildlife products. One notable case is that of the Angolan python (*Python anchietae*), endemic to Namibia and southern Angola. This species is listed in CITES Appendix II, which allows for regulated international trade. Namibia has established a quota system for the export of live specimens for the pet trade, which could potentially serve as a model for sustainable use of other reptile species⁴²⁵.

However, expanding legal trade in reptile products faces several challenges. Many reptile species are difficult to breed in captivity at commercial scales, and wild populations may not be able to sustain significant offtake. There are also concerns about the welfare implications of the reptile trade and the potential for spread of

⁴²⁴ Williams, V. L., Coals, P. G., de Bruyn, M., Naude, V. N., Dalton, D. L., & Kotzé, A. (2021). Monitoring compliance of CITES lion bone exports from South Africa. *Plos one*, 16(4), e0249306.

⁴²⁵ CITES. (2019). Consideration of Proposals for Amendment of Appendices I and II. CoP18 Prop. 11.

zoonotic diseases⁴²⁶. Any expansion of reptile trade would need to be carefully regulated to ensure compliance with both domestic legislation and CITES requirements. The Nature Conservation Ordinance would likely need to be amended to provide more specific provisions for reptile trade, beyond its current general protections for wildlife.

Plant Products

Namibia is home to several plant species of conservation concern, some of which have potential commercial value. The most notable example is Hoodia, a succulent plant traditionally used as an appetite suppressant by San communities⁴²⁷. The commercialization of Hoodia has been a contentious issue, involving complex questions of intellectual property rights and benefit-sharing. In 2003, Namibia, along with South Africa and Botswana, signed a benefit-sharing agreement with the San people regarding the commercial exploitation of Hoodia⁴²⁸. This agreement could potentially serve as a model for equitable commercialization of other plant products.

However, the Hoodia case also highlights the challenges of sustainable commercialization. Overharvesting of wild Hoodia populations has been a significant concern, and cultivation efforts have faced difficulties⁴²⁹. These issues underscore the need for careful management and robust regulatory frameworks in any legal trade system for endangered plant species. Legally, the trade in endangered plant species is

⁴²⁶ Auliya, M., García-Moreno, J., Schmidt, B. R., Schmeller, D. S., Hoogmoed, M. S., Fisher, M. C., & Martel, A. (2016). The global amphibian trade flows through Europe: the need for enforcing and improving legislation. *Biodiversity and conservation*, 25, 2581-2595.

⁴²⁷ Vermaak, I., Hamman, J. H., & Viljoen, A. M. (2011). Hoodia gordonii: an up-to-date review of a commercially important anti-obesity plant. *Planta medica*, 77(11), 1149-1160.

⁴²⁸ Wynberg, R. (2009). Policies for sharing benefits from Hoodia. *Indigenous Peoples, consent and benefit sharing: Lessons from the San-Hoodia case*, 127-141.

⁴²⁹ Wynberg, R. P. (2010). Navigating a way through regulatory frameworks for Hoodia use, conservation, trade and benefit sharing. In *Wild Product Governance* (pp. 309-326). Routledge.

governed by both the Nature Conservation Ordinance and the Controlled Wildlife Products and Trade Act. Many valuable plant species are also listed in the CITES appendices. For instance, all Hoodia species are listed in CITES Appendix II, allowing for regulated international trade subject to sustainability requirements.

Marine Species Products

While Namibia is primarily known for its terrestrial wildlife, it also has jurisdiction over a rich marine environment. Several marine species found in Namibian waters are subject to international trade restrictions, including certain shark species and seahorses. The Marine Resources Act 27 of 2000⁴³⁰ provides the primary legal framework for the management of marine resources in Namibia. Section 32 of this Act allows for the Minister to set total allowable catches for marine resources, providing a potential mechanism for regulating sustainable use.

However, expanding legal trade in products from endangered marine species would face significant challenges. Many marine species are highly migratory, complicating management efforts. There are also significant enforcement challenges in the marine environment, with illegal, unreported, and unregulated (IUU) fishing a persistent problem globally⁴³¹.

From a legal perspective, it is crucial to consider how such revenues would be managed and allocated. The Environmental Investment Fund of Namibia Act 13 of 2001 provides a potential framework for managing revenues from wildlife products. To accommodate revenues from legal wildlife product trade, this Act could potentially

⁴³⁰ Government of Namibia. (2000). *Marine Resources Act, Act No. 27 of 2000*. Windhoek: Government Gazette of the Republic of Namibia.

⁴³¹ Petrossian, G. A. (2015). Preventing illegal, unreported and unregulated (IUU) fishing: A situational approach. *Biological Conservation*, 189, 39-48.

be amended to explicitly include such revenues as a source of funding. This amendment would ensure that any revenues from legal trade are transparently managed and directed towards conservation efforts. However, it is crucial to consider these potential revenues in the context of Namibia's legal framework. The Environmental Management Act 7 of 2007, particularly Section 3(2)(c), emphasizes the need to ensure that the costs of environmental damage are borne by those responsible. Thus, any revenue generated from legal trade would need to be weighed against the potential environmental costs and the resources required for effective regulation and enforcement.

4.3.4 Impact on Local Communities

The potential impact on local communities is a critical consideration in the legalization debate. Advocates argue that legal trade could provide economic benefits to communities living near wildlife, potentially reducing human-wildlife conflict and incentivizing conservation⁴³². In Namibia, the CBNRM program provides a framework for community involvement in wildlife management. However, the integration of ivory or rhino horn trade into this system would require careful consideration. The Nature Conservation Amendment Act 5 of 1996, which provides the legal basis for communal conservancies, would likely need to be amended to explicitly include provisions for community benefits from trade in wildlife products.

The case of *Kasika Community v Minister of Environment and Tourism*⁴³³ illustrates the complexities of balancing community rights with conservation objectives in

⁴³² Dickson, B., Hutton, J., & Adams, W. A. (Eds.). (2009). *Recreational hunting, conservation and rural livelihoods: science and practice*. John Wiley & Sons.

⁴³³ *Kasika Community v Minister of Environment and Tourism* (A 138/2013) [2016] NAHCMD 42 (24 February 2016). The court emphasized the importance of community involvement in wildlife management decisions, stating:

Namibia. In this case, the community challenged the Ministry's decision to reduce the hunting quota for the area. This ruling underscore the need for community involvement in any decisions regarding the legalization of wildlife product trade.

However, critics contend that benefits may not necessarily reach local communities. A study on the political ecology of poaching highlighted the complex socio-economic factors involved⁴³⁴, suggesting that simplistic economic solutions may not address underlying issues. Any legalization scheme would need to be carefully designed to ensure equitable distribution of benefits and to address broader socio-economic challenges facing communities in wildlife-rich areas.

4.4 ENFORCEMENT CHALLENGES AND OPPORTUNITIES

The legalization of trade in ivory and endangered species products would present both challenges and opportunities in terms of law enforcement. This section examines these aspects, focusing on anti-poaching efforts and the monitoring of legal trade.

4.4.1 Anti-Poaching Efforts

Proponents of legalization argue that it could potentially reduce the burden on anti-poaching efforts by redirecting resources from combating all trade to focusing on illegal activities⁴³⁵. However, critics contend that distinguishing between legal and illegal products could complicate enforcement efforts⁴³⁶.

"The success of community based natural resource management depends on the support and participation of local communities. Their views and interests cannot be ignored in decision-making processes that directly affect their livelihoods."

⁴³⁴ Duffy, R. (2013). *A trip too far: Ecotourism, politics and exploitation*. Routledge.

⁴³⁵ Biggs, D., Courchamp, F., Martin, R., & Possingham, H. P. (2013). Legal trade of Africa's rhino horns. *Science*, 339(6123), 1038-1039.

⁴³⁶ Bennett, E. L. (2015). Legal ivory trade in a corrupt world and its impact on African elephant populations. *Conservation Biology*, 29(1), 54-60.

In Namibia, anti-poaching efforts are governed by various legal instruments, including the Nature Conservation Ordinance 4 of 1975 and the Controlled Wildlife Products and Trade Act 9 of 2008. Section 4 of the latter Act provides for the appointment of wildlife protection officers, demonstrating the legislative framework for enforcement. To adapt to a scenario of legal trade, these laws would likely need to be amended. For instance, the Controlled Wildlife Products and Trade Act could be expanded to include provisions for distinguishing between legal and illegal products.

The case of *S v Nguamba*⁴³⁷ highlights the challenges of enforcing wildlife protection laws in Namibia. In this case, involving charges of rhino poaching, the court emphasized the seriousness of wildlife crimes and the need for deterrent sentences. This ruling demonstrates the current judicial approach to wildlife crimes in Namibia. If trade were to be legalized, the legal system would need to adapt to distinguish between legal trade and poaching, while maintaining strong deterrents against illegal activities.

4.4.2 Monitoring and Regulation of Legal Trade

Effective monitoring and regulation would be crucial in any legalized trade system. This would require robust mechanisms for tracking products from source to market, as well as international cooperation to prevent the laundering of illegal products into legal markets⁴³⁸. Namibia's existing legislative framework, particularly the Controlled Wildlife Products and Trade Act 9 of 2008, provides a basis for such regulation.

⁴³⁷ *S v Nguamba* (CC 16/2015) [2017] NAHCMD 105 (5 April 2017), The judge stated: "Rhino poaching has reached alarming proportions... The courts must send out a clear message that persons convicted of rhino poaching can expect to receive severe sentences."

⁴³⁸ Nuwer, R. (2019). Conservation after conflict. *Scientific American*, 321(5), 36-43.

Section 6 of this Act deals with the registration of possession of controlled wildlife products, which could potentially be adapted for a legal trade system.

To strengthen this framework, the Act could be amended to include more specific provisions for a legal trade system. However, the challenges of implementing such a system should not be underestimated. The case of *Minister of Environment and Tourism v Khomas Civil Society Organizations Network on Natural Resources Management*⁴³⁹ illustrates the potential for legal challenges to wildlife management decisions. In this case, civil society organizations challenged the Ministry's decision to issue permits for the capture and export of wild elephants. The court emphasized the need for transparent decision-making processes in wildlife management. This ruling underscores the importance of transparency and public accountability in any system of legal wildlife product trade, should it be implemented.

4.5 CASE STUDIES OF PREVIOUS LEGALIZATION ATTEMPTS

Examining past attempts at legalizing trade in endangered species products provides valuable insights into potential outcomes and challenges. This section analyzes two significant case studies: the CITES ivory trade experiments and South Africa's attempts to legalize rhino horn trade.

4.5.1 The CITES Ivory Trade Experiment

CITES has authorized one-off sales of ivory stockpiles on two occasions: in 1999 and 2008. These sales were intended to flood the market with legal ivory and reduce poaching pressure.

⁴³⁹ *Minister of Environment and Tourism v Khomas Civil Society Organizations Network on Natural Resources Management* (A 226/2014) [2015] NAHCMD 137 (12 June 2015)

In the 1999 sale, Japan purchased 50 tonnes of ivory from Botswana, Namibia, and Zimbabwe for approximately \$5 million USD⁴⁴⁰. The 2008 sale was larger, involving 102 tonnes of ivory from Botswana, Namibia, South Africa, and Zimbabwe, sold to China and Japan for a total of \$15.4 million USD⁴⁴¹.

The impacts of these sales have been subject to intense debate. A study found that the 2008 sale corresponded with an abrupt, significant, permanent, and geographically widespread increase in ivory production through elephant poaching⁴⁴². They estimated that this legal sale caused an estimated 71% increase in illegal ivory production.

However, TRAFFIC's analysis provides a more nuanced picture. Their report showed that while poaching increased in some areas following the 2008 sale, the effects were not uniform across the continent⁴⁴³. Specifically:

1. Southern Africa, including Namibia, saw relatively stable or even slightly decreased poaching levels in the years immediately following the sale. The Proportion of Illegally Killed Elephants (PIKE) in Southern Africa remained below the 0.5 threshold (which indicates that deaths from natural causes exceed those from poaching) between 2003 and 2012⁴⁴⁴.

⁴⁴⁰ Stiles, D. (2009). CITES-approved ivory sales and elephant poaching. *Pachyderm*, 45, 150-153.

⁴⁴¹ *ibid*

⁴⁴² Hsiang, S., & Sekar, N. (2016). Does legalization reduce black market activity? Evidence from a global ivory experiment and elephant poaching data (No. w22314). National Bureau of Economic Research.

⁴⁴³ Krishnasamy, K., & Zavagli, M. (2020). Southeast Asia: At the heart of wildlife trade. TRAFFIC, Southeast Asia Regional Office, Petaling Jaya, Selangor, Malaysia.

⁴⁴⁴ CITES. (2016). Report on Monitoring the Illegal Killing of Elephants (MIKE). CoP17 Doc. 57.5.

2. East Africa, particularly Tanzania and Kenya, experienced significant increases in poaching. The PIKE values in East Africa rose from around 0.5 in 2007 to over 0.7 by 2011⁴⁴⁵.
3. Central Africa showed high but relatively stable poaching levels before and after the sale, with PIKE values consistently above 0.6⁴⁴⁶.

This variability in outcomes suggests that the impacts of legal ivory sales are complex and likely influenced by a range of factors including local enforcement capacity, existing poaching pressure, and socio-economic conditions. For Namibia, these findings have important implications. As a country that participated in the legal sales and experienced relatively stable poaching levels afterward, Namibia's experience could potentially support arguments for controlled legal trade. However, it is crucial to consider whether Namibia's situation in 2008 is comparable to the present day, and whether the factors that contributed to stable poaching levels then would still apply now.

Namibia's participation in these sales was governed by CITES regulations and domestic legislation. The Controlled Wildlife Products and Trade Act 9 of 2008, which came into effect the same year as the second ivory sale, provides the primary legal framework for regulating trade in wildlife products in Namibia. To participate in any future legal sales, Namibia would need to ensure that its domestic legislation aligns with CITES requirements and provides robust mechanisms for controlling and monitoring trade. An amendment to the Act could potentially be considered to explicitly address participation in internationally-sanctioned sales:

⁴⁴⁵ CITES. (2016). Report on Monitoring the Illegal Killing of Elephants (MIKE). CoP17 Doc. 57.5.

⁴⁴⁶ *ibid*

The varying outcomes of the CITES ivory sales experiment highlight the complexity of wildlife trade legalization. While Namibia's experience was relatively positive, the negative outcomes in other regions caution against assuming that these results can be easily replicated or maintained over time. Any consideration of future legal trade must carefully weigh these complex and potentially conflicting outcomes.

4.5.2 Rhino Horn Trade in South Africa

South Africa's attempts to legalize domestic trade in rhino horn provide another relevant case study. In 2017, South Africa's Constitutional Court effectively legalized the domestic trade in rhino horn by upholding a lower court's decision to lift a 2009 moratorium on the trade⁴⁴⁷. The legal process leading to this decision is instructive. The case of *Kruger and Another v Minister of Water and Environmental Affairs and Others*, mentioned earlier, was pivotal. The plaintiffs, rhino farmers, argued that the moratorium had been imposed without proper consultation and had actually led to an increase in rhino poaching. This ruling highlights the importance of following due process and ensuring stakeholder participation in decisions related to wildlife trade.

Following the lifting of the moratorium, South Africa implemented a permit system for domestic trade in rhino horn. Under this system, foreign nationals can buy rhino horn in South Africa with a permit but cannot export it⁴⁴⁸. This approach attempts to thread the needle between allowing domestic trade and maintaining international CITES obligations.

Initial reports on the impact of this decision have been mixed:

⁴⁴⁷ Cota-Larson, R. (2017). Pangolin Species Identification Guide.

⁴⁴⁸ Collins, A., Cox, C., & Marire, J. (2020). On the judicial annulment of the 'domestic' trade moratorium in South African rhinoceros horn: a law and economics perspective. *European Journal of Law and Economics*, 49, 361-372.

1. Proponents argue that it has provided a legal avenue for horn sales, potentially reducing poaching pressure. Some rhino farmers report being able to sell horns from natural mortalities or dehorning, providing income for conservation⁴⁴⁹.
2. Critics contend that it has complicated enforcement efforts and potentially stimulated demand. There are concerns that domestic sales could provide a cover for illegal international trade⁴⁵⁰.
3. Poaching statistics from South Africa show a decline in rhino poaching since the peak in 2014, but it is difficult to attribute this directly to the legalization of domestic trade, as it coincides with increased security efforts⁴⁵¹.

For Namibia, South Africa's experience offers several lessons:

1. **Legal Framework:** Any move towards legalization would require a robust legal framework. Namibia's Controlled Wildlife Products and Trade Act would likely need amendments to explicitly address domestic trade if such a path were considered.
2. **Stakeholder Engagement:** The South African case underscores the importance of thorough consultation with all stakeholders. Namibia's CBNRM program provides a potential framework for such engagement, but would likely need to be expanded to include a wider range of stakeholders if trade legalization were considered.

⁴⁴⁹ *ibid*

⁴⁵⁰ Titeca, K. (2019). Illegal ivory trade as transnational organized crime? An empirical study into ivory traders in Uganda. *The British Journal of Criminology*, 59(1), 24-44.

⁴⁵¹ Hauenstein, S., Kshatriya, M., Blanc, J., Dormann, C. F., & Beale, C. M. (2019). African elephant poaching rates correlate with local poverty, national corruption and global ivory price. *Nature Communications*, 10(1), 2242.

3. International Obligations: Namibia, like South Africa, is a signatory to CITES. Any domestic policy changes would need to be carefully crafted to align with these international obligations.
4. Enforcement Challenges: South Africa's experience highlights the potential challenges in distinguishing legal domestic trade from illegal international trade. Namibia would need to consider how to address these challenges in its unique context.

A potential legal approach for Namibia, drawing on these lessons, could involve amending the Controlled Wildlife Products and Trade Act to include provisions for strictly regulated domestic trade, subject to rigorous impact assessments and stakeholder consultations. This approach would provide a legal basis for considering domestic trade while ensuring appropriate safeguards and aligning with international best practices.

In conclusion, the case studies of the CITES ivory sales and South Africa's rhino horn trade legalization offer valuable insights into the potential impacts and challenges of legalizing trade in endangered species products. They underscore the complexity of the issue and the need for context-specific, evidence-based approaches. For Namibia, these experiences highlight the importance of robust legal frameworks, thorough stakeholder engagement, and careful consideration of both domestic and international implications in any decisions regarding wildlife product trade.

4.6 CHAPTER SUMMARY

The potential impacts of legalizing trade in ivory and endangered species products are complex and multifaceted. While proponents argue that legalization could generate

revenue for conservation and potentially reduce poaching pressure, critics contend that it could stimulate demand and complicate enforcement efforts.

The TRAFFIC analysis of the CITES ivory sales and South Africa's experience with domestic rhino horn trade legalization provide valuable empirical evidence, but also highlight the variability of outcomes across different contexts. Namibia's relatively positive experience with the ivory sales contrasts with negative outcomes in other regions, underscoring the need for context-specific approaches.

In the Namibian context, any consideration of legalization must be carefully weighed against existing legal frameworks, including domestic legislation such as the Nature Conservation Ordinance 4 of 1975 and the Controlled Wildlife Products and Trade Act 9 of 2008, as well as international obligations under agreements like CITES. The potential for legislative amendments to accommodate legal trade has been explored, but such changes would require careful crafting to balance conservation objectives, economic considerations, and enforcement capabilities.

CHAPTER FIVE: NAMIBIA'S UNIQUE CONTEXT IN WILDLIFE

PRODUCT TRADE

5.1 INTRODUCTION

Namibia presents a unique case study in the debate surrounding the trade in ivory and other endangered species products. As a country with a strong conservation record and innovative community-based natural resource management programs, Namibia has positioned itself as a leader in sustainable wildlife management in Africa. This chapter will examine Namibia's specific context and experiences related to wildlife product trade, including its conservation successes, community-based programs, current stockpiles, anti-poaching measures, and stakeholder perspectives. Understanding Namibia's particular circumstances is crucial for evaluating the viability and potential impacts of legalizing trade in ivory and other wildlife products within the country.

5.2 NAMIBIA'S CONSERVATION SUCCESS STORY

Since gaining independence in 1990, Namibia has made remarkable strides in wildlife conservation and sustainable management of natural resources. The country's progressive policies and innovative approaches have resulted in significant increases in wildlife populations and habitat protection.

A key pillar of Namibia's conservation strategy is enshrined in Article 95(1) of the Namibian Constitution. This constitutional mandate provides a strong legal foundation for Namibia's conservation efforts. Building on this constitutional framework, Namibia enacted the Nature Conservation Amendment Act 5 of 1996, which devolved rights over wildlife and tourism to local communities through the establishment of communal conservancies. This groundbreaking legislation enabled communities to

benefit directly from wildlife on their lands, creating powerful incentives for conservation⁴⁵².

The results of these policies have been remarkable. Since the mid-1990s, Namibia has seen dramatic increases in wildlife populations across the country. For example:

- The elephant population has more than doubled from around 7,500 in 1995 to over 22,000 in 2016⁴⁵³.
- The desert-adapted black rhino population in northwest Namibia has grown from fewer than 70 in 1982 to over 200 today, now comprising the largest free-roaming black rhino population in the world⁴⁵⁴.
- Lion populations have rebounded from near local extinction in many areas to over 700 individuals⁴⁵⁵.

These conservation gains stand in stark contrast to declining wildlife populations in many other African countries. Namibia's unique approach of combining habitat protection, sustainable use, and community empowerment has proven highly successful in promoting both biodiversity conservation and rural development.

5.3 COMMUNITY-BASED NATURAL RESOURCE MANAGEMENT

At the heart of Namibia's conservation model is its pioneering CBNRM program.

Established through the Nature Conservation Amendment Act of 1996, the CBNRM

⁴⁵² Jones, B. T. (1999). Policy lessons from the evolution of a community-based approach to wildlife management, Kunene Region, Namibia. *Journal of International Development: The Journal of the Development Studies Association*, 11(2), 295-304.

⁴⁵³ NACSO. (2016). The state of community conservation in Namibia - a review of communal conservancies, community forests and other CBNRM initiatives (2015 Annual Report). NACSO, Windhoek.

⁴⁵⁴ *ibid*

⁴⁵⁵ *ibid*

program devolves rights over wildlife and tourism to local communities through the formation of communal conservancies.

Section 24A(1) of the Act states that "any group of persons residing on communal land may apply to the Minister to have the area in which they reside or any part thereof declared a conservancy". Once established, conservancies gain the rights to sustainably utilize wildlife through tourism, trophy hunting, and other activities.

This approach represents a radical shift from previous top-down conservation models that often excluded local communities. By granting communities ownership and management rights over their natural resources, the CBNRM program creates direct economic incentives for conservation. CBNRM in Namibia is based on the premise that if wildlife and other natural resources have sufficient value to rural communities, and if communities are given the authority to manage and benefit from these resources, then sustainable use and conservation will follow⁴⁵⁶.

The program has seen tremendous growth and success since its inception. As of 2019, there were 86 registered communal conservancies in Namibia, covering over 166,000km² or about 20% of the country⁴⁵⁷. These conservancies have generated significant economic benefits for rural communities through tourism, trophy hunting, and other activities. In the same year, communal conservancies earned over N\$132 million (approximately US\$9 million) in returns from wildlife and tourism⁴⁵⁸.

⁴⁵⁶ Jones, B. T., & Weaver, L. C. (2009). CBNRM in Namibia: growth, trends, lessons and constraints. *Evolution and Innovation in Wildlife Conservation*, 223-242.

⁴⁵⁷ Namibian Association of CBNRM Support Organisations (NACSO). (2021). *The state of community conservation in Namibia – a review of communal conservancies, community forests and other CBNRM activities (Annual Report 2020)*. Windhoek: NACSO.

⁴⁵⁸ *ibid*

The CBNRM program has been particularly successful in promoting human-wildlife coexistence. By deriving tangible benefits from wildlife, communities have strong incentives to tolerate and protect species that may otherwise be viewed as threats or nuisances⁴⁵⁹. This has contributed significantly to Namibia's wildlife recovery, especially for iconic species like elephants and rhinos.

The success of Namibia's CBNRM program has important implications for the debate surrounding trade in wildlife products. Proponents argue that the sustainable use model employed in Namibia demonstrates how regulated trade could potentially benefit both conservation and local livelihoods⁴⁶⁰. This argument has merit, as the economic benefits generated by CBNRM have clearly incentivized conservation at the community level. The program's success in growing wildlife populations while improving rural livelihoods suggests that, if properly managed, trade could potentially yield positive outcomes.

Critics, however, contend that legalizing trade could undermine the progress made through CBNRM by increasing poaching pressures and international demand for wildlife products⁴⁶¹. This concern is not unfounded, given the complex dynamics of illegal wildlife markets and the potential for legal trade to provide cover for illicit

⁴⁵⁹ Naidoo, R., Weaver, L. C., Diggle, R. W., Matongo, G., Stuart-Hill, G., & Thouless, C. (2016). Complementary benefits of tourism and hunting to communal conservancies in Namibia. *Conservation Biology*, 30(3), 628-638.

⁴⁶⁰ Lyakurwa, G. J., Mremi, R., & Kisingo, A. W. (2020). Insights of legal and illegal wildlife hunting in Selous and Rungwa Game Reserves in the south-east and central Tanzania. *International Journal of Biodiversity and conservation*, 12(4), 326-336.

⁴⁶¹ Harvey, R. (2016). Risks and fallacies associated with promoting a legalised trade in Ivory. *Politikon*, 43(2), 215-229.

activities. The spike in elephant poaching following the 2008 CITES-approved ivory sales demonstrates the risks of stimulating demand⁴⁶².

In evaluating these competing claims, it is crucial to consider Namibia's unique context. The country's strong track record in conservation and community-based management sets it apart from many other range states. However, the transboundary nature of wildlife trade means that Namibia's policies could have far-reaching consequences beyond its borders.

On balance, while Namibia's CBNRM success suggests potential for sustainable use approaches, the risks associated with reopening international trade in ivory and rhino horn likely outweigh the potential benefits at this time. A more viable path forward may be to focus on expanding non-consumptive uses of wildlife, such as photographic tourism, which can generate significant revenues without the inherent risks of product-based trade. Ultimately, any policy changes should be approached with extreme caution and based on rigorous analysis of potential impacts both within Namibia and across the wider region.

5.4 CURRENT WILDLIFE PRODUCT STOCKPILES

As a result of its growing wildlife populations and sustainable use policies, Namibia has accumulated significant stockpiles of ivory and other wildlife products over the past decades⁴⁶³. Understanding the size and nature of these stockpiles is crucial for evaluating potential trade scenarios.

⁴⁶² Hsiang, S., & Sekar, N. (2016). Does legalization reduce black market activity? Evidence from a global ivory experiment and elephant poaching data (No. w22314). National Bureau of Economic Research.

⁴⁶³ 't Sas-Rolfes, M., Moyle, B., & Stiles, D. (2014). The complex policy issue of elephant ivory stockpile management. *Pachyderm*, 55, 62-77.

According to the Ministry of Environment, Forestry and Tourism, as of 2019 Namibia's government-held ivory stockpile totalled approximately 69,000 kg⁴⁶⁴. The vast majority of this ivory was obtained through natural elephant mortalities, problem animal control, and seizures from illegal activities. Only a small percentage comes from trophy hunting, which is strictly regulated in Namibia. In addition to ivory, Namibia also holds stockpiles of rhino horn totalling around 800 kg as of 2018⁴⁶⁵. Like ivory, most of this rhino horn comes from natural mortalities and anti-poaching operations rather than trophy hunting.

The accumulation of these stockpiles has created significant management challenges and costs for the Namibian government. Secure storage facilities must be maintained and inventory systems kept up to date, all of which require substantial resources⁴⁶⁶. There are also opportunity costs associated with keeping potentially valuable products in storage rather than deriving economic benefits from them.

The existence of these stockpiles has fuelled debate about whether Namibia should be permitted to sell them on the international market. Proponents argue that revenues from stockpile sales could generate much-needed funding for conservation efforts. For instance, a 2017 economic analysis estimated that Namibia's ivory stockpile alone could be worth over US\$40 million if sold internationally⁴⁶⁷. Critics, however, warn that any legal sales could stimulate demand and provide cover for illegal trade. They

⁴⁶⁴ Shifeta, P. (2019). Statement by Honourable Pohamba Shifeta, MP

⁴⁶⁵ Informanté. (2018). Namibia's rhino horn stockpile worth millions. Retrieved from <https://informante.web.na/namibias-rhino-horn-stockpile-worth-millions/>

⁴⁶⁶ *ibid*

⁴⁶⁷ 't Sas-Rolfes, M., Moyle, B., & Stiles, D. (2014). The complex policy issue of elephant ivory stockpile management. *Pachyderm*, 55, 62-77.

point to the experience of the 2008 CITES-approved ivory sales, after which poaching levels rose dramatically across Africa⁴⁶⁸.

The Namibian government has consistently advocated for the right to sell its stockpiles, arguing that it should be rewarded for its conservation successes⁴⁶⁹. At the 18th Conference of Parties to CITES in 2019, Namibia (along with Botswana, Zimbabwe, and South Africa) unsuccessfully proposed amendments to allow ivory trade⁴⁷⁰. The rejection of these proposals has left Namibia in the difficult position of managing growing stockpiles without a legal avenue for international trade.

In evaluating these arguments, it is important to consider the unique context of Namibia's wildlife management approach. The country's successful community-based natural resource management program has created strong incentives for conservation at the local level. Allowing the sale of stockpiles could potentially provide additional resources to support these community-based efforts. However, the risk of stimulating broader demand for wildlife products cannot be ignored. Moreover, the international nature of wildlife trade means that Namibia's decisions have implications far beyond its borders. While Namibia has demonstrated strong conservation practices, legalizing trade could potentially undermine efforts in countries with weaker governance and anti-poaching capabilities.

On balance, while the economic arguments for selling stockpiles are compelling, the potential risks to global conservation efforts likely outweigh the benefits at this time.

⁴⁶⁸ Hsiang, S., & Sekar, N. (2016). Does legalization reduce black market activity? Evidence from a global ivory experiment and elephant poaching data (No. w22314). National Bureau of Economic Research.

⁴⁶⁹ Lesser, J. (2018). The Future of Conservation in Namibia: Making the Case for an Environmental Court and Legislative Reforms to Improve Enforcement of Wildlife Crimes. *Tulane Environmental Law Journal*, 32(1), 49-91.

⁴⁷⁰ CITES. (2019). Consideration of Proposals for Amendment of Appendices I and II. CoP18 Prop. 11.

Ultimately, any decisions regarding stockpile management should be made with careful consideration of both the local and global implications, and in close consultation with other range states and the international conservation community.

5.5 CHAPTER SUMMARY

Namibia's unique context - characterized by conservation success, innovative community-based natural resource management, significant wildlife product stockpiles, and ongoing poaching challenges - creates a complex backdrop for debates over legalizing trade in ivory and other endangered species products. The country's experience demonstrates both the potential benefits of sustainable use approaches and the risks posed by illegal wildlife trade. As Namibia continues to grapple with these issues, policymakers must carefully weigh the potential economic and conservation benefits of legal trade against the risks of stimulating demand and undermining existing protection efforts. The perspectives of local communities, who have been at the forefront of Namibia's conservation achievements, should be central to any policy decisions. Ultimately, Namibia's path forward on wildlife product trade will have significant implications not only domestically, but for broader debates about conservation strategies across Africa. As such, it deserves careful study and analysis to inform evidence-based policymaking.

CHAPTER SIX: RESULTS AND DISCUSSIONS

6.1 INTRODUCTION

This chapter presents the findings of the study on the potential legalization of trade in ivory and endangered species products in Namibia. The results are structured to address each of the sections of the interview guide (Appendix A), providing insights into the current legal landscape, potential impacts of legalization, lessons from previous trade experiments, Namibia's unique factors, and a proposed framework for managed trade.

The discussion interprets these findings in the context of existing literature, legislation, policies and conservation practices, highlighting the complex interplay between legal structures, ecological concerns, economic potentials, and practical enforcement challenges. The results synthesize diverse data sources and expert opinions, to provide a nuanced understanding of the opportunities and risks associated with legalizing wildlife product trade in Namibia. This chapter not only presents factual findings but also offers critical analysis and interpretation, setting the stage for the conclusions and recommendations that follow.

6.2 DEMOGRAPHIC PROFILE OF RESPONDENTS

Table 6.1 presents demographic information for 29 respondents involved in various aspects of conservation and endangered species product issues in Namibia. The respondents represent a diverse range of professional roles, organization types, educational backgrounds, age ranges, genders, and levels of international experience.

Table 1: The demographic information of respondents

Code	Professional Role	Years of Experience	Organization Type	Educational Background	Age Range	Gender	International Experience
R1	Senior Ecologist	15	Government Ministry	PhD in Ecology	45-54	Female	Yes
R2	Conservation Officer	8	NGO	BSc in Wildlife Management	35-44	Male	No
R3	Policy Analyst	12	Think Tank	MSc in Environmental Policy	35-44	Female	Yes
R4	Conservationist	20	NGO	MSC Wildlife Biology	55-64	Male	Yes
R5	Legal Advisor	10	Government Ministry	LLM in Environmental Law	35-44	Female	No
R6	Park Ranger	5	National Park	Diploma in Conservation	25-34	Male	No
R7	Research Scientist	18	University	PhD in Zoology	45-54	Male	Yes

R8	Community Liaison	7	NGO	BA in Social Work	35-44	Female	No
R9	Enforcement Officer	13	Customs Agency	BSc in Criminology	45-54	Male	Yes
R10	Wildlife Biologist	9	Research Institute	MSc in Wildlife Biology	35-44	Female	Yes
R11	Tourism Manager	11	Private Sector	MBA	35-44	Male	Yes
R12	Conservancy Manager	14	Community Conservancy	BSc in Natural Resource Management	45-54	Female	No
R13	Environmental Lawyer	16	Law Firm	JD, LLM in Environmental Law	45-54	Male	Yes
R14	Anti-Poaching Unit Leader	6	National Park	Military Background	25-34	Male	No
R15	Wildlife Economist	22	International Organization	PhD in Resource Economics	55-64	Female	Yes
R16	Conservancy Manager	8	Research Institute	PhD in Genetics	35-44	Male	Yes
R17	Traditional Leader	30	Community	Traditional Knowledge	65+	Male	No
R18	Wildlife Trafficking Investigator	10	National Police	BSc in Criminal Justice	35-44	Female	Yes
R19	Environmental Education Specialist	12	NGO	MEd in Environmental Education	35-44	Female	No
R20	Sustainable Use Expert	25	CITES	PhD in Sustainable Development	55-64	Male	Yes
R21	Wildlife Photographer	15	Media	BA in Journalism	45-54	Female	Yes

R22	GIS Specialist	7	Government Ministry	MSc in Geographic Information Systems	25-34	Male	No
R23	Wildlife Trade Policy Advisor	20	International NGO	PhD in International Relations	45-54	Female	Yes
R24	Veterinary Pathologist	18	Diagnostic Lab	DVM, PhD in Pathology	45-54	Male	Yes
R25	Community Conservation Coordinator	9	NGO	MSc in Rural Development	35-44	Female	No
R26	Environmental Impact Assessor	11	Consulting Firm	MSc in Environmental Science	35-44	Male	Yes
R27	Wildlife Forensic Scientist	13	Government Lab	PhD in Forensic Science	35-44	Female	Yes
R28	Eco-tourism Operator	16	Private Sector	BSc in Tourism Management	45-54	Male	Yes
R29	International Development Specialist	14	Donor Agency	MA in International Development	45-54	Female	Yes

Professional roles vary widely, including ecologists, policy analysts, veterinarians, legal advisors, enforcement officers, community liaisons, and specialists in areas such as genetics, economics, and forensics. Years of experience range from 5 to 30 years, with an average of approximately 13.5 years. Organization types include government agencies, NGOs, research institutions, national parks, private sector entities, community organizations, and international bodies. Educational backgrounds are diverse, with many respondents holding advanced degrees (Masters and PhDs) in relevant fields. Age ranges are represented across categories from 25-34 to 65+, with the majority falling in the 35-44 and 45-54 ranges. There is a relatively balanced gender representation, with 15 males and 14 females. 19 respondents report international experience, while 10 report no international experience.

The demographic profile of this study reflects the multifaceted nature of wildlife conservation and endangered species product management in Namibia. The diversity of expertise and organizational representation among respondents mirrors the complexity of Namibia's legislative framework and conservation approach. This multidisciplinary composition enhances the study's potential to provide comprehensive insights into the viability of legal trade in endangered species products.

The inclusion of respondents from government agencies, NGOs, and community organizations reflects Namibia's (CBNRM) approach. This approach, enshrined in the Nature Conservation Amendment Act 5 of 1996, has been pivotal in Namibia's conservation success. The representation of community liaisons and traditional leaders in our sample suggests that this study can offer valuable insights into the practical implementation and community-level impacts of wildlife management policies.

The high level of education among respondents, with many holding advanced degrees, indicates a sample well-equipped to navigate the technical complexities of wildlife management and conservation. This expertise is crucial for addressing Namibia's obligations under international agreements such as CITES, which demand sophisticated monitoring and enforcement mechanisms⁴⁷¹. The presence of legal experts and enforcement officers in the sample further strengthens the study's capacity to critically examine the practical challenges of implementing and enforcing wildlife protection laws, such as the Controlled Wildlife Products and Trade Act 9 of 2008⁴⁷².

The international experience reported by many respondents is particularly relevant given the transboundary nature of conservation challenges and the global context of illegal wildlife trade. This global perspective, combined with local expertise, positions the study to offer nuanced insights into how Namibia's policies interact with and are influenced by international conservation efforts and agreements⁴⁷³.

The age distribution of respondents, concentrated in the 35-54 range, suggests a sample that balances experience with current knowledge. This combination is vital for addressing both long-standing conservation issues and emerging challenges, such as adapting to climate change impacts on wildlife⁴⁷⁴.

The gender balance in the sample is noteworthy, reflecting broader efforts to promote gender equality in conservation and natural resource management, as outlined in

⁴⁷¹ Lindsey, P. A., Balme, G., Becker, M., Begg, C., Bento, C., Bocchino, C., & Zulu, A. (2013). The bushmeat trade in African savannas: Impacts, drivers, and possible solutions. *Biological conservation*, 160, 80-96.

⁴⁷² Ntema, L. J. (2018). The challenge of wildlife crime enforcement in Namibia: A case study of Etosha National Park. *Journal of Law and Criminal Justice*, 6(1), 19-31.

⁴⁷³ Cumming, D. H. M., Allen, G. E., Ban, N. C., Biggs, D., Biggs, H. C., Cumming, D. H. M., & Schoon, M. (2015). Understanding protected area resilience: a multi-scale, social-ecological approach. *Ecological Applications*, 25(2), 299-319.

⁴⁷⁴ Muntifering, J. R., Linklater, W. L., Clark, S. G., Uri-Khob, S., Kasaona, J. K., Uiseb, K., & Knight, A. T. (2015). Harnessing values to save the rhinoceros: insights from Namibia. *Oryx*, 49(1), 98-105

Namibia's National Gender Policy⁴⁷⁵. This balance enhances the study's potential to capture diverse perspectives on wildlife management and trade issues.

In conclusion, the demographic profile of this study's participants provides a strong foundation for a comprehensive analysis of the complex issues surrounding the viability of legal trade in endangered species products in Namibia. The diverse expertise and balanced representation across various demographic factors position this study to offer valuable insights that can inform policy decisions and contribute to the ongoing dialogue on sustainable wildlife management in Namibia and beyond.

6.3 POTENTIAL IMPACTS AND VIABILITY OF LEGALIZING TRADE

When asked about the potential ecological impacts of legalizing trade in ivory and endangered species products, respondents offered a range of perspectives, often reflecting their professional backgrounds and experiences.

R1, a senior ecologist, expressed concern: "Look, we're treading on thin ice here. Legalizing trade could send the wrong message. We might see an uptick in poaching as demand increases. It's not just about elephants and rhinos either – there's a whole ecosystem at stake"⁴⁷⁶

R7, a research scientist, offered a more nuanced view: "It's not black and white. If done right, legal trade could actually incentivize conservation. But, and this is a big but, we'd need rock-solid regulations and monitoring. The Nature Conservation Ordinance would need a major overhaul to handle this"⁴⁷⁷

⁴⁷⁵ Republic of Namibia. (2010). National Gender Policy (2010-2020). Ministry of Gender Equality and Child Welfare, Windhoek.

⁴⁷⁶ R1 response to a questionnaire by Anne Otto, 15 August 2024.

⁴⁷⁷ R7 response to a questionnaire by Anne Otto, 14 August 2024

R10, a wildlife biologist, highlighted potential positive impacts: "Controlled legal trade could potentially reduce pressure on wild populations. If we're smart about it, we could use revenues to fund conservation efforts. But we'd need to amend the Controlled Wildlife Products and Trade Act to ensure proper oversight"⁴⁷⁸

R4, a wildlife veterinarian, raised concerns about animal welfare: "My worry is that legalizing trade might lead to more intensive farming of wildlife. We've seen this with other species. It's not just about numbers; it's about the quality of life for these animals"⁴⁷⁹

R20, a sustainable use expert, argued: "Ecological impacts could be positive if we get the policy right. Legal trade could fund habitat protection, anti-poaching efforts. But we need to consider the Environmental Management Act of 2007 – any trade system would need to comply with its provisions on sustainable use."⁴⁸⁰

R15, a wildlife economist, added: "There's potential for positive ecological impacts through better-funded conservation. But we need to be cautious. The demand elasticity for these products is crucial. If demand outstrips sustainable supply, we're in trouble."⁴⁸¹

R6, a park ranger, shared frontline concerns: "I'm worried it could make our job harder. If there's legal trade, how do we distinguish between legal and illegal products? We'd need major updates to our enforcement protocols."⁴⁸²

⁴⁷⁸ R10 response to a questionnaire by Anne Otto, 15 August 2024

⁴⁷⁹ R4 response to a questionnaire by Anne Otto, 16 August 2024

⁴⁸⁰ R20 response to a questionnaire by Anne Otto, 17 August 2024

⁴⁸¹ R15 response to a questionnaire by Anne Otto, 15 August 2024

⁴⁸² R6 response to a questionnaire by Anne Otto, 14 August 2024

R17, a traditional leader, offered a community perspective: "Our people have lived alongside these animals for generations. Legal trade could help us benefit from wildlife, but we need guarantees that it won't deplete our natural heritage." ⁴⁸³

R23, a wildlife trade policy advisor, pointed out: "We need to consider CITES obligations here. Any legalization would need to align with international commitments. It's not just about domestic law; it's a global issue." ⁴⁸⁴

R27, a wildlife forensic scientist, added: "From a scientific standpoint, we'd need robust systems to track products from source to market. DNA profiling, isotope analysis – these tools would be crucial. But our current laws don't fully account for these technologies." ⁴⁸⁵

The responses reveal a complex picture of the potential ecological impacts of legalizing trade in ivory and endangered species products in Namibia. This complexity has significant implications for assessing the viability of such trade.

The concern raised by several respondents about increased poaching pressure aligns with arguments that legal trade could stimulate demand and provide cover for illegal activities⁴⁸⁶. This suggests that our study must carefully consider the potential for legalization to inadvertently exacerbate conservation challenges.

However, the potential for legal trade to incentivize conservation, as mentioned by some respondents, is consistent with the argument that well-regulated trade could

⁴⁸³ R17 response to a questionnaire by Anne Otto, 15 August 2024

⁴⁸⁴ R23 response to a questionnaire by Anne Otto, 12 August 2024

⁴⁸⁵ R27 response to a questionnaire by Anne Otto, 14 August 2024

⁴⁸⁶ Bennett, E. L. (2015). Legal ivory trade in a corrupt world and its impact on African elephant populations. *Conservation Biology*, 29(1), 54-60.

generate funds for conservation and reduce pressure on wild populations⁴⁸⁷. This perspective implies that our assessment of viability must include a thorough analysis of how trade revenues could be effectively channelled into conservation efforts.

The need for robust regulations and monitoring systems, as highlighted by several experts, is consistent with the recommendations of scholars who emphasise the importance of strong governance in any legal trade system⁴⁸⁸. This indicates that our study must go beyond purely economic considerations, incorporating a detailed evaluation of Namibia's regulatory capacity to ensure effective implementation and oversight of wildlife trade systems.

Further concerns about animal welfare and the practice of intensive wildlife farming underscore an often-neglected aspect of the trade debate. It has been noted that intensive wildlife management can have significant ecological and ethical ramifications⁴⁸⁹. Thus, our study must not only assess the sustainable quantity of wildlife available for trade but also consider the quality of life of animals involved in a legalized trade framework.

Moreover, the focus on community perspectives and benefits is aligned with Namibia's community-based natural resource management (CBNRM) approach. It has been argued that successful conservation in Namibia is closely tied to the economic benefits

⁴⁸⁷ 't Sas-Rolfes, M., Challender, D. W., Hinsley, A., Veríssimo, D., & Milner-Gulland, E. J. (2019). Illegal Wildlife Trade: Scale, Processes, and Governance. *Annual Review of Environment and Resources*, 44, 201-228.

⁴⁸⁸ Biggs, D., Courchamp, F., Martin, R., & Possingham, H. P. (2013). Legal trade of Africa's rhino horns. *Science*, 339(6123), 1038-1039.

⁴⁸⁹ Kiffner, C., Wenner, C., LaViolet, A., Yeh, K., & Kioko, J. (2014). From savannah to farmland: effects of land-use on mammal communities in the Tarangire–Manyara ecosystem, Tanzania. *African Journal of Ecology*, 53(2), 156-166.

realised by local communities⁴⁹⁰. Therefore, our assessment of the viability of wildlife trade must also address the mechanisms for ensuring an equitable distribution of benefits to these communities.

The necessity to align any legalization efforts with Namibia's international obligations under the CITES, as pointed out by a wildlife trade policy advisor, highlights the global dimensions of this issue. National wildlife trade policies operate within a complex international regulatory framework, making it crucial for our study to consider how potential legalization would interact with international conservation agreements⁴⁹¹.

Finally, the emphasis on scientific tools for product tracking aligns with growing calls for the use of forensic technologies in wildlife trade management. This suggests that our assessment of trade viability must include an evaluation of Namibia's technological and scientific capacity to implement such systems⁴⁹².

In conclusion, the diverse perspectives on potential ecological impacts highlight the need for a multifaceted approach to assessing the viability of legal trade. Our study must consider not only direct impacts on wildlife populations, but also broader ecosystem effects, animal welfare concerns, community impacts, and the complex interplay between national policy and international obligations.

⁴⁹⁰ Naidoo, R., Weaver, L. C., Diggle, R. W., Matongo, G., Stuart-Hill, G., & Thouless, C. (2016). Complementary benefits of tourism and hunting to communal conservancies in Namibia. *Conservation Biology*, 30(3), 628-638.

⁴⁹¹ Challender, D. W., Harrop, S. R., & MacMillan, D. C. (2015). Understanding markets to conserve trade-threatened species in CITES. *Biological Conservation*, 187, 249-259.

⁴⁹² Ogden, R., Dawnay, N., & McEwing, R. (2009). Wildlife DNA forensics—bridging the gap between conservation genetics and law enforcement. *Endangered Species Research*, 9(3), 179-195.

6.4 LESSONS FROM PREVIOUS LEGALIZATION ATTEMPTS

When asked about the lessons Namibia can learn from previous legalization attempts, respondents offered insights based on their knowledge of international conservation efforts and policy outcomes.

R23, a wildlife trade policy advisor, emphasized the importance of international cooperation: "Look at the one-off ivory sales permitted by CITES in 2008. The idea was good on paper, but it backfired. Namibia needs to understand that we can't act in isolation. Any legalization attempt needs buy-in from other range states and consumer countries."⁴⁹³

R3, a policy analyst, highlighted the need for robust monitoring systems: "The South African experience with rhino horn trade is instructive. They legalized domestic trade, but without adequate systems to track horn from source to market. We can't make that mistake. We'd need to amend our Controlled Wildlife Products and Trade Act to mandate end-to-end tracking."⁴⁹⁴

R15, a wildlife economist, pointed out the complexities of market dynamics: "The vicuña fiber trade in South America offers both positive and cautionary lessons. It shows that sustainable use can work, but also that market fluctuations can have big impacts on conservation outcomes. We'd need to build flexibility into our legal frameworks."⁴⁹⁵

R20, a sustainable use expert, emphasized the importance of community involvement: "Namibia's CBNRM program is world-renowned. We need to learn from our own

⁴⁹³ R23 response to a questionnaire by Anne Otto, 12 August 2024

⁴⁹⁴ R3 response to a questionnaire by Anne Otto, 9 August 2024

⁴⁹⁵ R15 response to a questionnaire by Anne Otto, 15 August 2024

successes. Any legalization attempt should build on this foundation. The Nature Conservation Amendment Act of 1996 gives us a legal basis for this approach."⁴⁹⁶

R13, an environmental lawyer, stressed the need for comprehensive legislation: "Look at the legal challenges South Africa faced with their domestic rhino horn trade. We need to ensure our laws cover all bases - trade, possession, transport, the works. It's not just about amending existing laws; we might need entirely new legislation."⁴⁹⁷

R27, a wildlife forensic scientist, highlighted technological considerations: "Previous legalization attempts have often failed due to inability to distinguish legal from illegal products. We need to learn from this. Our laws should mandate the use of forensic technologies like DNA profiling and isotope analysis."⁴⁹⁸

R5, a legal advisor, pointed out the importance of harmonizing domestic and international law: "We can't ignore our CITES obligations. Any legalization attempt needs to be carefully crafted to align with international law. We should learn from countries that have successfully navigated this, like Australia with its crocodile trade."⁴⁹⁹

R1, a senior ecologist, emphasized the need for adaptive management: "Previous attempts often failed because they were too rigid. We need to build in mechanisms for adapting our approach based on ecological monitoring. This would require amending our Environmental Management Act to include specific provisions for wildlife trade."⁵⁰⁰

⁴⁹⁶ R20 response to a questionnaire by Anne Otto, 17 August 2024

⁴⁹⁷ R13 response to a questionnaire by Anne Otto, 16 August 2024

⁴⁹⁸ R27 response to a questionnaire by Anne Otto, 14 August 2024

⁴⁹⁹ R5 response to a questionnaire by Anne Otto, 15 August 2024

⁵⁰⁰ R1 response to a questionnaire by Anne Otto, 15 August 2024

R18, a wildlife trafficking investigator, stressed the importance of strong enforcement: "Many countries have good laws on paper, but fail in enforcement. We need to learn from this. Any legalization must be accompanied by significant investment in enforcement capacity."⁵⁰¹

R29, an international development specialist, highlighted the need for stakeholder engagement: "Previous attempts often failed because they didn't have broad support. We need to engage all stakeholders - communities, conservationists, the private sector - in developing any legalization framework."⁵⁰²

The responses from our expert panel provide crucial insights into the lessons Namibia can learn from previous attempts to legalize wildlife product trade. These insights have significant implications for assessing the viability and potential implementation of legal trade in Namibia.

The emphasis on international cooperation, as highlighted by the wildlife trade policy advisor, aligns with findings that argue successful legalization of wildlife product trade requires coordinated action at both national and international levels⁵⁰³. This suggests that our study must consider not only Namibia's domestic capacity for managing legal trade but also its ability to navigate complex international dynamics. The example of the 2008 CITES-approved ivory sales, which many argue led to increased poaching across Africa, underscores the potential for unintended consequences when international dynamics are not fully considered⁵⁰⁴.

⁵⁰¹ R18 response to a questionnaire by Anne Otto, 17 August 2024

⁵⁰² R29 response to a questionnaire by Anne Otto, 6 August 2024

⁵⁰³ Biggs, D., Courchamp, F., Martin, R., & Possingham, H. P. (2013). Legal trade of Africa's rhino horns. *Science*, 339(6123), 1038-1039.

⁵⁰⁴ Hsiang, S., & Sekar, N. (2019). Does legalization reduce black market activity? Evidence from a global ivory experiment and elephant poaching data. National Bureau of Economic Research.

The need for robust monitoring systems, emphasized by several respondents, echoes the recommendations of scholars who stress the importance of traceability in any legal wildlife trade system⁵⁰⁵. This implies that our assessment of trade viability in Namibia must include a thorough evaluation of the country's technological and institutional capacity to implement end-to-end tracking of wildlife products. The challenges faced by South Africa in its attempt to legalize domestic rhino horn trade provide a cautionary tale, indicating that Namibia would need to ensure its legal framework, particularly the Controlled Wildlife Products and Trade Act, is updated to mandate comprehensive tracking systems.

The insights on market dynamics provided by the wildlife economist highlight the need for flexible and adaptive management approaches. This aligns with the argument that wildlife trade policy must be responsive to changing market conditions⁵⁰⁶. For our study, this suggests that any recommendations for legal trade must include mechanisms for adapting regulations in response to market shifts and ecological indicators.

The emphasis on community involvement and building on Namibia's CBNRM success aligns with findings demonstrating the positive impacts of community-based conservation approaches in Namibia⁵⁰⁷. This suggests that our assessment of trade viability should consider how legalization could be integrated with and enhance existing community-based conservation models. The legal basis provided by the

⁵⁰⁵ 't Sas-Rolfes, M., Moyle, B., & Stiles, D. (2014). The complex policy issue of elephant ivory stockpile management. *Pachyderm*, 55, 62-77

⁵⁰⁶ Challender, D. W., Harrop, S. R., & MacMillan, D. C. (2015). Understanding markets to conserve trade-threatened species in CITES. *Biological Conservation*, 187, 249-259.

⁵⁰⁷ Naidoo, R., Weaver, L. C., Diggle, R. W., Matongo, G., Stuart-Hill, G., & Thouless, C. (2016). Complementary benefits of tourism and hunting to communal conservancies in Namibia. *Conservation Biology*, 30(3), 628-638.

Nature Conservation Amendment Act of 1996 offers a potential framework for this integration.

The need for comprehensive legislation, as stressed by the environmental lawyer, underscores the complexity of regulating wildlife trade. This aligns with analysis highlighting the challenges of crafting effective wildlife trade legislation⁵⁰⁸. Our study must therefore consider whether Namibia's existing legal framework is sufficient for managing legal trade, or whether new, specialized legislation is needed.

The emphasis on technological considerations, particularly the use of forensic technologies, echoes the growing body of literature on wildlife forensics⁵⁰⁹. This suggests that our assessment must include an evaluation of Namibia's capacity to implement and maintain advanced tracking and verification technologies.

The importance of harmonizing domestic and international law, as pointed out by the legal advisor, aligns with research examining the complex interactions between national wildlife laws and international agreements⁵¹⁰. This implies that our study must carefully consider how potential legalization in Namibia would interact with the country's CITES obligations and other international commitments.

The need for adaptive management, emphasized by the senior ecologist, resonates with the principles of adaptive resource management⁵¹¹. This suggests that our

⁵⁰⁸ Wandesforde-Smith, G. (2016). Looking for law in all the wrong places? Dying elephants, evolving treaties, and empty threats. *Journal of International Wildlife Law & Policy*, 19(4), 365-381.

⁵⁰⁹ Ogden, R., Dawnay, N., & McEwing, R. (2009). Wildlife DNA forensics—bridging the gap between conservation genetics and law enforcement. *Endangered Species Research*, 9(3), 179-195.

⁵¹⁰ Bowman, M. (2013). A tale of two CITES: Divergent perspectives upon the effectiveness of the wildlife trade convention. *Review of European, Comparative & International Environmental Law*, 22(3), 228-238.

⁵¹¹ Williams, B. K., & Brown, E. D. (2014). Adaptive management: from more talk to real action. *Environmental Management*, 53(2), 465-479.

recommendations should include mechanisms for ongoing monitoring and policy adjustment based on ecological and socio-economic outcomes.

The emphasis on enforcement capacity aligns with findings that the effectiveness of wildlife protection laws is heavily dependent on enforcement capabilities⁵¹². This implies that our assessment of trade viability must include a thorough evaluation of Namibia's law enforcement capacity and potential needs for enhancement.

Finally, the importance of stakeholder engagement highlighted by the international development specialist echoes the principles of collaborative governance in natural resource management⁵¹³. This suggests that our study should consider processes for inclusive policy development and implementation as part of assessing the viability of legal trade.

In conclusion, the diverse lessons from previous legalization attempts underscore the complexity of implementing legal wildlife product trade. Our study must consider a wide range of factors, from international dynamics and market forces to community involvement and technological capacity. The experiences of other countries provide both cautionary tales and potential models, suggesting that a carefully crafted, adaptive, and inclusive approach would be necessary for any successful legalization effort in Namibia.

⁵¹² Nurse, A. (2015). Policing wildlife: perspectives on criminality in wildlife crime. *Papers from the British Criminology Conference* (Vol. 15, pp. 38-53).

⁵¹³ Ansell, C., & Gash, A. (2008). Collaborative governance in theory and practice. *Journal of Public Administration Research and Theory*, 18(4), 543-571.

6.5 NAMIBIA'S UNIQUE FACTORS

When asked about Namibia's unique factors that could influence the outcomes of legalized trade, respondents provided insights that highlighted the country's distinctive conservation approach and socio-economic context.

R20, a sustainable use expert, emphasized Namibia's track record: "Look, Namibia's not your average conservation case. We've got a history of increasing wildlife populations while other countries have seen declines. Our Nature Conservation Ordinance of 1975, with its amendments, has given us a solid foundation for sustainable use."⁵¹⁴

R12, a conservancy manager, highlighted community involvement: "What sets us apart is our conservancy system. It's not just about government-run parks. Our communities are actively involved in wildlife management. The Nature Conservation Amendment Act of 1996 really changed the game for us."⁵¹⁵

R15, a wildlife economist, pointed out economic factors: "Namibia's relatively stable economy and low corruption levels could make a difference. We're not dealing with the same level of economic desperation you see in some other range states. This could help us manage legal trade more effectively."⁵¹⁶

R5, a legal advisor, stressed the legal framework: "Our constitution explicitly mentions environmental protection. Article 95(l) mandates sustainable use of natural resources.

⁵¹⁴ R20 response to a questionnaire by Anne Otto, 17 August 2024

⁵¹⁵ R12 response to a questionnaire by Anne Otto, 14 August 2024

⁵¹⁶ R15 response to a questionnaire by Anne Otto, 15 August 2024

That gives us a strong legal basis for carefully managed trade, if we decide to go that route."⁵¹⁷

R1, a senior ecologist, highlighted ecological factors: "Namibia's arid environment means our wildlife populations are more dispersed. This could actually make it easier to monitor and manage populations in a legal trade scenario."⁵¹⁸

R29, an international development specialist, mentioned geopolitical aspects: "Namibia's political stability and good relationships with neighbouring countries could be advantageous. Any legal trade system would need regional cooperation, and we're well-positioned for that."⁵¹⁹

R17, a traditional leader, emphasized cultural factors: "Our people have long lived alongside wildlife. There's a cultural understanding of sustainable use that you don't find everywhere. This could help in managing legal trade responsibly."⁵²⁰

R7, a research scientist, pointed out scientific capacity: "Namibia has invested in wildlife research and monitoring. Our ability to track population trends could be crucial in managing legal trade sustainably."⁵²¹

R23, a wildlife trade policy advisor, highlighted international standing: "Namibia is seen as a conservation success story. That gives us some credibility on the international stage, which could be important if we pursue legalization."⁵²²

⁵¹⁷ R5 response to a questionnaire by Anne Otto, 15 August 2024

⁵¹⁸ R1 response to a questionnaire by Anne Otto, 15 August 2024

⁵¹⁹ R29 response to a questionnaire by Anne Otto, 6 August 2024

⁵²⁰ R17 response to a questionnaire by Anne Otto, 15 August 2024

⁵²¹ R7 response to a questionnaire by Anne Otto, 14 August 2024

⁵²² R23 response to a questionnaire by Anne Otto, 12 August 2024

R3, a policy analyst, stressed adaptive management: "Our policy framework, especially under the Environmental Management Act of 2007, allows for adaptive management. That flexibility could be key in navigating the complexities of legal wildlife trade."⁵²³

The responses from our expert panel highlight several unique factors that could potentially influence the outcomes of legalized wildlife product trade in Namibia. These insights provide a crucial context for assessing the viability of legal trade in the country.

Namibia's track record of increasing wildlife populations, as emphasized by the sustainable use expert, sets it apart from many other range states. This aligns with findings that document significant increases in wildlife populations in Namibia's communal conservancies⁵²⁴. This success suggests that Namibia may have the management capacity to sustainably regulate legal trade. However, it also raises the stakes—any negative impacts from legalization could jeopardize these hard-won conservation gains.

The country's CBNRM system, highlighted by several respondents, is indeed a distinctive feature of Namibia's conservation approach. As noted, Namibia's CBNRM program has been internationally recognized as a successful model for integrating conservation and rural development⁵²⁵. This system could potentially provide a

⁵²³ R3 response to a questionnaire by Anne Otto, 9 August 2024

⁵²⁴ Naidoo, R., Weaver, L. C., Diggle, R. W., Matongo, G., Stuart-Hill, G., & Thouless, C. (2016). Complementary benefits of tourism and hunting to communal conservancies in Namibia. *Conservation Biology*, 30(3), 628-638.

⁵²⁵ Jones, B. T., & Weaver, L. C. (2009). CBNRM in Namibia: growth, trends, lessons and constraints. *Evolution and Innovation in Wildlife Conservation*, 223-242.

framework for equitable benefit-sharing in a legal trade scenario, addressing one of the key challenges identified in other countries' legalization attempts.

The economic factors mentioned, particularly Namibia's relative stability and low corruption levels, could indeed be advantageous. Transparency International consistently ranks Namibia among the least corrupt countries in Africa, which could be crucial for implementing a well-regulated trade system, as corruption has been identified as a major obstacle to effective wildlife trade management in other contexts⁵²⁶.

The strong legal foundation for environmental protection and sustainable use, enshrined in Namibia's constitution and elaborated in various laws, provides a robust framework for potential trade legalization. Legal reforms in the 1990s created a supportive environment for community-based conservation, which could facilitate the development of comprehensive regulations for legal wildlife product trade⁵²⁷.

The ecological factors mentioned, particularly the dispersed nature of wildlife populations in Namibia's arid environment, present both challenges and opportunities. While dispersed populations might be easier to monitor, they also require more resources for effective management. The unique challenges of conserving wide-ranging species like black rhinos in Namibia's arid northwest have been noted, and any legal trade system would need to account for these ecological realities⁵²⁸.

⁵²⁶ Transparency International. (2020). Corruption Perceptions Index 2020. Transparency International.

⁵²⁷ Bennett, E. L. (2015). Legal ivory trade in a corrupt world and its impact on African elephant populations. *Conservation Biology*, 29(1), 54-60.

⁵²⁸ Boudreaux, K., & Nelson, F. (2011). Community conservation in Namibia: Empowering the poor with property rights. *Economic Affairs*, 31(2), 17-24.

Namibia's political stability and regional relationships, as mentioned by the international development specialist, could indeed be advantageous in implementing a legal trade system. Effective wildlife conservation and trade management often require transboundary cooperation, and Namibia's good standing in the region could facilitate such cooperation⁵²⁹.

The cultural factors highlighted, particularly the long-standing coexistence of people and wildlife, could contribute to more sustainable management of legal trade. However, it is important to note that cultural attitudes towards wildlife are not uniform across Namibia. There is significant variation in attitudes towards wildlife crime across different communities, which suggests that community engagement would be crucial in any legalization effort⁵³⁰.

Namibia's scientific capacity, particularly in wildlife monitoring, could be a significant asset in managing legal trade. However, there are still gaps in Namibia's wildlife monitoring systems, particularly for less charismatic species, and enhancing this capacity would be crucial for comprehensive trade management⁵³¹.

Namibia's international standing as a conservation success story, while potentially advantageous, also raises the stakes for any legalization attempt. Namibia's conservation model has been influential in shaping approaches in other countries, and

⁵²⁹ Muntifering, J. R., Linklater, W. L., Clark, S. G., Uri-Khob, S., Kasaona, J. K., Uiseb, K., ... & Knight, A. T. (2015). Harnessing values to save the rhinoceros: insights from Namibia. *Oryx*, 49(1), 98-105.

⁵³⁰ Duffy, R. (2016). War, by conservation. *Geoforum*, 69, 238-248.

⁵³¹ Kahler, J. S., & Gore, M. L. (2012). Beyond the cooking pot and pocket book: Factors influencing noncompliance with wildlife poaching rules. *International Journal of Comparative and Applied Criminal Justice*, 36(2), 103-120.

a failed legalization attempt could therefore have repercussions beyond Namibia's borders⁵³².

Finally, the adaptive management approach emphasized by the policy analyst aligns with best practices in natural resource management. Adaptive management is crucial for dealing with the uncertainties inherent in complex social-ecological systems, and this approach could be valuable in navigating the unpredictable dynamics of legal wildlife product trade⁵³³.

In conclusion, Namibia's unique factors – including its successful CBNRM system, strong legal framework, relative political and economic stability, and adaptive management approach – suggest that the country may be better positioned than many others to implement a well-regulated legal trade system. However, these same factors also raise the stakes, as any negative outcomes could jeopardize Namibia's conservation achievements and international reputation. Our study must carefully consider how these unique factors would interact with the challenges and risks inherent in wildlife product trade legalization.

6.6 PROPOSALS FOR A COMPREHENSIVE LEGAL FRAMEWORK

When asked about the key components that should be included in a comprehensive legal and policy framework for wildlife product trade in Namibia, respondents provided a range of insights reflecting their diverse expertise.

⁵³² Brown, C., & Potgieter, G. (2019). Can Community-Based Natural Resource Management Help Halt Biodiversity Loss in Namibia? *Environmental Conservation*, 46(1), 70-78.

⁵³³ Lindsey, P. A., Nyirenda, V. R., Barnes, J. I., Becker, M. S., McRobb, R., Tambling, C. J., & t'Sas-Rolfes, M. (2014). Underperformance of African protected area networks and the case for new conservation models: insights from Zambia. *PLoS one*, 9(5), e94109.

R5, a legal advisor, emphasized the need for clarity and comprehensiveness: "We need a framework that covers all aspects - from harvesting to export. It should clearly define what products can be traded, under what conditions, and by whom. The Controlled Wildlife Products and Trade Act needs major amendments to cover this."⁵³⁴

R13, an environmental lawyer, stressed the importance of enforcement provisions: "Any new framework must have teeth. We need strong penalties for violations, clear enforcement protocols, and provisions for international cooperation in combating wildlife crime."⁵³⁵

R3, a policy analyst, highlighted the need for adaptive management: "The framework should include mechanisms for regular review and adjustment based on ecological and market data. We could look at incorporating this into the Environmental Management Act."⁵³⁶

R20, a sustainable use expert, emphasized community involvement: "Community rights and benefits need to be at the core of any new framework. We should build on the success of our CBNRM program, maybe through amendments to the Nature Conservation Amendment Act."⁵³⁷

R27, a wildlife forensic scientist, stressed the importance of traceability: "We need legal provisions mandating the use of forensic technologies for product tracking. This could involve amending the Controlled Wildlife Products and Trade Act to require DNA profiling of traded products."⁵³⁸

⁵³⁴ R5 response to a questionnaire by Anne Otto, 15 August 2024

⁵³⁵ R13 response to a questionnaire by Anne Otto, 16 August 2024

⁵³⁶ R3 response to a questionnaire by Anne Otto, 9 August 2024

⁵³⁷ R20 response to a questionnaire by Anne Otto, 17 August 2024

⁵³⁸ R27 response to a questionnaire by Anne Otto, 14 August 2024

R15, a wildlife economist, pointed out the need for market regulation: "The framework should include provisions for price controls, quotas, and mechanisms to prevent monopolies. We might need new legislation specifically for wildlife product market regulation."⁵³⁹

R23, a wildlife trade policy advisor, emphasized international alignment: "Any new framework needs to be CITES-compliant and aligned with regional agreements. We should consider incorporating key CITES provisions directly into our domestic law."⁵⁴⁰

R1, a senior ecologist, stressed the importance of science-based decision making: "The framework should mandate regular population assessments and set clear, science-based criteria for determining sustainable offtake levels."⁵⁴¹

R9, an enforcement officer, highlighted practical considerations: "We need clear protocols for inspections, seizures, and prosecutions. The framework should also provide for capacity building and resources for enforcement agencies."⁵⁴²

R17, a traditional leader, emphasized the need for cultural sensitivity: "The framework should recognize traditional knowledge and practices. Maybe we need provisions in the Traditional Authorities Act to formalize the role of traditional leaders in wildlife management."⁵⁴³

The responses from our expert panel highlight the complexity and multifaceted nature of creating a comprehensive legal and policy framework for wildlife product trade in

⁵³⁹ R15 response to a questionnaire by Anne Otto, 15 August 2024

⁵⁴⁰ R23 response to a questionnaire by Anne Otto, 12 August 2024

⁵⁴¹ R1 response to a questionnaire by Anne Otto, 15 August 2024

⁵⁴² R9 response to a questionnaire by Anne Otto, 8 August 2024

⁵⁴³ R17 response to a questionnaire by Anne Otto, 15 August 2024

Namibia. These insights provide crucial guidance for developing a robust and effective system that could potentially support sustainable trade.

The emphasis on clarity and comprehensiveness in the legal framework, as stressed by the legal advisor, aligns with recommendations from international bodies such as CITES. Effective wildlife trade regulation requires clear, unambiguous legislation that covers all aspects of the trade chain⁵⁴⁴. For Namibia, this suggests that significant amendments to existing laws, particularly the Controlled Wildlife Products and Trade Act, would be necessary. Alternatively, as some respondents suggested, entirely new legislation specifically tailored to wildlife product trade might be required.

The importance of strong enforcement provisions, highlighted by the environmental lawyer, echoes findings from studies on wildlife crime. The effectiveness of wildlife protection laws is heavily dependent on the strength and clarity of enforcement mechanisms⁵⁴⁵. This suggests that any new legal framework in Namibia should not only define trade parameters but also clearly outline enforcement protocols, penalties for violations, and mechanisms for international cooperation in combating wildlife crime.

The call for adaptive management mechanisms in the legal framework aligns with best practices in natural resource management. Adaptive management is crucial for dealing with the uncertainties inherent in complex social-ecological systems like wildlife trade⁵⁴⁶. Incorporating such mechanisms into Namibia's Environmental Management

⁵⁴⁴ Wandesforde-Smith, G. (2016). Looking for law in all the wrong places? Dying elephants, evolving treaties, and empty threats. *Journal of International Wildlife Law & Policy*, 19(4), 365-381.

⁵⁴⁵ Nurse, A. (2015). *Policing wildlife: perspectives on the enforcement of wildlife legislation*. Palgrave Macmillan.

⁵⁴⁶ Williams, B. K., & Brown, E. D. (2014). Adaptive management: from more talk to real action. *Environmental Management*, 53(2), 465-479.

Act could provide the flexibility needed to respond to changing ecological conditions and market dynamics.

The emphasis on community involvement and benefit-sharing reflects the success of Namibia's CBNRM program. Namibia's CBNRM approach has delivered significant benefits to local communities while supporting conservation goals⁵⁴⁷. Building on this success in any new trade framework could be crucial for ensuring local support and sustainable outcomes. This might involve amendments to the Nature Conservation Amendment Act to explicitly link community benefits to legal wildlife product trade.

The focus on traceability and the use of forensic technologies, as stressed by the wildlife forensic scientist, reflects growing international trends in wildlife trade management. The potential of wildlife DNA forensics in supporting law enforcement efforts has been well-documented⁵⁴⁸. Incorporating requirements for such technologies into Namibia's legal framework could significantly enhance the country's ability to monitor and control wildlife product trade.

The need for market regulation mechanisms, pointed out by the wildlife economist, touches on a critical aspect of sustainable trade. Effective market regulation is crucial for preventing overexploitation and ensuring fair distribution of benefits⁵⁴⁹. This suggests that Namibia might need to develop new legislation specifically focused on regulating wildlife product markets, including provisions for price controls, quotas, and anti-monopoly measures.

⁵⁴⁷ Naidoo, R., Weaver, L. C., Diggle, R. W., Matongo, G., Stuart-Hill, G., & Thouless, C. (2016). Complementary benefits of tourism and hunting to communal conservancies in Namibia. *Conservation Biology*, 30(3), 628-638.

⁵⁴⁸ Ogden, R., Dawnay, N., & McEwing, R. (2009). Wildlife DNA forensics—bridging the gap between conservation genetics and law enforcement. *Endangered Species Research*, 9(3), 179-195.

⁵⁴⁹ 't Sas-Rolfes, M., Moyle, B., & Stiles, D. (2014). The complex policy issue of elephant ivory stockpile management. *Pachyderm*, 55, 62-77.

The emphasis on international alignment, particularly with CITES, reflects the global nature of wildlife trade issues. Effective national wildlife laws must be harmonized with international agreements⁵⁵⁰. For Namibia, this might involve directly incorporating key CITES provisions into domestic law, an approach that has been successfully used by countries like Australia in managing its wildlife trade⁵⁵¹.

The call for science-based decision making in the legal framework aligns with best practices in conservation management. Evidence-based conservation is crucial for effective policy making⁵⁵². This suggests that Namibia's legal framework should mandate regular scientific assessments and clear criteria for determining sustainable harvest levels.

The practical considerations highlighted by the enforcement officer underscore the need for operational clarity in the legal framework. Clear protocols and adequate resources are crucial for effective wildlife law enforcement⁵⁵³. This implies that Namibia's framework should include detailed provisions for enforcement procedures and capacity building.

Finally, the emphasis on cultural sensitivity and recognition of traditional knowledge aligns with growing recognition of the importance of indigenous and local knowledge in conservation. Integrating traditional ecological knowledge into conservation policy

⁵⁵⁰ Bowman, M. (2013). A tale of two CITES: Divergent perspectives upon the effectiveness of the wildlife trade convention. *Review of European, Comparative & International Environmental Law*, 22(3), 228-238.

⁵⁵¹ Alacs, E., & Georges, A. (2008). Wildlife across our borders: a review of the illegal trade in Australia. *Australian Journal of Forensic Sciences*, 40(2), 147-160.

⁵⁵² Sutherland, W. J., Pullin, A. S., Dolman, P. M., & Knight, T. M. (2004). The need for evidence-based conservation. *Trends in ecology & evolution*, 19(6), 305-308

⁵⁵³ Pires, S. F., & Moreto, W. D. (2011). Preventing wildlife crimes: Solutions that can overcome the 'Tragedy of the Commons'. *European Journal on Criminal Policy and Research*, 17(2), 101-123.

can enhance both ecological understanding and community support⁵⁵⁴. This suggests that Namibia might consider amendments to the Traditional Authorities Act to formalize the role of traditional leaders in wildlife management and trade regulation.

In conclusion, the diverse components suggested by our expert panel highlight the need for a comprehensive, multifaceted approach to developing a legal and policy framework for wildlife product trade in Namibia. Such a framework would need to balance clear regulations with adaptive flexibility, strong enforcement with community engagement, and domestic concerns with international obligations. The development of this framework would likely require significant amendments to existing legislation, as well as potentially new, specialized laws to address the unique challenges of wildlife product trade.

6.7 CHAPTER SUMMARY

The findings reveal a delicate balance between potential conservation benefits and significant risks across ecological, economic, and enforcement domains. The discussion emphasizes the need for adaptive management, robust monitoring systems, and strong international cooperation in any move towards legalized trade. Ultimately, this chapter demonstrates that while legalization of ivory and endangered species product trade in Namibia could potentially provide economic benefits and resources for conservation, it also carries significant risks that must be carefully weighed. The discussion sets the stage for more targeted conclusions and recommendations.

⁵⁵⁴ Berkes, F. (2009). Evolution of co-management: role of knowledge generation, bridging organizations and social learning. *Journal of Environmental Management*, 90(5), 1692-1702.

CHAPTER SEVEN: CONCLUSIONS AND RECOMMENDATIONS

7.1 INTRODUCTION

Chapter 7 focuses on summarizing the key findings of the study and presenting policy recommendations for Namibia regarding the trade in ivory and endangered species products. It also makes conclusions in light of the objectives that the study intended to fulfil. It also outlines areas for further research, including the development of more effective enforcement mechanisms and the exploration of alternative revenue streams for local communities.

7.2 SUMMARY OF CHAPTERS

Chapter 1 introduces the research topic and provides a background on the global trade in ivory and endangered species products, framing the issue within Namibia's conservation efforts. The objectives of the study are defined, focusing on examining the potential impacts of legalizing ivory trade. Key takeaways include the complex interplay between conservation and economic development, the high risks posed by poaching, and the need for a sustainable and enforceable legal framework.

Chapter 2 discusses key concepts such as wildlife trade, endangered species, and poaching, alongside theoretical underpinnings like Rawls' Theory of Justice and the Public Trust Doctrine. These frameworks guide the legal and ethical examination of whether legalizing ivory trade can be justified. The chapter concludes by establishing the foundation for the thesis' arguments, highlighting the ethical tension between conservation and resource use.

Chapter 3 provides a thorough review of international and Namibian legal frameworks, including CITES, CBD, and the Controlled Wildlife Products and Trade Act. The chapter also compares Namibia's legal frameworks with those of South Africa,

Botswana and Zimbabwe, identifying enforcement gaps and inconsistencies. The key takeaway is that while Namibia's legal frameworks are robust in terms of anti-poaching, they lack clear provisions for regulating a potential legal trade in ivory.

Chapter 4 evaluates the ecological, economic, and enforcement implications of legalizing trade in ivory, using empirical data gathered through surveys and legal analysis. It concludes that while economic benefits may exist, the risks to biodiversity and enforcement challenges make legalization a highly precarious option for Namibia at this stage.

Chapter 5 focuses on Namibia's community-based natural resource management (CBNRM) systems and their role in reducing poaching and managing wildlife sustainably. It details the success of local conservancies and the challenges they face, such as human-wildlife conflict and limited financial resources. The chapter emphasizes the importance of continuing these programs rather than risking them through legal ivory trade.

Chapter 6: presents and discusses the empirical findings from surveys and interviews with stakeholders, revealing mixed opinions on the viability of legalizing ivory trade. While some see potential economic benefits, the majority of respondents express concerns about enforcement, potential poaching increases, and the ethical implications for wildlife conservation.

7.3 CONCLUSIONS

Objective 1: To critically analyze the current legal frameworks governing trade in ivory and endangered species products in Namibia and selected comparative jurisdictions – Botswana, South Africa and Zimbabwe.

The analysis revealed that while all four countries have established legal frameworks for wildlife protection, significant differences exist in their approaches to wildlife management and trade. Namibia's legal framework, primarily based on the Nature Conservation Ordinance of 1975 and the Controlled Wildlife Products and Trade Act of 2008, provides a strong foundation for wildlife protection but would require substantial amendments to accommodate legal trade in ivory and endangered species products. Botswana's temporary lifting of the elephant hunting ban, South Africa's experience with domestic rhino horn trade, and Zimbabwe's CAMPFIRE program all offer valuable lessons in balancing conservation with economic and social pressures. Namibia's conservancy system stands out as a unique and relatively successful model of community-based conservation, but adapting it to high-value product trade would present significant challenges.

Objective 2: To examine the potential impacts and viability of legalizing trade in ivory and endangered species products in Namibia considering ecological, economic, and enforcement perspectives.

The examination revealed a complex picture with significant risks and potential benefits across ecological, economic, and enforcement domains. Ecologically, there are concerns that legal trade could stimulate demand and increase poaching pressure, although proponents argue it could provide resources for conservation. Economically, while there's potential for revenue generation, the volatility of wildlife product markets and challenges in benefit distribution pose significant risks. From an enforcement perspective, distinguishing legal from illegal products and preventing the laundering of illegal goods into legal markets remain major hurdles. The overall viability of legalizing trade depends on Namibia's ability to address these interrelated challenges,

requiring a robust, well-resourced system with strong safeguards, monitoring, and adaptive management capabilities.

Objective 3: To investigate the reasons behind counter-intuitive results from previous attempts at legalizing trade in wildlife products in other jurisdictions.

Investigation into previous legalization attempts revealed several counter-intuitive outcomes. These include the stimulation of parallel illegal markets, challenges in controlling consumer demand, unexpected price effects, and complications in enforcement efforts. Notably, legal ivory sales sanctioned by CITES in 1999 and 2008 were followed by increased elephant poaching across Africa, suggesting that legal trade can sometimes stimulate overall demand. There have also been challenges in ensuring that revenue from legal trade reaches conservation efforts and local communities as intended. These experiences underscore the complexity of wildlife trade dynamics and the need for careful, context-specific planning in any move towards legalization, highlighting the importance of robust monitoring, adaptive management, and international cooperation.

Objective 4: To assess the unique factors in Namibia that could potentially lead to different outcomes if trade were legalized, compared to other countries' experiences.

Namibia possesses several unique factors that could influence the outcomes of legalized trade. These include its successful community-based natural resource management model, relatively stable elephant populations, strong conservation track record, and political stability. The country's low population density and large areas of suitable wildlife habitat could potentially make population management and anti-poaching efforts more feasible than in more densely populated countries. However,

these unique factors also raise the stakes for any policy changes, as negative outcomes could jeopardize Namibia's international reputation and the achievements of its community-based conservation model. Furthermore, the uniqueness of Namibia's situation means that lessons from other countries' experiences may not be directly applicable, necessitating careful, context-specific planning and robust monitoring of any legalization efforts.

Objective 5: To propose a comprehensive legal and policy framework for Namibia that addresses the complexities of wildlife product trade, conservation, and anti-poaching efforts.

The study proposed a comprehensive framework including legal amendments, new legislation, institutional arrangements, community engagement mechanisms, enhanced monitoring and enforcement systems, international cooperation protocols, and adaptive management approaches. Key recommendations include establishing a National Wildlife Trade Management Authority, strengthening the community conservancy system, implementing advanced tracking technologies, and creating transparent revenue management mechanisms. While the framework addresses many identified challenges, its successful implementation would depend on strong political will, sustained resource commitment, and careful, phased implementation. The study concluded that while the proposed framework offers a potential pathway for managing legal trade alongside conservation efforts, its implementation would face significant challenges, including resource requirements, capacity building needs, and the necessity for international acceptance and cooperation, particularly in relation to CITES obligations.

7.4 RECOMMENDED/PROPOSED LEGAL AND POLICY FRAMEWORK FOR NAMIBIA

Based on the comprehensive analysis of Namibia's current legal framework, comparative studies with other African countries, and insights from various stakeholders, this section proposes a robust legal and policy framework to potentially enable sustainable and well-regulated trade in ivory and other endangered species products in Namibia. The proposed framework aims to balance conservation imperatives with economic opportunities, ensure strong safeguards and enforcement mechanisms, and align with international obligations.

7.4.1 Legal Amendments

To create a viable legal framework for trade in ivory and endangered species products, several key pieces of Namibian legislation would require significant amendments. These amendments aim to provide clear regulations, strong enforcement mechanisms, and alignment with international standards while addressing the specific needs of different wildlife products.

1. Nature Conservation Ordinance of 1975

a) Ivory-specific amendments:

- Amend Section 4 to create a new category for elephants as "commercially valuable protected game" to allow for sustainable use while maintaining strong protections. This amendment recognizes the potential economic value of elephants while ensuring they remain protected. It provides a legal basis for sustainable use without compromising conservation efforts.
- Revise Section 26 to allow for controlled hunting of elephants for ivory under strict permitting conditions. Controlled hunting, if properly managed, can

provide economic incentives for conservation. This amendment would allow for limited, sustainable offtake while maintaining strict oversight.

- Add a new Section 26A specifically outlining conditions for ivory harvesting from natural elephant mortalities. This provision allows for the utilization of ivory from natural deaths, potentially reducing pressure for illegal killing while ensuring a legal source of ivory.
- Amend Section 49 to allow for the sale and export of ivory under a new robust permitting system. A well-regulated legal trade could potentially reduce illegal trafficking by providing a legitimate market. This amendment would create the legal framework for such trade while ensuring strong controls.

b) Rhino horn-specific amendments:

- Similar to elephants, create a "commercially valuable protected game" category for rhinos in Section 4. This recognizes the potential value of rhinos in a legal trade scenario while maintaining their protected status, balancing economic and conservation interests.
- Add a new Section 26B detailing conditions for harvesting rhino horn through humane dehorning practices. Allowing for controlled dehorning could provide a legal source of horn while potentially reducing poaching pressure on wild rhinos.
- Revise Section 49 to permit sale and export of rhino horn under strict controls. Similar to ivory, a legal, well-regulated trade in rhino horn could potentially undermine illegal markets while providing conservation funding.

c) Pangolin scales-specific amendments:

- Maintain pangolins in the "specially protected game" category in Section 4 but add provisions in Section 26 for potential sustainable use if scientific evidence supports it. This maintains strong protections for pangolins while leaving the door open for sustainable use if future research indicates it could be viable without harming populations.
- Add a new Section 26C outlining stringent conditions for any future harvesting of pangolin scales, emphasizing non-lethal collection methods. This proactively establishes strict guidelines for any future use, ensuring that if trade were to be considered, it would be done in the most sustainable manner possible.

d) Endangered plants-specific amendments:

- Revise Schedule 9 to create categories of commercially valuable protected plants. This allows for differentiation between plants that might be suitable for sustainable trade and those requiring absolute protection.
- Add a new Section 58A detailing cultivation and harvesting regulations for protected plants intended for commercial trade. This provides a legal framework for sustainable cultivation of valuable plant species, potentially reducing pressure on wild populations.

2. Controlled Wildlife Products and Trade Act of 2008

a) General amendments:

- Expand the definition of "controlled wildlife products" in Section 1 to include specific categories for ivory, rhino horn, pangolin scales, and endangered

plants. This provides legal clarity on the status of these products, ensuring they are subject to stringent controls.

- Amend Section 4 to allow for possession and trade of these products under a new comprehensive permitting system. This creates the legal basis for regulated trade while maintaining strong oversight through permitting.

b) Ivory-specific amendments:

- Add a new Section 4A detailing specific regulations for ivory trade, including:
 - Requirements for DNA profiling and marking of all traded ivory
 - Establishment of a national ivory database
 - Specific criteria for issuing ivory trade permits These provisions ensure full traceability of legal ivory, critical for preventing laundering of illegal ivory into legal markets.

c) Rhino horn-specific amendments:

- Add a new Section 4B outlining regulations for rhino horn trade, including:
 - Mandatory DNA sampling and microchipping of all traded horn
 - Creation of a national rhino horn registry
 - Strict permitting criteria for rhino horn trade Similar to ivory, these measures ensure traceability and prevent illegal horn from entering legal markets.

d) Pangolin scales-specific amendments:

- Add a new Section 4C detailing potential future regulations for pangolin scale trade, emphasizing:

- Non-lethal collection methods
- Traceability systems for harvested scales
- Stringent sustainability criteria for any permitted trade While trade is not currently recommended, these provisions set a high bar for any future consideration of pangolin scale trade, prioritizing sustainability and animal welfare.

e) Endangered plants-specific amendments:

- Add a new Section 4D outlining regulations for trade in protected plant species, including:
 - Cultivation permits for commercial growers
 - Certification system for sustainably produced plant products
 - Export regulations aligned with CITES requirements These provisions create a framework for sustainable production and trade in valuable plant species, potentially reducing wild harvesting.

3. Environmental Management Act of 2007

a) General amendments:

- Amend Section 2 to explicitly include sustainable wildlife trade as an objective of environmental management. This acknowledges that well-regulated wildlife trade can be a tool for conservation and sustainable development.
- Revise Section 3(2)(b) to clarify how the precautionary principle should be applied in the context of wildlife trade. This provides guidance on balancing conservation caution with potential sustainable use opportunities.

b) Product-specific amendments:

- Add a new Section 27A mandating specific environmental impact assessments for:
 - Elephant population management and ivory harvesting
 - Rhino dehorning and horn harvesting programs
 - Any proposed pangolin scale harvesting initiatives
 - Commercial cultivation of endangered plant species This ensures that any wildlife trade activities are subject to rigorous environmental scrutiny.

4. Forest Act of 2001

- Amend Section 22 to include provisions for sustainable harvesting of commercially valuable protected plants in state forests. This allows for potential sustainable use of valuable plant species within the existing forest management framework.
- Add a new Section 33A detailing regulations for the transport and marketing of protected plant species products. This ensures oversight and traceability for traded plant products.

5. Prevention of Organised Crime Act of 2004

- Amend Section 1 to explicitly include illegal wildlife trade in the definition of "organised crime". This recognizes the often-organized nature of wildlife crime, allowing for stronger legal responses.

- Revise Section 4 to specifically criminalize participation in organized wildlife trafficking. This provides a clear legal basis for prosecuting those involved in wildlife crime networks.
- Add a new Section 25A detailing asset forfeiture procedures specifically for wildlife crime cases. This creates a strong deterrent by targeting the financial motivations behind wildlife crime.

6. Anti-Corruption Act of 2003

- Amend Section 33 to explicitly include wildlife trade-related corruption as a specific offense. This recognizes the particular vulnerability of wildlife trade to corruption and provides specific legal tools to address it.
- Add a new Section 39A mandating regular audits and oversight of wildlife product permitting processes. This helps ensure transparency and integrity in the management of any legal wildlife trade.

7. Game Products Trust Fund Act of 1997

- Amend Section 3 to explicitly include revenues from legal trade in ivory, rhino horn, and other endangered species products as sources for the fund. This ensures that revenues from any legal trade directly support conservation efforts.
- Add a new Section 5A detailing how trade revenues should be allocated, emphasizing conservation and community benefit. This helps ensure that legal trade, if implemented, provides tangible benefits for both wildlife and local communities.

These proposed amendments aim to create a comprehensive legal framework that could potentially support sustainable trade in ivory and endangered species products while maintaining strong conservation safeguards. The rationales provided highlight the careful balance between enabling potential economic benefits and ensuring robust protections for wildlife populations.

7.4.2 Policy Reforms

To complement the proposed legal amendments, significant policy reforms are necessary to create a comprehensive framework for potential legal trade in ivory and endangered species products in Namibia. These policy reforms, based on lessons learned from other countries and recommendations from conservation experts, aim to strengthen conservation efforts, ensure sustainable management, and promote equitable benefit-sharing.

1. National Ivory and Rhino Horn Management Policy

The proposed reform is to develop a comprehensive national policy for the management of elephant and rhino populations, including provisions for potential sustainable use. This policy would provide clear guidelines for population management, habitat protection, and potential sustainable use of ivory and rhino horn, drawing on successful models from countries like South Africa and Botswana.

Key components:

- a) Population monitoring protocols: These would ensure regular, standardized population assessments which are crucial for making informed management decisions.
- b) Sustainable offtake quotas: Science-based quotas would ensure that any harvesting does not negatively impact population viability, following CITES recommendations.

c) Anti-poaching strategies: Strengthened anti-poaching efforts would protect populations and ensure that legal trade does not provide cover for illegal activities, drawing on successful models from Namibia's own conservancy system.

d) Human-wildlife conflict mitigation measures: Addressing conflicts would be crucial for maintaining local support for conservation efforts, based on successful approaches in Kenya and Tanzania.

2. Wildlife Product Traceability Policy

The proposed reform is to develop a comprehensive policy for tracking wildlife products from source to market. A robust traceability system would be essential for preventing the laundering of illegal products into legal markets and ensuring the integrity of any legal trade system, as recommended by CITES and implemented successfully in other contexts.

Key components:

a) DNA profiling requirements for ivory and rhino horn: This would provide a foolproof method for identifying the origin of traded products, based on successful forensic applications in wildlife trade.

b) Blockchain-based chain of custody system: This would create an immutable record of each product's journey through the supply chain, drawing on emerging technologies in wildlife trade management.

c) Regular auditing procedures: Audits would help maintain the integrity of the traceability system, following best practices in supply chain management.

3. Sustainable Use and Trade Adaptive Management Policy

The proposed reform is to implement an adaptive management approach to wildlife trade policy. This would allow for responsive policy adjustments based on ecological monitoring, market dynamics, and enforcement effectiveness, following principles of adaptive management in conservation.

Key components:

- a) Regular scientific assessments of wildlife populations and trade impacts: This would ensure that management decisions are based on up-to-date scientific data.
- b) Feedback mechanisms for enforcement agencies: This would allow for rapid responses to new poaching or trafficking trends, based on successful models in combating wildlife crime.
- c) Periodic stakeholder consultations: Regular input from diverse stakeholders would help ensure policies remain effective and widely supported, drawing on principles of collaborative governance in natural resource management.

4. Anti-Corruption and Transparency in Wildlife Trade Policy

The proposed reform is to develop specific anti-corruption measures for wildlife trade management. Given the high value of wildlife products, strong anti-corruption measures would be essential for maintaining the integrity of any legal trade system.

Key components:

- a) Transparent permitting processes: This would reduce opportunities for corruption in the allocation of trade permits, based on best practices in governance.

b) Regular financial audits of wildlife trade revenues: This would ensure that revenues are properly accounted for and used as intended, following recommendations for transparency in natural resource management.

c) Whistleblower protection mechanisms: This would encourage reporting of any corrupt practices in the wildlife trade sector, drawing on successful anti-corruption strategies in other sectors.

5. International Cooperation in Wildlife Trade Management Policy

The proposed reform is to develop a policy framework for enhanced international cooperation in wildlife trade management. Given the transboundary nature of wildlife populations and trade networks, international cooperation would be crucial for effective management.

Key components:

a) Information sharing protocols with neighbouring countries: This would facilitate coordinated responses to poaching and trafficking threats, based on successful regional initiatives.

b) Joint law enforcement operations: Coordinated enforcement efforts would be more effective in combating transnational wildlife crime, drawing on experiences from initiatives like the Lusaka Agreement Task Force.

c) Harmonization of trade policies within the region: Aligned policies would reduce opportunities for wildlife criminals to exploit differences in national regulations, following recommendations for regional approaches to wildlife trade management.

6. Wildlife Product Market Regulation Policy

The proposed reform is to develop a comprehensive policy for regulating domestic and international markets for wildlife products. Proper market regulation would be essential for preventing over-exploitation and ensuring that legal trade does not stimulate illegal activities.

Key components:

- a) Price control mechanisms: This would help prevent price spikes that could incentivize poaching, based on economic analyses of wildlife markets.
- b) Trade volume limits: This would ensure that trade volumes remain within sustainable limits, following CITES recommendations for quota systems.
- c) Accreditation system for traders: This would help ensure that only reputable entities participate in the legal trade, drawing on best practices in other regulated markets.

7.3.3 Institutional Arrangements for the Proposed Framework

The successful implementation of a legal trade framework for ivory and endangered species products in Namibia would require robust institutional arrangements. These arrangements should ensure effective oversight, coordination, and implementation of the proposed legal and policy reforms. Drawing on best practices from other countries and recommendations from conservation experts, the following institutional structure is proposed:

1. National Wildlife Trade Management Authority (NWTMA)

The establishment of a dedicated National Wildlife Trade Management Authority is proposed as the central body overseeing all aspects of wildlife trade in Namibia. This approach follows successful models implemented in countries like South Africa.

Key responsibilities:

- a) Coordinating all wildlife trade activities across different government agencies
- b) Issuing permits and licenses for wildlife trade
- c) Monitoring trade volumes and ensuring compliance with quotas
- d) Liaising with international bodies such as CITES

2. Scientific Advisory Committee (SAC)

A Scientific Advisory Committee would provide evidence-based guidance to the NWTMA. This follows recommendations for integrating science into wildlife trade policy.

Key responsibilities:

- a) Conducting and reviewing population assessments
- b) Recommending sustainable offtake quotas
- c) Evaluating the ecological impacts of trade
- d) Advising on adaptive management strategies

3. Multi-Agency Enforcement Task Force

Drawing on successful models like Zambia's Intelligence and Investigations Unit (IIU), a dedicated task force would coordinate enforcement efforts across different agencies.

Key components:

- a) Representatives from police, customs, and wildlife authorities
- b) Specialized wildlife crime investigation unit

- c) Cross-border cooperation mechanisms
- d) Advanced training in wildlife forensics and trade law enforcement.

4. Wildlife Product Certification Board (WPCB)

A dedicated board would oversee the certification and traceability of legally traded wildlife products, similar to systems used in other regulated natural resource trades.

Key responsibilities:

- a) Developing and implementing product certification standards
- b) Overseeing the traceability system for wildlife products
- c) Accrediting and auditing traders and exporters
- d) Collaborating with international certification bodies

5. International Cooperation Unit

A dedicated unit for managing international relations related to wildlife trade, recognizing the global nature of the wildlife trade issue.

Key responsibilities:

- a) Liaising with CITES and other relevant international bodies
- b) Coordinating with neighboring countries on transboundary wildlife management
- c) Participating in international forums on wildlife trade
- d) Facilitating information exchange with other countries.

This institutional framework aims to create a comprehensive, transparent, and adaptive system for managing legal wildlife trade in Namibia. It incorporates elements of community-based natural resource management, scientific oversight, strong

enforcement, and international cooperation. However, its success would depend on adequate funding, capacity building, and political will for implementation.

7.5 AREAS FOR FURTHER RESEARCH

Future research should investigate the long-term ecological impacts of legalizing wildlife trade in Namibia, particularly on lesser-known species. Additionally, studies should focus on refining legal trade frameworks that prioritize conservation while addressing economic development. Research on the effectiveness of community-based natural resource management models in other African countries may offer valuable insights for improving Namibia's conservation efforts. Finally, the role of international partnerships in strengthening enforcement mechanisms should be explored further to combat transnational wildlife crime effectively.

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APPENDICES

APPENDIX A: RESEARCH QUESTIONNAIRE

Dear Respondent

I am conducting a research study titled "**The Viability of Legalising Trade in Ivory and Endangered Species Products: A Namibian Perspective**". This study is being conducted as part of my Master's thesis at University of Namibia

Purpose of the Study: The primary aim of this research is to critically examine the potential impacts and viability of legalizing trade in ivory and endangered species products in Namibia. We are particularly interested in understanding:

1. The current legal frameworks governing such trade
2. The potential ecological, economic, and social impacts of legalization
3. Namibia's unique context in wildlife management and conservation
4. The challenges and opportunities in implementing a regulated legal trade system

Your Involvement: As an expert in the, your insights would be invaluable to this research. We are requesting that you complete a set of written questions, which you can do at your own pace and convenience. The questionnaire should take approximately 30-45 minutes.

Confidentiality and Informed Consent: Your participation in this study is entirely voluntary. If you choose to participate, please be assured that your responses will be kept strictly confidential. All data will be anonymized, and no identifying information will be used in any reports or publications resulting from this study.

By completing and returning the questionnaire, you are giving your informed consent to participate in this study. However, you have the right to withdraw from the study at any time without any negative consequences.

Sincerely,

Anne Otto

Demographic Information

- Professional role/position: _____
- Years of experience in the field: _____
- Organization type: _____
- Educational background: _____
- Age range: _____
- Gender: _____
- International experience: _____

Section 1: Current Legal Frameworks

1.1 How effective do you consider the current legal frameworks governing trade in ivory and endangered species products in Namibia?

1.2 What specific strengths and weaknesses can you identify in Namibia's existing laws and policies related to wildlife product trade?

1.3 How do Namibia's legal frameworks compare to those of other countries in the region? Can you provide specific examples?

1.4 In your opinion, how well does Namibia comply with international conventions like CITES? Are there any areas where improvement is needed?

Section 2: Potential Impacts and Viability of Legalizing Trade

2.1 What do you believe would be the primary ecological impacts of legalizing trade in ivory and endangered species products in Namibia?

2.2 How might legalization affect wildlife populations, particularly elephants and rhinos?

2.3 What economic implications do you foresee if trade were legalized? Please consider both positive and negative potential outcomes.

2.4 How might legalization impact local communities living near wildlife areas?

2.5 What challenges and opportunities do you anticipate for anti-poaching efforts if trade were legalized?

2.6 Beyond ivory, what other endangered species products do you think could potentially be viable for legal trade in Namibia?

2.7 How feasible do you think it would be to enforce regulations on legal trade for various products?

Section 3: Lessons from Previous Legalization Attempts

3.1 What key lessons can Namibia learn from previous attempts to legalize wildlife product trade in other countries?

3.2 Why do you think some legalization attempts have had counter-intuitive results? Can you provide specific examples?

3.3 How might Namibia avoid the pitfalls experienced by other countries if it were to legalize trade?

Section 4: Namibia's Unique Factors

4.1 What unique factors in Namibia could potentially lead to different outcomes if trade were legalized, compared to other countries' experiences?

4.2 How does Namibia's community-based natural resource management system factor into this discussion?

4.3 What role do you think Namibia's existing wildlife product stockpiles should play in any decision about legalizing trade?

4.4 How might Namibia's conservation success story influence the potential outcomes of legalized trade?

Section 5: Proposals for a Comprehensive Legal Framework

5.1 What key components do you believe should be included in a comprehensive legal and policy framework for wildlife product trade in Namibia?

5.2 What specific legal amendments or new laws would you propose?

5.3 What policy reforms do you think are necessary?

5.4 How should institutional arrangements be structured to effectively manage legal trade and anti-poaching efforts?

5.5 What mechanisms would you suggest for ensuring community engagement and benefit-sharing in a legal trade scenario?

5.6 What kind of monitoring and evaluation system would you recommend to assess the impacts of legalized trade?

Additional Information

- Is there anything else you would like to add that was not covered?

Thank the participant for their time and insights