The need for harmonisation of wildlife crime laws in the Southern African Development Community (SADC)

A case study of the illicit abalone trade

By

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Declaration

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Chelsea Cohen

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Abbreviations and acronyms

AU	**African Union**
CBD	**Convention on Biological Diversity**
CITES	**Convention on International Trade in Endangered Species**
CMS	**Convention of Migratory Species of Wild Animals**
DEAT	**Department of Environmental Affairs and Tourism**
EAC	**East African Community**
ECOWAS	**Economic Community of West Africa States**
EFFACE	**European Union Action to Fight Environmental Crime**
EU	**European Union**
FAO	**Food and Agriculture Organisation**
GFI	**Global Financial Integrity**
ICCF	**International Conservation Caucus Foundation**
ISS	**Institute for Security Studies**
IWT	**Illicit Wildlife Trade**
MLR	**Marine Living Resources**
NEMBA	**National Environmental Management: Biodiversity Act**
NISCWT	**National Integrated Strategy to Combat Wildlife Trafficking**
NGO	**Non-Government Organisation**
OHADA	**Organisation for the Harmonisation of Corporate Law in Africa**
POCA	**Prevention of Organised Crime Act**
PSMA	**Port State Measures Agreement**
SADC	**Southern African Development Community**

SAPS	**South African Police Service**
TAC	**Total Allowable Catch**
TEC	**Transnational Environmental Crime**
TIP	**Trafficking in Persons**
TOC	**Transnational Organised Crime**
UNCAC	**United Nations Convention Against Corruption**
UNEP	**United Nations Environmental Programme**
UNODC	**United Nations Office Drug and crime**
UNTOC	**United Nations Transnational Organised Crime**
WACD	**West African Community on Drugs**
WWF	**World Wildlife Fund**

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Chapter 1

1. Introduction

The illicit wildlife trade (IWT) is the fourth most lucrative form of organised crime globally (Donnenfeld & Aucoin, 2017:1). The Global Financial Integrity (GFI) reports that IWT is one of the most profitable and illicit economies with a profit margin of US$ 23 billion annually (May, 2017:np). It has developed into one of the most expensive security challenges. For example, South Africa has to raise R200 million for security costs annually (Donnenfeld & Aucoin, 2017:1). Affecting a broad range of plants and animals, the illegal trade in wildlife deprives nations of their biodiversity, income opportunities, natural heritage and capital (Nowak, 2016:1). Although governments, non-governmental organisations (NGOs) and locals have sought to protect wildlife in the past, entire species of animals and plants are still in danger. To complicate matters, wildlife crime is no longer nationally bound and has moved to a highly sophisticated and a transnational problem (Steyn, 2017:np). Wildlife criminal syndicates exploit weaknesses in neighbouring countries criminal justice systems and porous borders amongst other elements making it easier for the crime to be transboundary in nature (Pienaar, 2014:2; Steyn, 2017:np). It is for this reason that this thesis will explore how harmonisation of laws can be used as a preventive mechanism in wildlife crime. This will be done by examining the relationship between the lack of congruent legislation in SADC member states and its ability to facilitate the IWT in the SADC region.

1.1 Background to the study

IWT is often considered to be a less serious crime than human trafficking and the illicit fire arms trade because there are no human victims. Scholars, policy-makers and practitioners have devised multiple definitions of the criminal phenomenon. The United Nations Office on Drugs and Crime (UNODC) has emphasised that as a result of biodiversity coupled with country specific wildlife protection methods, it is difficult to come up with a universal definition for wildlife crime (UNODC, 2016:23). For the purpose of this thesis, wildlife trafficking will be defined as per the definition of South and Wyatt (2011:546): "…as any wild plant or animal, indigenous or exotic that encompasses the collection, harvesting, possession, processing, acquiring, smuggling, poaching or importing of wildlife illegally." Additionally, TRAFFIC (2008:np) defines IWT "as any sale or exchange of wild animal and plant resources by people." This involves a diverse range of live or prized animal and plant products. The trade has always been considered a valuable business in the world, with overlapping legal and illegal dimensions

(Duffy, 2016:109). Between the years 2000 and 2015, South Africa has been reported to have the most incidents of wildlife crimes in the SADC region (Jordaan, 2017:np; Donnenfeld & Aucoin, 2017:2). Rhino horn, elephant tusk, abalone, pangolin, cycads and big cats are the top six illegally possessed, poached and smuggled species in Southern Africa (Donnenfeld & Aucoin, 2017:2).

Over the years, methods used to connect source countries in IWT with increasingly wealthy end-user markets, primarily in East Asia have become increasingly sophisticated and complex (Duffy, 2016:109). For any given wildlife crime, there is a specific product (rhino, abalone), a range of actors (poachers, smugglers, traders, consumers), a destination market (jewellery, restaurant), points of origin (South Africa, Congo, etc.) and a set of domestic and/or international laws that have been broken (Donnefeld & Aucoin, 2017:1). IWT is often studied by examining the different stages of the crime and the actors involved. Furthermore, it is studied by researching the supply and demand dynamics, where supply refers to the origin country/continent and demand relates to the countries with the consumer markets (Donnenfeld & Aucoin , 2017:1).

The threat to these megafauna species like tigers, rhinoceros, elephants, is well known globally. Yet, there are other mammals, reptiles, marine species and plants that have declined drastically. Unfortunately, certain types of species, such as pangolins, cycads, fish and reptiles get limited public awareness and legal protection of these animals is weak (UNODC, 2013:78). IWT is by no means restricted to land-based species, with a substantial amount of protected marine wildlife being illegally traded for extremely high profit margins for traders. Marine life such as sharks, prawns, sea turtles and abalone are just some of the many marine species that form part of the IWT in the SADC region (UNODC, 2013:78).

The wildlife trade offers two overlapping markets, the legal and illegal market (TRAFFIC, 2008:np). The global North and South markets are overshadowed by the Southeast and East Asian markets which dominate as consumers for a number of wildlife life animals and products, including the subject of this study – South African abalone. The consumer markets for abalone in East Asia are both legal and illegal, of which the illegal ones are more prominent after a network of illegal trade in the marine species has developed. Despite the trade's legal and illegal dimensions, it has become one of the most valuable businesses in the world (Duffy, 2016:109). It is important to acknowledge that these dimensions of the wildlife trade are not simply determined by a contravention of international laws but are determined by sovereign

territories' national legal jurisdictions (Hübschle, 2017:178). For example, the unregulated harvesting and trafficking of animal and plant species in and out of South Africa is found to be prohibited, whereas the same species found in Zimbabwe do not face any criminal sanctions. This consequently creates grey markets which blur the lines between what is considered legal and illegal.

In the case of the abalone trade, similar market problems exist, especially within domestic borders, where the illegal and legal line is often indistinctive. The next few paragraphs will aim to highlight the overlapping markets in the trade. Abalone, is a sea snail found primarily in the cold shallow waters of Australia, United States, New Zealand Japan and South Africa (Warchol & Harrington, 2016:23). Abalone takes approximately eight to ten years to reach maturity and is considered a delicacy and aphrodisiac in some cultures (Warchol & Harrington, 2016:23). Abalone is highly valued for its meat in East Asia creating its commercial value in South Africa (Chigumira, 2016:1). From 1949 unrestricted commercial harvesting began and abalone was harvested at an increasing rate. To curb exploitation and protect the resource, seasonal quotas were introduced by the 1970s, which significantly reduced the annual quota from 2800 tons to 615 tons (Chigumira, 2016:2). Some believe that the introduction of the seasonal quotas resulted in increased poaching and criminalisation (Goga, 2014:2). The illegal poaching of abalone has escalated into a highly organised multi-million Dollar illicit industry, controlled by organised syndicates operating along the trade routes to East Asia (Lau, 2018:6).

From the late 1980's, smuggling and trafficking routes evolved in South Africa, encouraging the growth in illegal transnational trade and foreign investment in wildlife products (Goga, 2014:3). Asian countries are key importers of illegally harvested abalone from South Africa. The recognition of this syndicated activity has created a substantial amount of effort to introduce further enforcement operations to curb abalone smuggling. The implementation of additional shoreline patrols and law enforcement units such as the initiation of several well-resourced organised crime investigative projects that are used to control South African borders (TRAFFIC, 2018:1).

Despite these efforts, illicit abalone is still harvested and exported (TRAFFIC, 2018:39). The efforts made to combat the illegal trade have been blunted by low levels of international and regional cooperation (Goga, 2014:3), for the reason that it has commercial value amongst Asian communities and the lack of international and regional regulations for abalone. There is no law that prohibits abalone from being purchased or sold openly in Asian markets (Goga, 2014:3).

Some Southern African countries function as transhipment nodes, which are aiding traffickers in the transnational supply-chain of illicitly harvested abalone. These transit countries surfaced after regulatory measures were introduced to protect the legal abalone trade during 2007 and 2008 (Lau,2018:3). During the years 2000-2007, 74% of dried abalone was imported to Hong Kong from South Africa. A decrease of 35% was seen between 2008-2015 as a result of the new restrictions (Lau, 2018:3). At this point, the illicit trade routes shifted, instead of directly exporting poached abalone to Hong Kong, traffickers began to smuggle abalone to neighbouring countries. Seven countries in Africa have been identified in exporting illegally harvested abalone to Hong Kong. Countries such as, Angola, Kenya, Democratic Republic of Congo (DRC), Namibia, South Africa, Zambia and Zimbabwe. With South Africa exporting the most (39%) followed by Mozambique (32%) and Zimbabwe (11%) and DRC exporting the least (1%) (Lau, 2018: 4). These countries have been identified as transit countries used for repackaging and exporting poached abalone (Lau, 2018:3).

In 2007, the South African government placed the abalone species in Appendix III of The Convention on the International Trade in Endangered Species (CITES). CITES is an international mechanism and agreement that provides a regulatory system for wildlife products between countries (Lau, 2018:4) The level of protection is determined by three appendices which each have a different function for the wildlife trade (Lau, 2018:4). These measures were aimed at highlighting and creating awareness of IWT passing through neighbouring countries (Lau, 2018:6). Some of the listings require that a legal export of the species would need to have a CITES permit, which would be issued by a countries Department of Environmental Affairs.

Neighbouring countries often do not consider other neighbouring countries' wildlife. Therefore, one country's wildlife problem may not be considered as a problem in another country, which in turn may open loopholes (Warchol & Harrington, 2016:25). This is due to each country listing country-relevant species and developing legislation suitable to their needs. However, the dynamics of wildlife crime being transnational and perpetrated by organised criminal networks cannot only be dealt with at a national level, as this may aid in the exploitation of wildlife crime laws and the above-mentioned loopholes (Warchol & Harrington, 2016:25).

The laws used directly to deal with abalone-related crimes in South Africa are the Prevention of Organised Crime Act of 121 of 1998 (POCA), Section 53(1) and the Marine Living Resources Act 1998 (MLR), number 18: part 6, Section 36, 37, 38 and 40. Abalone is protected

and criminalised under POCA as it is considered part of TOC involving local and Chinese organised crime networks. These networks use the well-established illicit trade routes between South Africa and East Asia. Furthermore, research has found that the applicability of POCA for abalone smuggling is a result of the connection between the illicit trade and other organised criminal activities that overlap with each other. Thus, the objective of POCA is to tackle these types of criminal activities (Fourie, 2008:105).

The MLR Amendment Act 68 of 2000 is another law that deals with abalone-related crimes in South Africa. It was developed to protect and regulate the marine life in South Africa. It provides for the conservation of the marine ecosystem, the long term sustainable utilisation of marine living resources and exercises control over marine living resources in South Africa (MLR Act 68, 2000:1). Obank et al (2015:3) highlight that harmonisation is important at all levels, including regional and national levels. For example, while South Africa has a strong legislative approach to wildlife crime and abalone at national level, its implementation happens at a provincial level resulting in discordant laws and enforcement capacity. It creates a haphazard enforcement approach that allows wildlife criminals to exploit weaker provincial laws and enforcement (Obank et al, 2015:3).

The harmonisation of wildlife crime laws is an important and relevant issue alongside the loopholes created by the many discordant wildlife laws that protect wildlife in different ways (Faure, 2000:174). These differences are not only from protective measures in the legislation but from the varying licensing and standard setting procedures creating a non-integrated response towards wildlife crimes in the SADC region (Faure, 2000:174). Although there are many signed multi-lateral environment agreements for instance, the adoption of the 2003 Protocol on Wildlife Conservation and Law Enforcement to the SADC treaty[1]. The Protocol advocates that member countries should harmonise legal instruments for effective wildlife prevention (Price, 2017:7). The problem arises in national legislators in SADC member states that often struggle to implement the international guidelines and regulations in their jurisdictions. The importance of these frameworks are rarely considered at the national level. Therefore, a larger disconnect between international, regional and national legal regimes exist (Price, 2017:3). Consequently, various wildlife laws and their protective measures are influenced by how serious a country considers wildlife crime to be. Although the importance

[1] Which has been ratified by Botswana, Lesotho, Malawi, South Africa, Namibia, Mozambique, Tanzania, Zambia and Mauritius (Price, 2017:7).

of harmonisation is stressed in the SADC Protocol, adoption has been slow. Additionally, SADC member states such as Swaziland, Zimbabwe and DR Congo, are not part of the Protocol. The SADC member states that have adopted the Protocol still face the problem of discordant wildlife laws, as a result of having different definitions and penalties amongst their domestic legislation. This is comparable to experiences in Europe where the European Union Action to Fight Environmental Crime (EFFACE) found that despite having numerous policies to tackle wildlife crime, there are significant differences among neighbouring countries' criminal justice procedures with regards to dealing with environmental crimes (EFFACE, 2014:2).

Research on the harmonisation of criminal law in Africa is minimal and is mainly done by regional bodies, for example the West African Community on Drugs (WACD) on harmonising drug legislation and SADC on harmonising trafficking in Persons (TIP) legislation (Alemika, Aning, Loua & Cisse, 2014:np; Kavanagh, [sa]:np; SADC, 2016:np). Although there has been a substantial amount of research on harmonisation in Africa has been conducted on trade and commercial laws which have proven to have a positive impact on the commercial industry such as the Organisation for the harmonisation of cooperate law in Africa (OHADA) (Fagbayibo, 2009:309-322). This highlights the scope for other types of (criminal) laws to be harmonised.

Thus, harmonisation is important as wildlife crime has become a transnational crime that is no longer bound to any one geographic or political boundary. Thus, it requires a coordinated and effective system of laws that can produce prevention strategies.

1.2 Problem statement

Due to political, social instabilities and its geographic placement, South Africa is one of the most vulnerable countries in the SADC region when it comes to wildlife crimes (Gaustadaether, 2016:6). Generally, SADC's inefficiencies in law enforcement, legislation and border control further add to its vulnerability (Gaustadaether, 2016:6).

Although there have been many efforts and attempts focused on preventing and combatting IWT, such as the creation of policies and prevention strategies, wildlife crime still continues to rise (Gaustadaether, 2016:6). It is a complex problem that needs a multi-level response with harmonisation being an important component amongst SADC countries. The issues prevalent with discordant laws are the effects they have on cooperation, communication and prevention of transnational crimes among neighbouring countries.

The lack of laws prohibiting IWT in neighbouring countries to South Africa, are used as transit countries (Hübschle, 2010:31). Furthermore, these laws emphasise the incongruity found amongst national laws and make it easier for criminals to conduct TOC's through neighbouring countries (South & Wyatt, 2011:556). Moreover, 'safe havens' are created by criminal syndicates in jurisdictions where their criminal activities are lightly countered or do not constitute offences (Calderoni, 2009:22).

Discordant laws hinder the adaption of the required legal solutions to fight against cross-border crimes. The inability to address transnational wildlife crime in international and domestic laws creates loopholes that are taken advantage of by criminal groups. Thus, it thrives especially in those countries that are the weakest link in the chain regarding implementation and enforcement of wildlife laws. Thus, discordant laws are viewed as possible factors that assist TOC in the wildlife trade (Calderoni, 2009:22).

1.2.1 Research questions

Overarching question: Could the regional harmonisation of national wildlife laws in SADC member states assist the fight against illegal trade in wildlife?

1.2.1.1 How do transnational criminal networks (TCNs) smuggle illicitly harvested abalone across the South African border?

1.2.1.2 Do legislative loopholes in national laws facilitate the illicit abalone trade in SADC? Which loopholes are exploited?

1.2.1.3 How could the regional harmonisation of national laws be used as a mechanism to aid in combatting wildlife crime in the SADC region?

The purpose for the sub-questions are to look at the relationship between discordant laws and the illicit abalone trade in South Africa. Moreover, the abalone case study is applied to analyse how discordant laws facilitate the transnational nature of the illicit abalone trade. Subsequently, this can be used to highlight the same effects on wildlife crime in the SADC region. By answering these questions, I hope to shed light on the importance of legal harmonisation as a mechanism that could assist in the prevention of wildlife crimes. Additionally, I would like to emphasise the shortcomings that discordant legislative frameworks create in the process of identifying, preventing and investigating wildlife crime.

The primary research objective is to explore the use of harmonisation of national legislation to aid in combatting the illicit abalone trade in SADC. Thus, the aim of the study is to explore the

possibility of creating a regional harmonised legal framework for preventing wildlife crime. In order to reach the aim, the following objectives were formulated:

- **To explore how legal harmonisation can be used as a mechanism to combat transnational wildlife crime in SADC.**
- **To explore the problems with discordant laws in current legislation used to prevent wildlife crime by using the illicit abalone trade as a case study.**
- **To explore legislative loopholes and gaps that facilitate transnational organised crime (TOC) of the illicit abalone trade in SADC.**

The objectives and outcomes aim is to emphasise harmonisation of laws as a proactive measure towards curbing wildlife crime, as opposed to reactive measures. Proactive and reactive laws are legal approaches used before or after a crime is committed. Proactive law deals with prevention through deterring criminal activity whereas reactive law responds to a problem after the commission of a crime (Berger-Walliser, 2015:16).

1.2.2 Research design and method

The chosen research methodology is qualitative. Qualitative research methods provide a deeper understanding and insight into social phenomena (De Vos et al, 2011: 144). I have conducted empirical research through the use of secondary data collection as opposed to primary data collection. The latter being data collected for the first time by the researcher and the former being in initially collected or produced by others (Ajayi, 2017:2).

My data collection consisted of a review of relevant scholarly and policy literatures, content analysis, and a legal analysis. My chosen research design was a case study which allowed me to conduct an in-depth investigation into a complex issue (Flyvbjerg, 2006:219). The type of case study I used was a paradigmatic case study that was used to exemplify the larger problem of discordant regional laws aimed at addressing transnational issues. This single case study was applied to explore the disadvantages of discordant laws by examining how the illicit abalone trade moves through neighbouring countries. An extensive literature review was conducted from relevant sources such as books, academic journals, technical reports, newspapers and past research on the illicit abalone trade. Content analysis was employed for its ability to render replicable and valid conclusions from texts (Bengtsson, 2016:9).

When analysing the legislative loopholes, a legal analysis method was conducted. This is described as a method of comparing the relationship between legal systems of one or more

systems. It has an important role when it comes to harmonisation of laws as it allowed me to identify differences and similarities. Containing sixteen member states[2], the SADC regional bloc was chosen for this research because of it being the only region in Africa that is home to abalone. Secondly, minimal research has been conducted on the harmonisation of wildlife crime laws in SADC region. Much of the literature has focused on the East African region. The focal countries of the legal analysis are South Africa, Mozambique and Zimbabwe. The analysis was done on the legislative frameworks of each country's main and most recent wildlife laws. The reason for using Mozambique and Zimbabwe for this research is because two countries have the highest incidence of abalone trafficking outside of South Africa. Surrounded by South Africa, Zambia, Botswana and Mozambique, Zimbabwe is a small landlocked country. Mozambique shares borders with Zimbabwe, Malawi, Zambia and Tanzania. Both countries lack abalone legislation prohibiting the import and export of abalone. There are two types of economies present in Zimbabwe, the formal and informal sector, with 60,6% of the Zimbabwean economy being informal (Medina & Schneider, 2018:2). Informal economies, also known as grey economies are part of an economy that is neither taxed nor monitored by any government (Miller, 2007:128). Informal sectors vary in size from country to country, and it is hard to determine because of the unregulated nature in which they operate in (Miller, 2007:128). Runhovde (2018:4) highlights that informal economies often have informal cross border trading that is not necessarily illegal. Informal cross-border trade can be described "as transactions made across the economic boundaries of two or more countries that are not reported or under recorded by customs authorities and not directly taxable or regulated. Informal cross-border trade constitutes the majority of informal activity in most African countries (Runhovde, 2018:4). The SADC region is estimated to make up 30-40% of the total intra-SADC trade, with an estimated value of US$17.6 billion (Southern African Institute of International Affairs (SAIIA), 2016:np). Such trade is primarily characterised by smuggling goods and avoiding formal border processes (SAIIA, 2016:np). Similar to Zimbabwe's informal sector, Mozambique has both a formal and informal sector, with the informal sector at 42.4% (Byiers, 2009:9). Mozambique has the bulk of abalone being trafficked for transit at 21% of all SADC countries (Lau, 2018:3). This is awarded to the geographical placement of the country and size.

[2] Angola, Botswana, Comoros, Democratic Republic of Congo (DRC), Eswatini, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, South Africa, Seychelles, Tanzania, Zambia and Zimbabwe,

1.3 Outline of the study

The illegal abalone trade and wildlife crime is a growing problem in South Africa. It has become a difficult problem to combat nationally and at an international level. This chapter focused on highlighting the current situation of the illicit abalone trade and the adverse effects of diverse laws in the SADC region when combating a transnational crime such as IWT.

The next chapter will contextualise the abalone trade in terms of the IWT in the SADC region. It will begin by explaining what constitutes the illicit trade and the magnitude of it. The chapter will discuss the complexity of the abalone trade in South Africa and highlight the movement of abalone in the SADC region through transit countries. Finally, the chapter will proceed to examine the involvement of TOC's in the IWT.

Chapter three will discuss the international, regional and national laws relevant to the prevention of IWT. It will then discuss legal harmonisation and the SADC region. Highlighting the advantages and disadvantages of harmonised law from scholarly analysis with the conclusion that the advantages outweigh the disadvantages. Thus the chapter emphasises the use of harmonisation as a preventive mechanism IWT.

Chapter four will focus on the findings. It will do this by contextualising chapter two and three. Therefore, this chapter will finally address the research question, making sense of the findings, organising them and lastly drawing conclusions from them. The chapter will again attempt to discuss the illicit abalone trade in relation to wildlife crime as a whole and argue why harmonisation is relevant.

Chapter 2

Employing the concept of illegal trade in wildlife

"Poaching and illicit trafficking in wildlife is a global challenge which requires a global response. This vile trade is forcing endangered species to the brink of extinction. To turn the tide on wildlife poaching and trafficking, global responses need to be strengthened. All possible support must be provided to the countries and communities on the front line of these serious criminal activities."

- UNDP Administrator Helen Clark (2016)

2. Introduction

In order to understand the magnitude of the problem, this chapter will discuss the illicit abalone trade within the broader perspective of IWT. Furthermore, it will aim to conceptualise IWT within the broader field of transnational organised crime (TOC). The scope, scale and impact of IWT has been grossly underestimated and treated as a specialist niche within conservation work with national and international authorities only recently beginning to recognise the magnitude of the illicit trade (United Nations Environmental Programme (UNEP), 2014:2) and its connection to TOC.

2.1 The Illicit trade in Wildlife

A large amount of the wildlife trade is unsustainable; animals and plants that were not considered rare before are now threatened with extinction and is unswervingly related to significant population losses of many species (Pires, 2015:299). Over the past decade, media attention focused on poaching and wildlife trafficking incidents involving charismatic megafauna such as elephants, rhinos, and tigers. Many of these animals are critically endangered or have already gone extinct in the wild. For example, both the Western Black Rhino and the Northern White Rhino are believed to be extinct in the wild as a direct consequence of poaching for their horns (World Wildlife Fund (WWF), 2015:np). The illicit trade of animals and their associated products are not limited to photogenic species only. Pangolins, an insect-eating mammal that is similar to an armadillo, are not particularly attractive and do not receive much media attention but are among the most poached mammals in the world for their meat and scales (Pires, 2015:299).

IWT is a complex industry with thousands of wild animals, plants and associated products transported daily around the world, providing a significant source of profit for criminals. Adding to its complexity, the trade in animals and their products takes many different forms, ranging from food, pets, medicines, trophies and religious amulets contributing to it being one of the most lucrative illegal trades (Pires, 2016:299). Its multifaceted international threat and its intricate and clandestine nature requires a holistic approach in combatting the trade. The next section of this thesis will attempt to demonstrate the complexity of IWT by discussing the illicit abalone trade in Southern Africa.

2.2. The illicit abalone crisis in South Africa.

Over the past years, the abalone trade has been considered as a crisis, because of the high level of illegal poaching of the species (De Greef & Raemaekers, 2014:1). According to WWF (2018:np), a state of crisis occurs when an increasing portion of a wildlife species is harvested illegally and unsustainably, directly threatening the survival of the species in the wild.

According to a TRAFFIC report (TRAFFIC, 2018:3) released in September 2018, a total of 56 species of abalone are documented globally but only approximately 10 to 14 species support commercial fisheries in the main harvesting areas of Australia, Japan, New Zealand, Mexico, the United States and South Africa. In recent years, the growing demand for illegally harvested abalone in East Asia has caused an increase in security and sustainable measures in the commercial abalone fisheries to conserve the marine mollusc and in some cases, they have been closed (TRAFFIC, 2018:3). Historically, there has been a serial depletion of abalone across all major supply countries. All have shown similar trends in the rapid increases in landings and then followed by steady declines due to overexploitation of the stocks. However, despite the decline in the production of abalone worldwide, the supply now exceeds peak levels due to the more recent development of abalone farming as well as high levels of illegal harvesting (TRAFFIC, 2018:3).

South Africa is considered one of the world's major abalone producing countries but has suffered severe declines over the last 20 years (TRAFFIC, 2018:4). Mostly due to illegal harvesting coordinated largely through complex criminal syndicates. South Africa is home to five abalone species, but only one, *Haliotis midae* (a species endemic to the country) is harvested commercially. This is the only species in East and Southern Africa for which there is a known commercial demand (TRAFFIC, 2018:4).

The abalone fishery began in 1945 for commercial use as an open-access fishery, in the Western Cape province of South Africa. The consequences of years of unregulated fishing and unsustainable harvesting have been evident through the obvious decline of the species (TRAFFIC, 2018:4). By 1968, the use of quota restrictions was first implemented with further reductions resulting in a Total Allowable Catch (TAC) of 615t in 1995. During the 1990s, in post-apartheid South Africa, isolation came to an end and borders were opened. This enforced a political transformation in the fisheries sector whereby rights were being reallocated. This process began in the mid-1990's and followed a policy decision to redistribute the existing rights in the Western Cape from five corporately owned companies, to individual boat-based divers and marginalised traditional fishers from the local communities (Runhovde, 2018:4; Raemaeker, et al, 2011:436).

This complex process caused tensions between fishing authorities and traditional fishers who felt they had a historical entitlement to the resource. The unfair allocations resulted in distrust in the process and disregard for regulations implemented. Thus, many of those whose livelihoods depended on abalone fishing but were now excluded, continued to fish and sell their catch (Traffic, 2018:4). Furthermore, commercial companies with quotas have been involved in illegally harvesting abalone, by using their legitimate fishing business to systematically violate the law (Bondaroff, van der Werf & Reitano, 2015:42). Especially, as there has been an increase between opportunities for trade between South Africa and Hong Kong as a result of the demand for South African abalone (Bondaroff et al, 2015:51). A culmination of factors, including the high prices on offer as well as the socio-political climate, attitudes around the rights and legalities of abalone fishing, fostered an environment for the illegal fishery to grow, not only domestically but internationally. Through long and well established transnational routes, the illicit abalone trade has developed into a transnational organised crime.

2.2.1 Role of Transnational Organised Crime (TOC) and IWT in SADC

2.2.1.1 What is TOC?

From a criminological perspective, the concept "transnational crime" was first identified by the United Nations in the 1970s and used to describe certain criminal activities which transcend national jurisdiction (Khan & Singh, 2014:523). It was later changed to TOC as a result of the systematic nature these activities displayed. Moreover, transnational crime is identified by

criminals who use opportunities to commit unauthorised acts beyond national borders or by the cross-border transfer of illegal commodities (Runhovde, 2017:2). The addition of crimes related to pollution and crimes against wildlife, and it fits White's (2011) description of 'transnational environmental crime' (TEC), which shares many similarities with TOC.

Although the concepts 'transnational crime' and 'organised crime' overlap, transnational crimes are often but not necessarily perpetrated by organised criminal groups. Furthermore, crimes can be organised without crossing international borders, thus it is important to acknowledge domestic organised crime (Runhovde, 2017:3). The broad definition of 'organised crime' provided by the UN Convention on Transnational Organized Crime causes any pattern of profit-motivated serious criminal activity to be considered organised crime, including most transnational wildlife trafficking (UNODC 2016:23). The UN Secretary General noted the lack of a uniform agreement on the definition of the term 'organised crime' amongst countries and set out seven characteristics that, when present, suggest the involvement of organised crime:

- The presence of multiple shipments through well-established routes, methods and facilitators;
- Use of violence against rivals or law enforcement;
- Use of sophisticated methods of concealment or fraud;
- Trafficking of wildlife alongside other contraband;
- Laundering of profits;
- Use of front companies to provide legitimate cover and use of bribery to facilitate trade and corruption (UNODC, 2016:23).

Form these characteristics, the conclusion that some acts of wildlife poaching and trafficking, including that of the illicit abalone trade exhibit the hallmarks of organised crime (Abotsi et al, 2016:412-413). Wildlife traffickers can be self-employed and act alone as the opportunity presents itself or they may be employees of a larger informal or formal network (Wyatt 2013:86). While the traditional conceptualisation of organised crime involves an element of hierarchy, continuity and rationality, Wyatt (2013:86) explains that within more informal 'disorganised' networks there is still a level of organisation and structure to the offenders' actions, but they do not act on the directions of a formal 'organised crime' group. It is therefore mostly the work of loosely linked entrepreneurs in groups where there is limited contact between members (Runhovde, 2017:3).

It is important to note that though organised crime exists in many places around the world, it takes very particular forms in various countries (Blum, 2016:7). As opposed to mafia structures, criminal groups in Southern Africa, for example, tend to function in loose and shifting associations and alliances with others or in a network without a clear hierarchy (Blum, 2016:7). The original paradigm of organized crime usually depicts a homogenous, structured group of criminals that exists outside the parameters of the formal economy, this is not the case in sub-Saharan Africa (Blum, 2016:7). There are a variety of actors involved in organised criminal activities in sub-Saharan Africa where there is an unclear line between the licit and illicit that serves as a playing field for criminals and that can be taken advantage of (Blum, 2016:7). For example, the prised abalone in South Africa may reach the East Asian market as legal abalone as a result of the product coming from countries that have not criminalised/regulated the marine mollusc.

2.2.1.2. Transnational Criminal Networks (TCN's) and IWT

Most of the literature identified for this research for TOC examines other transnational crimes such as human trafficking, drug trafficking and terrorism, which differs in its nature and aim from, for instance, environmental and wildlife crimes. Although some similarities may be found in the ways in which these crimes operate and are conducted. Thus, transnational forms of criminality have common features which link them together under the umbrella of TOC. However, the kind of TOC that is being described must be specified explicitly. While transnational environmental and wildlife crime continue to grow rapidly as serious cross border criminal enterprises, arguments have been raised that it has not received enough attention in policy decisions and enforcement. Researchers also point to a lack of political will to implement international treaties to prevent and punish such crimes (Gaustadsaether, 2016:43; Biegus & Bueger, 2017:34; Ayling, 2017:1). On the contrary, the creation of comprehensive legal frameworks both in the international and regional community to combat the wildlife crime have surfaced over the last few years.

The low detection rate of IWT allows the crime to flourish in environments with natural resources, which can easily be exploited by the lack of capacity to regulate them. The increasing involvement in both illegal poaching and trade by criminal syndicates is linked to the tremendous profits made from the products (Abotsi et al, 2016:400). High profitability coupled with the low risk of detection have greatly attracted organised criminal networks involvement in the wildlife trade.

A stream of scholars (van Uhm, 2012; Gaustadsaether, 2016 & Wasser et al, 2018) have suggested that there are similarities between IWT and TOC and that the two overlap with each other. These similarities form an important part to this research with Avis (2017:7) suggesting that TCN's are often involved in the trafficking stage once the product is containerised. This is not an arbitrary decision as it has been suggested that TCN's provide the trafficking routes and methods to join together source and destination countries (Avis, 2017:7).

By acknowledging the IWT-TOC nexus, governments could take a more targeted approach towards crime prevention. Moreover, it suggests that a harmonised regional legal framework would assist in combatting the crime. Mutume (2007:np) highlights that TCN's are considerably involved in IWT because of the weak regulations in African countries. Consequently, this allows criminal syndicates to continue their crimes through other less criminalised and sanctioned crimes. For example, TCN's can use the wildlife products to move other contraband to other destinations and vice versa (this will further be discussed below in detail, section 2.1.4) (Adal, 2018:np).

On the same note, it could be argued that IWT and TOC are often interchangeably funded through each other's trading networks. That is, it is not always the case that poachers and traffickers are paid large amounts of money for their products as they might be paid through other means, including drugs and weapons. For example, Abotsi et al (2016:412) explain that some wildlife products like rhino horn, pangolin and lion bones support a supply of firearms and drugs in the same areas characterised with conflict (Institute for Security Studies (ISS), 2017:np). In his way TOC extends its self into IWT by facilitating other crimes in a transnational and organised manner. As a result, wildlife criminals have increasingly diversified with emerging criminal networks that specialise in wildlife poaching and trafficking (Avis, 2017:6).

South Africa's transition years left the country particularly exposed to organised criminal activities and networks (Mothibi et al, 2015:1-2). Such exposure was exploited and their well-developed infrastructure, high standard of living, transportation systems, remote airports and relatively weak and porous border controls contributed to easy smuggling. Furthermore, the country is home to diverse and valuable natural resources such as the rhino horn, sharks and abalone (Gaustadsaether, 2016:40). These factors combined make South Africa a convenient hub for individuals looking to organise crime operations. Moreover, the risk of being caught

and persecuted in the sub-Saharan Africa is relatively low (Gaustadsaether, 2016:40). This is linked to the region's lack of effective regulations and each country only focusing on protecting wildlife within its jurisdiction (Adal, 2018:np).

The lack of domestic and regional regulations for the illicit trade coupled with the prevailing political, economic and social conditions are favourable to the expansion of organised criminal organisations globally Although, it is not the intention of this research to highlight solely the relationship between the IWT, TOC and the illegal goods transferred, the next section will examine the illicit abalone trade in relation to TOC.

2.2.1.3 TCN's and the illicit abalone trade

TOC within the SADC region has deep political roots which solidified during the political transition after apartheid. This period of transition caused governments to concentrate resources to certain areas, leaving gaps to be exploited by organised criminal groups (Mothibi et al, 2015:649). Contact with local African entrepreneurs, smugglers and criminals was made after criminal groups were established to explore legal and illegal business opportunities, creating many informal sectors notably the illicit abalone trade.

The informal abalone fishery sector developed into a highly organised illegal fishery facilitated by international syndicates exporting abalone to Hong Kong as early as the 1970s. The illicit trade in abalone constitutes a major component of the business of Chinese organised criminal groups. According to earlier research the Chinese criminal groups started the illicit trade around the 1990s where evidence was produced of at least 30 to 40 tons of dried abalone had been exported illegally from South Africa (Winterdyk, Reichel & Danner, 2009: 84). Although abalone is highly sought-after, Chinese criminal groups were initially involved in shark fins before abalone. Since then, the range of illicit activities have evolved into a range of other illicit activities like the recreational drug trade, trafficking of immigrants and illicit goods through various well-established routes (TRAFFIC, 2018:5; Winterdyk et al, 2009:84). During this time, Chinese criminal groups became involved with locals who used their contacts through which they could illegally obtain goods such as cobalt and other metals, ivory, diamonds, or drugs such as "mandrax" scientifically knows as Methaqualone; a sedative hypnotic drug (Mothibi et al, 2015:65; Dasgupta, 2017:23). For example, during the transition phase, the removal of economic sanctions and the country's reinsertion into the global economy made it easier for criminal groups to conduct operations in the country as a result of a shift in political

governance (de Greef, 2013:24). At the same time, greater volumes of contraband entered the country—including other drugs such as "tik" scientifically known as crystal methamphetamine; a highly addictive central nervous stimulant which Chinese networks are understood to have bartered for abalone with local gangs from the Cape Flats (Ibid, 2013:24).

By the 1960s the smuggling routes were well established in the SADC region, infiltrating neighbouring countries *inter alia* such as Mozambique and Zimbabwe (Mothibi, Roelofse & Maluleke, 2015:652). Minnaar, van Schalkwyk and Sarika (2018:81) report that much of the abalone leaves South Africa through land borders and not commercial ports, because the latter is considered to have a low risk of detection as a mode of transport. Subsequently, Bondaroff et al (2015:52) highlights additional reasons that South African officials have failed in combatting abalone trafficking. Firstly, the ease in which abalone can be moved across borders is because of the form in which it leaves, which is often dried. Fresh abalone is easily detected by its pungent odour, while dried abalone can be disguised as another product (de Greef & Raemaekers, 2014:19). Secondly, corruption and bribery of law enforcement and border officials to not inspect consignments play a significant role in the movement of abalone to neighbouring countries. Thirdly, exporting the abalone into East Asia is made easier once the abalone is in a neighbouring country that lacks export bans on the species (Bondaroff et al, 2015:52). Consequently, these countries lack regulations against exporting abalone without a permit. The diagram below displays the routes in which abalone is moved out of South Africa through neighbouring countries into East Asia (Fig. 1).

This is reiterated by Chow (2017:np) who posits that there are two main ways for smuggling dried abalone out of the country. The first way is to move the abalone to landlocked neighbouring countries, where there is no regulation over the trade of abalone through a process known as smuggling. It is then 'imported' back into South Africa before exporting the abalone to Hong Kong under falsely declared origins. The second way, is through the process of drying and storing the abalone in a warehouse, from where the abalone is shipped off or transported to Hong Kong by air or sea (Chow, 2017:np). Additionally, a problem is that the illicit abalone trade is considered as a domestic/national wildlife crime problem, yet from what has been mentioned in the previous section there are clear indications that there is transnational movement of the marine mollusc. This has a limiting effect on national law enforcement who lack international jurisdiction. This is supported by Berry and colleagues' (2003:37) research who highlighted that the Chinese syndicates illegal activities often flourish outside of a source

country's jurisdiction as they fall outside the boundaries of domestic law enforcement's capabilities. This creates problems for law enforcement to arrest offenders and carry our investigations when both the product and offender are in another country.

Illicit abalone smuggling routes (Fig. 1)

Source of diagram: TRAFFIC (2018)

2.3. Arrests and seizures

Generally, IWT is difficult to quantify with an exact number, with most of the current statistical indicators being based on seizures. Information gathered from arrests and seizures of abalone are often seized with other illicit wildlife products. This implies that different wildlife products are often smuggled or trafficked via the same transport methods and/or in the same consignments. Furthermore, the blurred line between legal and illegal trading allows wildlife products to be shipped with other imports and exports. For example, TRAFFIC (2018: 27) highlights that the vast majority of abalone seizures occur within South Africa while only a few seizures have occurred in transit through Mozambique and Zimbabwe. In 2010, Mozambique customs officials seized over 2tons of abalone, smuggled in from South Africa.

The abalone was hidden amongst a consignment of maize and potatoes and was seized along the South African-Maputo highway, before its shipment to East Asia. Consequently, TRAFFIC (2018:26) emphasises that seizures of abalone often involves other contraband such as cash, cars and/or drugs. An example of this, was of a Chinese man who was arrested in Cape Town in 2014. He was sentenced to ten years in jail and a R5 million fine for the possession of elephant ivory worth R21 million. Within the same consignment of ivory was 116.5kg of abalone. Since then, similar incidences have occurred between 2014 and 2017 where abalone has been seized with other illegal wildlife products to Hong Kong. The Department of Environmental Affairs (DEA) (2018:np) stated that four live sharks, a live pangolin, ivory and rhino horn and 700kgs of abalone were seized during the month of July 2018. However, it is important to consider that abalone is not always mixed with other contraband. (TRAFFIC, 2018:27).

Minnaar et al's (2018:78) research found that import records of abalone to Hong Kong listed Mozambique, Zimbabwe, Swaziland, Namibia and Tanzania as abalone exporters. This indicates that abalone is being illegally smuggled into neighbouring Southern African countries, since this specific type of abalone is endemic to South Africa. Between the years 1994 and 2000, authorities noted an annual increase abalone confiscations, totalling to 1 615 000 pieces of abalone. With the year 2000 being the most confiscations at 360 000 individual molluscs. By 1997, a decline in the abalone confiscations was identified, except for the year 2006 which has been an all-time record high with 1 200 000 pieces of abalone confiscated (Minnaar et al, 2018:77). For the past 18 years the number of seized abalone fluctuates between 135 and 1081confiscations per year, averaging to 1.5 confiscations per day (TRAFFIC, 2018:27). This suggests that individualised national interventions have had little impact on illegal fishing for abalone in South Africa (Traffic, 2018:39).

However, evidence from seizure data suggests that local joint law enforcement operations do result in seizures, and that the provision of information to authorities has led to a number of high-value seizures over the last ten years (Traffic, 2018:39). Although it must be considered that seizures do not represent the percentage of the estimated poached mass. Reports deem that the poached mass is fairly low but should not necessarily be a reflection of enforcement efforts, as much of the product (up to 43% in some years) is going through neighbouring countries. Current exporting countries that are not abalone producers run the risk of being guilty of declaration violations in terms of their country's customs regulations by misreporting or mis-

declaring export products, since there are no records of abalone traded through their ports apart from the importers' records. The increasing imports of dried South African abalone combined with the high value of the product and the presence of organised crime syndicates suggest that interventions and collaborations at the international and regional level are required in order to address the trade in illegally harvested abalone (Traffic, 2018:39).

The rapid decline in wildlife fauna and flora calls for attention and its trade requires tight and rigorous regulation. Despite advances in detection technologies, which according to Kamminga et al (2018:2) are said to be an array of technologies that are used to detect poachers in wildlife areas through but not limited to, animal tagging, aerial drones and perimeter intruder detection systems, wildlife life is still being poached and trafficked at an alarming rate. Moreover, other intelligence-led policing measures have been used to disrupt IWT where police use information about abalone poaching from local informants. Additionally, the use of preventive strategies such as road blocks made on known roads heading to Cape Town or North towards Johannesburg have also been employed (Minnaar et al, 2018:80). Irrespective of these efforts, abalone is still found in East Asia at a larger rate than exported. Therefore, current preventive and control measures have not entirely disrupted illegal wildlife supply chains (Pires, 2016:299) hence a new approach is needed.

2.4. Drivers of (illicit abalone trade) IWT

The increasing recognition that the wildlife trade in East Asia has far reaching effects has drawn attention to understanding its drivers. This section will discuss the relevance of these drivers in relation to the importance of harmonising legal frameworks to combat wildlife crime. It is important to note that drivers of crime shape the way in which serious and organised criminal activities are conducted. They include a variety of facilitating and vulnerably factors in the society which essentially create opportunities for these crimes to take place.

It is evident that the wildlife trade is of significant economic importance in East Asia. The economic value of participating in IWT is varied, as trade in some cases is a regular source of income while for others it is an occasional source of income. In some cases, it is purely a lucrative business that attracts large amounts of money and profits (World Bank, [sa]:4). Internationally, both the expanding population growth and affluence in East Asia has led to a rising demand for exotic and luxury wildlife products. The UNODC (2013:77) reports that China is the region's largest economy and simultaneously the largest consumer market for

wildlife. With the bulk of the wildlife consumed as food or as ingredients in traditional medicines. Recent survey on Chinese attitudes found that respondents were motivated to consume wildlife for ostentatious reasons, such as displaying social status and respect for guests, as well as for perceived health benefits (UNODC, 2013:77).

From a regional perspective, SADC's drivers behind IWT are varied and complex; that vary over time and are unique from one location to another, depending on the type of commodities and crime involved. Therefore, caution should be taken when discussing these drivers. Broadly, the main drivers fall into economic, regulatory, political or customary drivers that are behind IWT in sub-Saharan Africa. These include but are not limited to; increasing demand in consumer countries in East Asia; poverty in source countries and a lack of alternative livelihoods in source countries (Price, 2017:2). An example of how drivers vary is the use of wildlife for traditional medicine. Although driven by unverified beliefs, such as medicinal properties of rare plants and animals or their parts and derivatives. Examples include: orchids, tiger parts and rhino horn. Historically, traditional medicine has been tied very closely to Asian cultural values and traditions that have been practiced for thousands of years (Price, 2013:77).

The most dramatic example of such misconceptions is the use of rhino horn, the demand of which has grown exponentially in Viet Nam in recent years. This has been linked to the spread of uncorroborated claims that rhino horn medicine cured a Vietnamese official of cancer[3] (Price, 2013:77). Whereas drivers that facilitate the illicit abalone trade appear to aid as a functional alternative to the formal fishery system on the supply side (World Bank, [sa]:5). It is therefore driven by a combination of poverty and a lack of alternative employment (Harrison et al, 2015:52). However, this does not fully explain the continuous drive towards IWT. In the next paragraph, a theoretical perspective of the drivers of illicit abalone trade and in the larger scheme of things the IWT is unpacked.

A theoretical explanation for the drivers of IWT is described in the CRAVED (concealable, removable, available, valued, enjoyable and disposable) model developed by Ronald Clarke (1999), to understand theft variation of products. The foundation of Clarke's CRAVED model came from his 1995 Situational Crime Prevention theory, which encouraged a wider scope of prevention than that of the criminal justice system. It examines the situational opportunities

[3] Hübschle (2016:165) highlights the relationship between rhino horn and traditional Chinese medicine (TCM). Rhino horn has been prescribed by TCM doctors for the purposes of lowering fever, detoxification and stabilisation.

that are facilitating factors for crimes, therefore identifying the circumstances and then reducing it (Freilich & Newman, 2017:2). Although Clarke's (1999) model is used to describe common theft crimes, it has been applied to IWT by several researchers. Moreto and Lemieux (2014) built on Clarke's work in their article 'From CRAVED to CAPTURED: Introducing a Product-Based Framework to Examine Illegal Wildlife Markets.'

The research of Moreto and Lemieux (2014) examined products that were frequently stolen and sold in illicit wildlife markets. These products displayed six characteristics, and were said to be those that are concealable, removable, available, valuable, enjoyable, and disposable. In their discussion, they point out that the CRAVED characteristics of wildlife products may vary depending on the stage of the trade (e.g., harvest, trafficking, processing, and sale to consumer) and this ultimately explains the variation in poaching. Moreto and Lemieux also explain that wildlife products differ from traditional inanimate hot products in three major ways. Processing, longevity (i.e., shelf-life, this is important as it is later suggested that wildlife animal products such as abalone are trafficked dry), and temporary or final use of wildlife products vary between species and affects their demand by actors and consumers alike. These three factors are unaccounted for by the CRAVED model and this is a serious limitation that may explain theft variation of animal derived products. As a result, Moreto and Lemieux (2014:303-320) introduced the framework CAPTURED (concealable, available, processable, transferrable, useable, removable, enjoyable, desirable) to fully understand variation in wildlife products throughout the market continuum (Moreto & Lemieux, 2014:303-320). Considering the uses of the animal and plant products that pertain to IWT, the CRAVED and CAPTURED frameworks highlight the products supply and demand dynamics.

The CRAVED theory has been successfully applied to parrot poaching and in Mexico and global illegal fishing (Pires & Clarke, 2012; Petrossian & Clarke, 2014). However, this theory is obviously not without criticism. As an example, not all wildlife contraband is traded for economic gain. Mancini and others (2011) found that in some IWT cases the drivers are purely for social status. Thus, the theory does not cater for non-traditional measures of value for IWT. Consequently, it is important to consider social-political influences that could have an effect on the CRAVED theory in different countries.

In addition to this, there are a number of enabling factors that encourage the IWT in SADC region which include: weak governance; corruption; failures in enforcement; and failures in regulation (UNODC, 2017:2). Weak regulations can be found at an international, regional and

domestic level and often associated with countries that do not support the rule of law (Wyatt et al, 2017:39). To date, the literature on the effects of weak regulations as a driver of IWT are meagre, however, correlations between the illicit trade, insufficient and weak legislation have been found as enabling factors (Wyatt et al, 2017:35-55). Take the CRAVED and CAPTURED framework for instance; Moreto and Lemieux (2014:311) posit that wildlife products have to go through a form of processing before they can enter into the illicit market. Processing is referred to as a form of alteration and refinement of a product from (physical trait) or status (legal/regulatory status) (Moreto & Lemieux, 2014:311). Therefore, a product would need to be considered as legal to continue its route from the source to destination. The method in which this is done varies but is either by false documentation or entering another jurisdiction with no criminal laws affecting the legality of the product.

For example, Harrison et al (2015:10) highlights weak regulations reduce a laws ability to act as a deterrent by producing low rates of prosecution and penalties. Evidence from case studies conducted by Salum and colleagues (2017:101-108) supports the idea that weak legislations are often a result of weak governance. The case study highlights that the prosecution authorities and courts in numerous African countries function poorly when prosecuting wildlife crime. Similarly, a case study conducted by Wyatt et al (2017: 35-55) found that corruption influenced poor domestic and international regulations, that indirectly had an effect on law enforcement. The researchers point out that despite having legislation in place, corruption may influence the ability to draft strong or weak legislation to prevent wildlife trafficking (Wyatt et al, 2017:38). Such enabling factors permit the exploitation of wildlife crime laws in countries by allowing the trade to cross over into other jurisdictions with ease, thereby creating a transnational and organised trade.

2.5 What are loopholes? What can we learn from the Literature?

Laws are often known to be replete with loopholes. The reason is generally thought to lie in the divergence between the text and the purpose of a law. Generally, the literature related to loopholes is scanty. It is for this reason that this research plays a critical part in identifying a gap in the literature, especially looking at the loopholes and its effects on TOC and IWT. However, the literature that is available highlights the effects of discordant laws, the gaps in laws and how it facilitates a criminal action.

Legislative loopholes are an important part of this research, therefore it is important to understand what is considered a loophole. According to Frith (2012:2), a loophole is a gap within a law, it is an obscurity that can be used to circumvent or otherwise avoid the express or implied intent of the law. Additionally, a loophole can be caused by two conflicting legal laws that can be used to benefit someone in a seemingly perverse way. This technicality often permits a person or entity to avoid the scope of a law without directly breaking the law (Frith, 2012:2).

Thus, the result of a loophole is an unintended consequence. This is further described by Firth (2012:2) as "unanticipated consequences," "unforeseen consequences," or "unexpected consequences." These unintended consequences are outcomes that are not the ones that were intended by a purposeful action, which is an action that involves motives and a choice between various alternatives. A perverse effect that is contrary to what was originally intended, a counterintuitive result; when an intended solution to a problem actually makes the problem worse (Firth, 2012:2). Critical to the discussion is the theory of loopholes by Leo Katz (2010) who argues that loopholes are inherent to the logical structure of a doctrine, as their emergence is from laws trying to balance conflicting principles. However, it must be considered that the theory by Katz looks at loopholes in civil claims and not from a criminal law perspective. In reference to this thesis, the legislative loopholes refer to loopholes that facilitate transnational crimes. Marler (1999:835) argues in favour of plugging loopholes in criminal laws as failure to do so may render it impossible to convict criminals.

Loopholes and regulatory gaps fail to adequately protect and regulate the wildlife trade. It also gives rise to abuses of the product and aids in the circumvention of punishment for traffickers. For example, the Wild Animal Reservation and Protection Act (WARPA) of Thailand was found to have legislative loopholes that allowed for the IWT of native tortoise species (TRAFFIC, 2016:np). Another example is the case of Lemthongthai, a wildlife criminal who used South Africa's hunting law loopholes to attain dozens of rhino horns for trading in Asia (Gosling, 2014:44). These loopholes have the potential to open doors to trafficking and many illicit activities. Often the causes of loopholes are from not having direct and specific domestic regulations in a country. However in the case of IWT, the divergent sets of national legislation pertaining to IWT in the SADC region creates a hindrance for international cooperation.

Considering the problematic nature wildlife crime encompasses, it is important to understand the recent history on environmental criminality. Societies are still unsure about what parameters define environmental crimes (Qudah, 2014:25). This is closely related to the minimum attention and significance that the environment has been given in past years. The UNODC (2015:np) highlights this as a problem that creates gaps in law and in the way law enforcement approaches the crimes. Wildlife crime has escalated due to the increased involvement of TOC groups (see section 2.1.1.2). By refusing to acknowledge the seriousness of the trade, punishment and legislative frameworks remain too common place and scanty, consequently effecting the way in which law enforcement handles the crime. This is supported by Luttenberger and Luttenberger (2017:213-220) whose research on challenges in regulating environmental crimes emphasises that the lack of prioritising environmental crimes creates shortcomings in the way governments deal with it. Additionally, the effects of this result in serious environmental crimes that contain organised criminal involvement is over looked and dealt with by misdemeanours (Luttenberger & Luttenberger, 2017:214).

Therefore, loopholes are additionally created by ignoring other crimes that are involved in the illegal trade in wildlife. Unlike many other crimes that benefit only the criminal, environmental crimes ironically, may have societal benefits, such as employment opportunities and economic prosperity for some individuals (Qudah, 2014:25). This creates a complex challenge when creating legislation as it blurs the lines between what is legal and illegal. For instance, locals that have depended on certain wildlife like abalone for food or to sell are now faced with quotas and permits to fish what was once accessible to all. Furthermore, the wildlife laws of some individual SADC countries only cover their domestic animals. Ordinarily this would be an appropriate way to tackle wildlife crime in a country; however, the transnational nature of IWT can thrive under conditions of discordant laws in the region. Wildlife products and animals are shipped to neighbouring countries under such conditions and this leads to the creation of transit countries and zones.

These discordant laws are guided by ununiformed principles to combat IWT. This means that there is no coordinated framework or set principles that guide countries decisions collectively. Therefore, countries use their own discretion in combatting IWT depending on the way in which IWT presents itself in the country. Therefore, the type of crime portrays itself as country-specific because it is neither been constant or identical in different countries. However, over recent years great efforts have been made both globally and within the SADC region to

harmonise other TOC crimes laws such as human trafficking. This has been mirrored from previous successful regulatory laws like the European Union's harmonised laws to combat crimes like IWT and TOC. The coordination of such laws and crime definitions have been a long standing response to avoid loopholes in legislation which allow criminal groups to act more freely.

Gosling (2014:1) highlights the importance of a universal legal framework to capture all crimes that fall under the broad umbrella concept of environmental crime, TOC and IWT. Furthermore, considering the fact that environmental crimes are no longer a domestic problem, criminal groups act in three different countries (origin, transit and destination), connecting to a complex nature of other criminal activities. Thus, the complexity of what to prosecute transnational crimes without consistency is a difficult task among legal regimes in neighbouring countries. These neighbouring countries are often labelled as transit countries, and will be discussed in the next section.

2.6. Transit countries

A significant part of the illicit trade takes place in neighbouring countries, it is therefore important not to underestimate the role and value these countries may have in facilitating the trade. According to Runhovde (2017:3), a transit country is "described as a country that is used to move imported goods from one foreign place to the territory of one or more destination countries." Furthermore, countries considered to be transit have important shipment points that are used for the movement of IWT products. This is relevant to Mozambique's role as a transit country. Blum (2016:11) suggests that Mozambique's ports are often used to ship wildlife products to East Asia, as the country's long shoreline (2300 kilometres) is less monitored. Its geographical position as window to the Indian Ocean for its landlocked neighbours and the more border-controlled South Africa makes it a key transport hub, lucrative for the smuggling of goods (Blum, 2016:5). Zimbabwe's geographic placement likewise makes it a strategic location for transit trafficked products, that can be moved to a number of additional neighbouring countries (Mutombodzi, 2007:1).

According to the UNODC (2013:8) transit countries are selected for a number of attractive reasons for smugglers. More often than not, smugglers use these neighbouring countries and diverse routes to avoid detection to the destination country. This research has recognised a pattern between the connection of source and destination countries, despite this there has been

little research into the role of transit countries with regards to IWT. Therefore, this research further extends into the literature by touching on the role and what makes the countries attractive as transit countries for IWT and TCN's in the SADC region.

There are common characteristics that make a transit country attractive. Runhovde (2017:4) identifies geographic proximity by land, sea and air; weak enforcement; porous borders; extensive and reliable networks of individuals in transit countries and insufficient legislation. Additionally, countries may fall broadly into four categories: 1) those with considerable political influence; 2) those with considerable natural resource endowments; 3) those recovering from conflict and where post-war reconstruction activities have brought in an array of external actors; and 4) those where the leadership has acquired a controversial or even pariah status. Interestingly, South Africa is identified as a major trans-shipment point for wildlife from and to other African and international nations because of its geographical positioning and good commercial roads, international airports, remote airstrips and seaports (Runhovde, 2017:5). This provides an interesting case study of the illicit abalone trade, as abalone is not directly shipped out of South Africa to East Asia. Yet it has all the identifiable characteristics that make a transit country attractive. Subsequently, this could highlight the use of national stringent laws that prohibit the illegal trade in abalone. These divisions are, however, not sacrosanct, as there are cases where some countries fall into two or more of the broad categorisations (Alao, 2014:5).

Scholars generally suggest that countries undergoing political transitions are particularly vulnerable to increased levels of organised crime (Kapiso, 2018:1). To illustrate that this is not only a problem in Africa the example of the transition of the Soviet Union in the early 1990s led to organised-criminal groups becoming entrenched and occupying (or acquiring) governance roles previously undertaken by state actors. However, although the relationship between organised crime and political transition is widely accepted, minimal evidence has been gathered on this making it difficult to determine the exact nature of this relationship and the levels of organised crime prevalent before, during and after periods of transition (Kapiso, 2018:1).

In a context of political transition from authoritarian to democratic rule that most African countries go through, the effect of state actions may be difficult to distinguish from general criminal activities. It is also challenging to assess the extent to which political transitions make hidden crimes visible or create new forms of crime. The latter is particularly the case in the

Zimbabwean context, where the criminal-political economy has had the effect of blurring the boundary between illicit and licit activities, and where political-office holders are key actors in illicit economies (Kapiso, 2018:1). This is especially in the case when developing legislation to combat organised crime. This is because Zimbabwe's government dominates the legislative process, leaving it to be politically influenced (Kapiso, 2018:9). This creates a gaping loophole as numerous illegal crimes and functions such as trafficking and smuggling routes are developed. Having no regulations in transit countries for many international wildlife products creates an informal sector that can cause goods from neighbouring countries to be brought in legally (Golub, 2015:180). A research paper by Ponsaers, Shapland and Williams (2008) found linkages between organised crime and the informal economies in Eastern European countries. Notably, both Zimbabwe and Mozambique's informal economies create the conundrum of legal versus illegal trade. These ambiguities allow obscure criminal activities which infiltrate the formal economy.

Considering that Zimbabwe is landlocked, with a more than half of the economy being informal, its role in the illicit abalone trade is of interest. Therefore, it is imperative to plug loopholes that allow traffickers to smuggle in neighbouring countries wildlife products. The role of Zimbabwe as a transit country is an interesting one because of its protracted democratic transition. A controversial argument on the role of Zimbabwe as a transit country is the involvement it has with foreign investments; particularly that of the Chinese dating back to the 1980 liberation war. The year 1980 was a turning point for Zimbabwe. While gaining democracy, the year also introduced the emergence of organised crime in Zimbabwe (Chihuri, 1997:np). While there may be a relationship between all three, there is no evidence tying China's involvement to the emergence of organised crime in Zimbabwe. However, during the year 1980 Zimbabwe's accelerating dependence on Chinese investments, has suggested that the countries extreme indebtedness may play a role in a sizeable black market for commercial quantities of illicit wildlife products (Shadow Governance Intel, 2018:np).

Considering the connection transit countries have with origin countries, there is a need for a coherent response in the illicit abalone trade. There is a necessity for the development of a legal framework that consists of a common goal that encapsulate all sectors of IWT. Subsequently, the SADC region should recognise the role in which transit countries have in IWT. Therefore, use this as a driving a driving force to be able to collaborate and work together.

2.7 Conclusion

This chapter has discussed the illicit trade in wildlife, by highlight the illicit trade in abalone. It has further highlighted the nature of the crime from being a national concern to an international problem as a result of its transnational nature. Furthermore, the case of the illicit abalone trade has been presented and offers insight regarding the movement of the marine mollusc through neighbouring countries in the SADC region. Moreover, the chapter touches on the socio-legal problems amongst neighbouring countries. Thus, the next chapter will discuss international, regional and national regulations of the trade and its shortcomings.

Chapter 3

3. Regulations and its shortcomings

3. Introduction

In the previous chapter we discussed how the illicit abalone trade is trafficked through SADC to east Asia. Despite the numerous factors that contribute to the trafficking of abalone, one of the identified reasons is the lack of legislation regulating the trade across SADC. This chapter will proceed to discuss the regulatory frameworks at an international, regional and national level. The aim is to illuminate legislative loopholes that facilitate the illicit abalone trade.

3.1 International convention and treaties on IWT

The regulation of wildlife crime management has often been at an international level. International legislation refers to global treaties (or conventions) and agreements that are open to participation by all nations. The rise of international regulations stems from the failure of national regulations and the endemic rise of IWT of threatened species (Price, 2017:3). The key international multilateral treaty regulating international trade in endangered plant and animal species is the 1973 Convention of International Trade in Endangered Species of Wild Fauna and Flora (CITES). The development of CITES arose from earlier unsuccessful regulatory attempts to deal with the unsustainable exploitation of wildlife. This was because of the national community's failure to agree (Hübschle, 2017:185). Since then, over 180 countries have either signed or ratified CITES, the prime purpose of which is to regulate trade in the species listed in its Appendices, either by outright prohibition or by monitoring trade levels.

The 1973 Convention on the International Trade in Endangered Species (CITES) provides the basis for cooperation through international mechanisms and agreements (Lau, 2018:4). CITES creation was to facilitate international cooperation and trade for importing and exporting of wildlife amongst nations (Warchol & Harrington, 2016:25). All imports, exports and re-exports of species covered in the Convention have to be authorised through a licensing system, allowing for species regulation (CITES, 2018:np). Depending on the degree of protection they need, species are listed in three appendices (CITES, 2018:np).

CITES is not an enforcement agency and thus signatories are required to regulate wildlife trade. This means that CITES determinations and effectiveness as a regulatory instrument are blunted by country-specific laws. Thus individual nations' need to adopt specific domestic measures

to enforce these regulations (CITES, 2018:np; Obank et al, 2015:1). Furthermore, this would mean that offences relating to IWT are subject to prosecution through respective domestic laws (Obank et al, 2015:1). Important to note is that the CITES agreement only aids in the regulation and competition in the products market and not how the product is supplied or its demand (Warchol & Harrington, 2016:25).

CITES achieves this through the use of three appendices to regulate the wildlife according to the level of threat and endangerment of the species. Appendix I lists species that are the most endangered among CITES-listed animals and plants. They are threatened with extinction and CITES prohibits international trade in specimens of these species except when the purpose of the import is not commercial, for instance for scientific research. In these exceptional cases, trade may take place provided it is authorized by the granting of both an import permit and an export permit (or re-export certificate) (Hübschle, 2017:186).

Appendix II lists species that are not immediately threatened with extinction but that may become so unless trade is closely controlled. It also includes so-called "look-alike species", i.e. species whose specimens in trade look like those of species listed for conservation reasons. International trade in specimens of Appendix-II species may be authorized by the granting of an export permit or re-export certificate. No import permit is necessary for these species under CITES (although a permit is needed in some countries that have taken stricter measures than CITES requires) (Hübschle, 2017:186).

Appendix III is a list of species included at the request of a Party that already regulates trade in the species and that needs the cooperation of other countries to prevent unsustainable or illegal exploitation. International trade in specimens of species listed in this Appendix is allowed only on presentation of the appropriate permits or certificates. Species may be added to or removed from Appendix I and II, or moved between them, only by the Conference of the Parties. Species may be added to or removed from Appendix III at any time and by any party unilaterally (Hübschle, 2017:186). CITES is considered a legal binding framework, but is not self-executing. This means that countries have to adopt CITES into their national legislation, which then subjects the listed wildlife to varying degrees of controls, permits or certificates should only be granted if the relevant authorities are satisfied that certain conditions are met, above all that trade will not be detrimental to the survival of the species in the wild (Price, 2017:3). As a result of corruption at ports, the illegal re-use of permits and inadequate awareness of the listing amongst neighbouring states the listing was unsuccessful (Lambrechts,

2013:np). By May 2010, the abalone listing was withdrawn by the South African government citing administrative difficulties. However, there are repercussions of not having an animal on CITES, such as it reduces awareness of the abalone conundrum in neighbouring countries. With the diminishing stocks, the production of commercial abalone has become one of the main forms in which abalone is produced for export (Chigumira, 2016:1). It is for this reason that some researchers believe that reinstating abalone on Appendix III could be more effective. Its premise postulates countries to reciprocally protect one another's species by penalising violations of the agreement (UNODC, 2016:24).

Another key global agreement in respect to wildlife regulation is the 1983 Convention on the Conservation of Migratory Species of Wild Animals (CMS). The CMS is a species-based agreement focusing on the immediate protection of certain species included in lists, differentiating according to the degree of threat. The CMS aims to conserve terrestrial, marine, and avian migratory species throughout their ranges, requiring cooperation among range states host to migratory species regularly crossing international boundaries. Many other international legal instruments are of relevance to wildlife, including the Convention on Biological Diversity (CBD) and the World Heritage Convention. The 2005 United Nations Convention against Corruption and the 2000 Convention against Transnational Organised Crime are also pertinent to IWT. Along with conventions such as the 2009 Port State Measures Agreement (PSMA) is a binding international treaty that focuses specifically on illegal fishing, of which Mozambique and South Africa are parties to (Price, 2017:3;Food and Agriculture Organisation (FAO), 2016:np). Similar to that of CITES, the PSMA treaty opens the lines for communication for member countries to inform each other about illegal fishing in their waters (FAO, 2018:np). However, much like other international agreements, it is only as good as the parties that adhere to and enforce it. A shortcoming of this treaty lies in the fact of it placing tighter controls on vessels seeking to enter and use a country's port. The problem arises when fishing is moved through road routes, like that of abalone and is smuggled into landlocked countries. This further draws attention to legislative loopholes found at an international level.

3.2 Regional regulations on IWT

As important as international regulations are to combat IWT, there has been a substantial amount of regional regulations on IWT in Southern Africa. Regional regulations play an important role, as the trade crosses over into neighbouring countries that lack international or national regulation for specific animals. However, SADC countries have undertaken a

meaningful process towards harmonisation of wildlife legislation, such as adopting the 2003 Protocol on Wildlife Conservation and Law Enforcement to the SADC Treaty (Price 2017:7).

The Protocol was to establish a common framework for conservation and sustainable use of wildlife in the region. It is a legally binding instrument, which entered into effect in 2003 and has been ratified by Botswana, Lesotho, Malawi, Mauritius, Mozambique, Namibia, South Africa, Tanzania and Zambia (with Angola and Zimbabwe being signatories only). The Protocol recognises states' sovereign rights to manage their wildlife resources, with a corresponding responsibility to sustainably use and conserve these resources. The primary objective of the Protocol is to establish, within the framework of the respective national laws of each party, common approaches to the conservation and sustainable use of wildlife resources and to assist with the effective enforcement of laws governing those resources (Price, 2017:7).

In signing the Protocol, Member States agree to policy, administrative, and legal measures for promoting conservation and sustainable wildlife practices within their jurisdictions. Member States agree to collaborate with one another on common approaches for achieving the goals of international agreements on wildlife. The Protocol advocates for Member States to harmonise legal instruments for wildlife, establish management programmes for wildlife, and create a regional database of wildlife status and management (Price, 2017:7).

Similar to this protocol is the African Union's (AU) 2015 African Strategy on Combatting Illegal Exploitation and Illegal Trade in Wild Fauna and Flora in Africa. Its objectives are to guide member states on how to achieve a coordinated response to combat IWT. It attempts to promote a strong international, regional and national response in combatting the illicit trade. However, like many other international and regional treaties it requires member states to use the necessary elements to be implemented at a national level.

In February 2016, the joint meeting of the Ministers of Environment and Natural Resources and of the Organ on Defence, Peace and Security Cooperation of SADC adopted the SADC Law Enforcement and Anti-poaching Strategy (LEAP). The LEAP Strategy aims at reducing the level of poaching and illegal trade in wildlife fauna and flora and enhance law enforcement capacity in the SADC Region by 2021 focusing on: enhancement of legislation and judicial processes; minimisation of wildlife crime and illegal trade; improvement and strengthening of

field protection; integration of people and nature in natural resources management; and ensuring sustainable trade and use of natural resources (Price, 2017:8).

An important observation of the regional regulations for IWT is that, although they describe what needs to be done in order to combat the trade, the laws lack a collective list of species that need protection and an effective regional implementation plan. For example, the EU legal framework to combat IWT contains the annexes containing a list of all species that are directly applicable to a member state, lodged into all EU governments legal frameworks known as the Council Regulation EC No.338/97.

There are four Annexes (A, B, C and D) to Council Regulation (EC) No. 338/97. Annexes A, B and C largely correspond to Appendix I, II and III of CITES, but also contain some non-CITES-listed species that are protected under EU internal legislation. Annex D, for which there is no equivalent in CITES, includes species that might be eligible for listing in one of the other Annexes and for which EU import levels are therefore monitored; it is often referred to as the "monitoring list". This is important as most wildlife protection laws are in line with CITES and neglect to regulate vulnerable wildlife and plants that are not regulated by CITES.

3.3. National laws to combat IWT in SADC

Due to the scope of this dissertation, the legislation of three SADC member states will be discussed in detail - South Africa, Mozambique and Zimbabwe - as these are relevant to the argument of the case study. National legislation can be defined as laws that are produced and enforced by individual countries which include laws to implement the provisions of international and regional conventions. National legislation can be broken down into two broad categories of principal and ancillary laws (OECD,2018:43). Principal legislation is aimed at punishing or deterring the specific offence. Such legislation would address the trafficking and illegal poaching of wildlife. The effectiveness of principal legislation is measured by the penalties imposed and their frequency of their application. Subsequently, ancillary legislation is to punish and deter the other crimes associated with the predicate offences. Predicate offences are offences that are often considered to be part of a bigger crime such as money laundering and fraud (TRAFFIC, 2017:np). Moreover, the importance of these offences is that they are directly related to an unlawful activity. Most predicated offences fall under financial crimes as they are said to provide the resources for a more serious crime. For example, wildlife

crime can be seen as a predicated offence with links to fraud, racketeering and money laundering (TRAFFIC, 2017:np).

3.3.1 South Africa's National Laws

South Africa's principle legislation, the National Environmental Management: Biodiversity Act, Act 10 of 2004 (NEMBA) sets forth the general framework for wildlife protection in the country and creates a list of threatened or protected species. Historically, the nine provinces in South Africa regulated nature conservation individually, but since 2004, wildlife management has been regulated at the national level by the NEMBA. In July of 2007, South Africa implemented by the Threatened or Protected Species (TOPS) Regulations under NEMBA, which provide a national standard for protecting threatened or protected species in South Africa, and places stricter controls on trophy hunting and other activities causing harm to threatened or protected species. South Africa also has a wide range of ancillary legislation, combatting corruption, organised crime, customs violations, and regulating illegal firearms (DLA Piper, 2015).

A more specific legal regime for wildlife is established at the Provincial level and a National Environmental Management Protected Areas Act (2003) is in place to regulate protected areas. While a member of CITES since 1975, South Africa did not implement its CITES Regulations until March 2010, but now has an impressive suite of wildlife legislation that is considered to meet requirements for implementation (DLA Piper, 2015). The Department of Environmental Affairs (DEA) has been the de facto lead agency in developing and driving the country's strategic and policy responses to organised wildlife crime.

All of the above laws set forth stringent penalties, including fines and/or imprisonment, for activities such as the illegal hunting, killing, import, export, possession of a threatened or protected species, or related offences concerning false documentation and permits. Over the last few years the severity of penalty fines for wildlife crimes has increased sharply, largely through amendments to relevant legislation. Fines under the TOPS Regulations now reach a maximum of ZAR ten million (USD 833,333), while other wildlife crime offences can carry jail sentences of five years, or ten years in the case of repeat offenders (DLA Piper, 2015). (Price, 2017:13-14). Additionally, South Africa uses both principal and ancillary legislation to criminalise and combat IWT. Obank et al (2015:1), highlight the importance of having strong principal and ancillary legislation to act as a deterrent to wildlife criminal activities. By contrast

limited and weak legislation fails as a deterrent and creates an environment that allows wildlife crime to flourish (Obank et al, 2015:1). Considering the additional crimes associated with IWT, ancillary legislation is used as a way to close the gaps between other organised crimes and IWT. Thus, offering a stronger penalty and wider scope of the illicit trade.

3.3.1.1 National laws and policies for abalone in South Africa

South Africa has made great strides in combatting IWT. With the recent rapid population decline of abalone in the Western Cape, South Africa has developed some strong national laws to aid in the combat of the illicit trade. The principal legislation for abalone is the Marine Living Resources Act 18 of 1998 (MLR), number 18: part 6, Section 36, 37, 38 and 40 that deals with abalone related crimes in South Africa. To provide for the conservation of the marine ecosystem, the long-term sustainable utilisation of marine living resources and the orderly access to exploitation, utilisation and protection of certain marine living resources; and for these purposes to provide for the exercise of control over marine living resources in a fair and equitable manner to the benefit of all the citizens of South Africa; and to provide for matters connected therewith.

Currently, South Africa has developed a strategy known as the National Integrated Strategy to Combat Wildlife Trafficking (NISCWT) 2017 (although it has not been signed off), which will be used to combat the illicit trade (DEAT, 2017:np). It effectively defines and acknowledges the difference between poaching, trafficking and smuggling. Importantly this strategy acknowledges the supply chain, which is crucial to the illicit trade as it encompasses the domestic and international activities in which criminal syndicates or criminal enterprises operate. In addition to this and previously mentioned in section 3.3.1, South Africa has strong ancillary legislation that is used to criminalise wildlife crime. For example, the Prevention of Organised Crime Act of 121 of 1998 (POCA), Section 53(1) as a law that criminalises the illicit abalone trade. Not only is this important, but it is the only SADC country to do so. Thus, acknowledging the broader connection between organised crime and the illicit trade.

Ancillary legislation covers crimes that include but not limited to money laundering, organised crime and corruption (OECD, 2018:43). While ancillary laws require principal criminal charges to be brought against the perpetrators, they can have a multiplying effect on the impact of the principal penalty by tackling the greater criminal networks (OECD, 2018:45). In addition, to the international and national frameworks, national policies and programmes are

also an effective framework to combat the illicit trade. Policies and programmes are used to inform law enforcement, customs and criminal justice officers of the principles and priorities that support their work. These policies, programmes and strategies provide support and coordination from multi-agency approaches to enhance punitive efforts (OECD, 2018:46).

3.3.2 Zimbabwe's national laws

Unlike South Africa, Zimbabwe has no laws prohibiting abalone imports and exports however, it has enacted detailed country-specific legislation called the Parks and Wildlife Act 22 of 2001. It has implemented its obligations under the CITES requirements and provides for a comprehensive series of offences and penalties governing the illegal trade in wildlife (Obank et al, 2015: 454). Accordingly, the CITES National Legislation Project classifies Zimbabwe as a category 1 country, meaning that it has enacted domestic legislation that is believed generally to meet the requirements for effective implementation of CITES.

Zimbabwe's main principal wildlife legislation is the Environmental Management Act (1975, amended in 2001). It sets out the general legal framework for environmental matters, addressing environmental institutions, planning, standards and impact assessment. The main legislation for the management of wildlife is the Parks and Wildlife Act (PWA). The Act confers privileges on owners or occupiers of alienated land as custodians of wildlife. It gives the appropriate authority over wildlife to Rural District Councils for communal lands on behalf of local communities. The Communal Land Act (1982) provides for the classification of land in Zimbabwe as Communal Land, and for the alteration of such classification, and seeks to alter and regulate the occupation and use of Communal Land. The National Environment Policy and Strategies of 2009 (NEP) seeks to harmonise all environment-related sectoral policies, and is critical in providing guidance to relevant legal instruments.

The existing legislative and regulatory framework provides for a series of prohibitions and offences which are designed to assist in the investigation, arrest, seizure and prosecution of wildlife criminals (Obank et al, 2015: 458). Further amendments to the enhanced penalty regime under the PWA in 2011 greatly increased the severity and effectiveness of penalties for poaching. In particular, severe mandatory minimum custodial sentences of twenty years apply to offences involving rhinoceros or other "Specially Protected Animals", and to illegal trade in ivory. Courts may also impose custodial sentences ranging from one to three years for less serious wildlife offences (Price, 2017:17).

3.3.3. Mozambique's national laws

In Mozambique, there are no direct laws that deal with the illicit abalone trade. However, it has developed various legislative instruments in place to promote environmental protection and the sustainable use of forests and wildlife, such as the Forestry and Wildlife Law (Law No. 10/99). The Regulations on the Forestry and Wildlife law approved by Decree 12/2002 of 6 June 2002 ("Wildlife Decree"), and more recently, the Conservation Law (Law No. 16/2004) which was enacted in June of 2014 (Obank, et al, 2015:214).

The Mozambican Conservation Law of 2014 was developed to protect the illegal trade in protected wildlife and illegal logging (International Conservation Caucus Foundation, 2018:np (ICCF). The law increased fines and penalties for poachers as well as those that finance poaching/receive illegal wildlife products (ICCF, 2018:np). However, it has been criticised for not considering the supply chain. Compared to the other previously mentioned laws in Mozambique, the Conservation law was created to implement stricter rules on the protection, conservation and sustainable use of wildlife in Mozambique. However, the CITES National Legislation Project currently classifies Mozambique as a Category 3 country, meaning that its legislation does not meet the requirements for implementing CITES. Moreover, in May 2015, the CITES Standing Committee identified Mozambique as one of the countries in need of priority attention to strengthen its legal framework for the effective implementation of the Convention, having previously criticised Mozambique for failing in combating poaching (CITES Standing Committee, 2018:3).

Indeed, experts (Sal & Calderia, 2014: np) had identified significant flaws in Mozambique's primary environmental legislation. In particular, the severe penalties under the new Conservation Law did not apply to illegal trafficking in wildlife or wildlife products. It was also unclear whether courts had the discretion to order alternative sentences in lieu of the severe custodial penalties for killing "protected animals" (Sal & Calderia, 2014:np). In addition, the legislation did not expressly set out which animals were "protected" (Obank et al,2015:214). This is a problem that is not specific to Mozambique but to other countries, as it creates ambiguity which has the potential to lead to loopholes in legal frameworks. As a result of this, Mozambique has made great efforts to amend their 16/2014 Conservation law by broadening the national geographical scope of its application, to protect country wide wildlife and not just animals in conservation areas (Article 63C (4)) (Imprensa Nacional De Moçambique.E.P., 2017:np). Furthermore, the amended law has increased attached its penalties for offenders of

wildlife crime to corresponding fines for species protected and prohibited found on the CITES annexes I and II (Ministry of Land, Environmental and Rural Development, 2017:2). An important aspect to the new law is the addition of criminalising wildlife trafficking. In this effect Mozambique has acknowledged its role of the supply chain as stipulated in Article 62 (1)(c) (Imprensa Nacional De Moçambique.E.P., 2017:np). The law has further clarified that judicial authority has the power and deciding factor either of his/her own initiative or at the request of the public prosecutor in deciding custodial penalties for the killing of protected species (Article 63C (4)) (Imprensa Nacional De Moçambique.E.P., 2017:np).

3.3.4 Key findings of national laws

From the above mention countries laws, it can be identified that wildlife legislation generally differs in countries. although, efforts are being made to support a harmonised cross-border approach in fighting wildlife crime there are still inconsistencies present amongst other neighbouring countries like that of Zimbabwe. In addition, loopholes are often created in uncertainties which exist regarding definitions of what is considered a wildlife crime. This is supported by Biegus and Bueger (2017:30) who found that offenders often circumvent the law as a result of non-congruent legal definitions of wildlife crime in neighbouring countries. For example, the distinction between poaching and trafficking are often interchangeably used but do not mean the same thing. While the former is the illegal hunting/capturing of wildlife, the latter involves the illegal cross border trade of the wildlife (NISCWT, 2017:9). EUROJUST (2014:10) argue that the absence of clarity in the definition of certain environmental crime laws was also identified as a major obstacle in the prosecution of cases of trafficking in the EU. This means that, in one country the act of poaching may be criminalised but not the action of trafficking the wildlife. Therefore, the movement of taking the wildlife product to another country is not criminalised and therefore may be considered legal. The consequences of this cause poor law enforcement efforts and illicit markets to thrive (Biegus & Bueger, 2017:30).

3.4 Shortcomings at an international, regional and national level for IWT

Although much effort has been made to criminalise and combat IWT, there are however some identifiable shortcomings found at the international, regional and national level. The lack of an authoritative body at an international level, reduces the ability to regulate regional coordination and assistance amongst member states (Izzo, 2010:971). Furthermore, there is no provision mandating countries to participate in extraditions for cross-border crimes (Izzo, 2010:971). This is something that is still a problem at a regional basis. Arguably, it can be noted that most

international conventions for IWT focus on governance and guidance of the trade and not criminalising it. It is therefore, recommended for countries to adopt the international regulations amongst their domestic legislation to be effective. Consequently, it can be argued that this can be considered the first step towards harmonisation. This is supported by Rossouw (2016:13) who highlights the use of international agreements to facilitate harmonisation amongst countries by requiring countries to conform by amending their domestic laws to their mutual agreement.

SADC's shortcomings are faced both at a regional and national level in the sense that there are comparable differences amongst regional countries domestic laws for IWT. This is often the case of regional laws such as the 2003 Protocol on Wildlife Conservation and Law Enforcement that has not been ratified in national laws like Angola and Zimbabwe who are only signatories (Cirelli & Moregera, 2010:18). Ratification is an important process in law to remove shortcomings at a national level. Its purpose is to acknowledge the states consent to be bound to the international/regional treaty. For international and regional conventions to be binding , a process of ratification needs to take place at the domestic level.

Consequently, countries in the region are not obligated to protect neighbouring countries wildlife. This not only defeats the purpose of combating IWT but encourages the continuous spread of organised crime due to the movement of groups that choose to operate from countries that do not have adequate wildlife criminal legislation or extradition policies. The problem is not that there is an insufficient amount of laws for IWT but rather these laws create an incoherent response which is further exacerbated by the existence of legal loopholes.

Moreover, the words 'illegal' and 'crime' are used loosely since legislation and penalties vary considerably around the world. In one country an act may result in the offender being sentenced to a term of imprisonment, whilst in another, only a minor administrative penalty may be issued. The range between what may be considered acceptable and illegal is vast. It should also be noted that there is significant inconsistency between the ways different types of environmental crimes are treated under international (and therefore national) legal frameworks. For example, the trade in fauna and flora is regulated by comparatively robust international law, with penalties to non-compliant parties. Illegal logging and fishing however mainly reliant on national laws and agreements. Such ambiguities currently present a challenge (Gosling, 2014:9-10).

When looking forward at proactive strategies and effective responses, it is important to consider weaknesses that exist in the principal and the lack of ancillary legislation. Within the principal legislation, loopholes, variations on provincial implementation of national laws, inadequate penalties, and in some cases, extremely antiquated legislation or legislation which is contrary to the country's obligations under CITES. Substantial differences exist across Sub Saharan African countries in terms of the severity of penalties for violating local wildlife law (Price, 2017:1). Therefore, there is a need for more harmonised standard and coherent legal frame work.

3.4.1 Cooperation through a coherent legal framework

Throughout this thesis, I have attempted to highlight that there is a need for governments to work together to combat transnational crime. In principle, everyone wants to cooperate but how this is done, however, is somewhat more complicated. This section aims to identify how harmonisation can facilitate cooperation amongst neighbouring countries. Although a challenging concept, harmonisation poses as an important mechanism to facilitate cooperation through a coherent legal framework. (van Asch, 2017:282),

Given the unauthoritative approach most international conventions and treaties pose such as CITES, certain regions such as SADC and East African Community (EAC) have endeavoured to address IWT on their own (Vegter, 2016:np; Olanyo, 2018:np). This approach has some merit, inasmuch as regions often face drastically different realities, and more focused local multilateral institutions may be better suited to combat the threat (Council on Foreign Relations, 2013:np). On the other hand, some (Council of Foreign relations, 2013:np) worry_that separate regional approaches might undermine common global/standards or help push criminal activities to more vulnerable regions.

Although sub-Saharan countries have signed multi-lateral environmental agreements and regional frameworks that are theoretically part of the country's law, their importance is rarely considered at the national level (Price, 2017:1). Therefore, there exists a large disconnect between international, regional and local legal regimes in each country in order to effectively tackle IWT (Price, 2017:1). The lack of cooperation for wildlife crime laws is problematic. As it has the ability to create broad guidelines by not engaging with neighbouring countries, which is often seen throughout SADC regional frameworks. For example, the SADC Protocol on Wildlife Conservation and Law Enforcement sets out flexible guidelines for each member

country to incorporate into their own domestic laws. A consequence of this is that there is no standard for interpretation, therefore, the interpretation for the Protocol's definition of 'wildlife' could easily mean the protection of a country's national wildlife. Another example is with wildlife crime penalties that include both fines and imprisonment for illegal hunting activities of any endangered/protected species. Fines may range from R10 million with a minimum prison sentences of 5 years for first time offences (Price, 2017:14). Whereas a country like Mozambique for wildlife crime has more fines as penalties ranging from 100 000,00 MT (US$16 269) with a recent amendment implementing prison penalties of 12–16 years for wildlife offenders (Mauck, 2013:48; International Conservation Caucus Foundation, 2018:np).

Perhaps SADC legislators could learn a lesson/incorporate lessons learnt from the earlier-mentioned European Union's model on how to achieve harmonisation of wildlife crime laws. The point of departure of EFFACE (2014:2) is that discordant sanctions pose a problem, stemming from the notion that the level of sanctions imposed for a certain offence also influences the investigative techniques and procedures. Therefore, the belief is that countries whose legal procedures only provide for light sanctions against environmental wildlife crimes, are at a disadvantage with regards to investigations as not all measures are used, ultimately hindering investigative successes and regional cooperation.

Moreover, EFFACE (2014:3) highlights that different sanctions for the same crime create different levels of priority given by law enforcement and judicial authorities to investigate and prosecute. The level of sanctions also has an effect on whether certain instruments of legal cooperation can be used between neighbouring countries. For example, abalone poaching is considered as a serious offence in South Africa while this is not the case in neighbouring countries. Therefore, it is often overlooked, as opposed to wildlife crimes such as rhino and elephant poaching which are seen as priority crimes. In other words, the illicit abalone trade will receive less law enforcement attention than priority crimes such as rhino trafficking. As a consequence, abalone that is trafficked to neighbouring countries often remains undetected (EFFACE, 2014:3).

As IWT has become a global problem, it requires a coherent response by having similar mandates to combat IWT (UNEP, 2016:np). Additionally, law enforcement tactics should be harmonised to achieve greater results (UNEP, 2016:np). It therefore requires regulatory cooperation, which is considered to be achieved through harmonisation (OECD, 2018:np).

Regulatory cooperation is a tool facilitated by harmonisation that reduces barriers between national governments to develop integrated frameworks (Department of International Development, 2011:5).

This type of cooperation has been highly desired because of its ability to improve efficiency and reduce barriers. This has been supported by Ndulo, 1993, Dlagnekova, 2009 and Shumba, 2015. Considering the transnational dynamic of IWT, cooperation is an important aspect that is required to combat IWT. Especially for species that are native to only one country such as the abalone referred to in this research. The lack of regulatory cooperation reduces the urgency for neighbouring countries to ensure its survival regardless of being on or off international treaty lists. The next sections will discuss the concept of harmonisation in greater detail.

3.4.2 Harmonisation as a legal concept

The concept of harmonisation of (criminal) law is among the most debated issues in this field. Preston and Hasson (2013:7) eloquently describe harmonisation as the agreeable and consistent arrangement of disparate parts. In music, for example, harmony involves the simultaneous combination of notes, such as a chord. The chord is a pleasing combination but it still comprises distinctive notes. Shumba (2014:32) concurs by stating that harmonisation means the removal of discord, the reconciliation of contradictory elements, between the rules and effects of two legal systems. Mistakenly, harmonisation is often suggested to only entail the adoption of a single set of rules, however, it involves a wide range of ways in which differences in legal concepts as found in different jurisdictions are accommodated. It has therefore been defined as (Cuming, 1985:3-4):

"a flexible concept embodying a range of measures that may vary according to the context in which an issue is treated. In one context, it may mean that the relevant law of the jurisdictions involved is characterized by a high degree of similarity in basic principles but not detailed provisions. The result is that a person familiar with the law in one jurisdiction can easily understand the law of another and adjust to it without difficulty."

Therefore, the goal of harmonisation is to bring about a consistent, combined approach but in recognising that the responses at international level and domestic level can be disparate. Harmony can be created by international law influencing domestic law, domestic law influencing international law, and the sharing and adoption of domestic laws between countries

throughout the world (Preston & Hanson, 2013:8). To be effective, there is a need for international law to be implemented domestically in each country. One purpose, or at least effect, of some international agreements is to harmonise national laws, either globally or regionally. This can be achieved when international law is implemented domestically by each of the ordinary three organs of a state: the executive, the legislature and the judiciary (Preston & Hanson, 2013:8).

Often harmonisation is looked at from a unification perspective, albeit similar characteristics, these two concepts are different. Unification involves the loss of individual identity of each legal regime (Preston & Hanson, 2013:7). Harmonisation, therefore, does not lead to a settled set of agreed rules; but rather refers to the search for common rules which can eliminate differences and create minimum requirements or standards. Harmonisation, therefore, focuses on the means of attaining substantive ends which can lead to the coordination of different policies (Roussow, 2016:14).

3.4.3. Harmonisation of laws for transnational crimes

Much of the literature of harmonisation has been based on international trade laws, where Fontaine (2013:50) found that the diversity of laws can often be an obstacle to trade between countries. Engaging in a commercial operation with a partner of another legal system immediately raises the question of which law will govern the relationship, with the consequence that, for one of the parties, the contract will be subject to unfamiliar rules (perhaps even for both parties if the law of a third party is determined to be applicable). With such disadvantages in mind, it is not surprising that so many efforts have been exerted to achieve a similar stance with other types of laws for instance, by authorities of the European Union, by institutions such as the United Nations Commission on International Trade Law (UNCITRAL), the Organisation pour l'Harmonisation en Afrique du Droit des Affaires (OHADA) (or, in English, the Organization for the Harmonisation of Corporate Law in Africa), or the International Institute for the Unification of Private Law (UNIDROIT) (Fontaine, 2013:50).

Considering the previous section, it is only natural that the same barriers would be found in criminal law. The driver for these efforts is owed to globalisation, where borders and barriers among different legal systems increasingly are fading out. Organised crime may take advantage of the new opportunities that these changes provide (Joutsen 2006:7). Therefore, a certain level of harmonisation of criminal legislation may prevent the creation of "safe havens" for criminal

organisations, where their criminal activities are lightly countered or do not constitute offences at all. Even if this reasoning received criticism, the argument that organised groups consider the differences among national criminal legislation when organising their criminal activities, the idea of providing every criminal justice system with commonly agreed definitions and tools for tackling organised crime seems reasonable (Klip 2005:118; van der Wilt 2002:78).
Schonfeld notes that, where some parties adopt laws sufficient to provide a deterrent effect and exhibit a willingness to enforce them, illegal trade is often shifted to countries where the laws and enforcement are not as strong. Since the problem of over-exploitative wildlife trade is a global one that requires an international effort, successful implementation of CITES and a reduction of the illegal market cannot be achieved unless domestic wildlife laws are harmonised (Preston & Hanson, 2013:10).

Harmonisation at the multilateral level is highly challenging for a number of (self-evident) reasons. However, a well-known attempt of multilateral harmonisation is the harmonisation of Trafficking In Persons (TIP) regulation in SADC region. The purpose for this was to create a comprehensive and coordinated response to crime through harmonisation of definitions and strategies. Furthermore, it provides a platform for sharing information, experiences and expertise, building the capacity for all stakeholders and identifying effective practices in implementing activities towards preventing IWT in the region. According to Dr Stergomena, who is the Tax Executive Secretary for SADC (2016) stated that without member countries having comprehensive national legislation criminalising the practice the response to TIP is inadequate. Thus, the same argument can be applied to that of IWT as there are similar structures and characteristics like TIP.

An example of another multi-lateral harmonisation of laws is that of wildlife laws in the East African region, that has embarked on harmonising their laws on IWT as part of an effort to combat the crime. Often many wildlife products go undetected due to poor coordination of various agencies and lack of skills by law enforcers. East Africa's wildlife harmonisation is to allow species that are not protected by CITES in neighbouring countries to not be exploited and exposed to cross border trade (Trade Mark East Africa, 2016:np). They further highlight the importance of the laws being domesticated to ensure that it gets enforced by the courts of the country. Considering this example, South Africa has the same problem with its abalone. The illicit trade in abalone continues to grow because it is not criminalised in other countries and therefore, it is being gravely exploited. Therefore, having endangered species protected in

neighbouring countries domestic laws would have positive outcomes. However, this would only be for certain through further research.

3.5. The role of harmonisation in TOC and IWT

The concepts of TOC and IWT have been widely debated on. They are often looked at as two completely different crimes. Historically, this may be true, however over the years it has been identified that TCN's have expanded into IWT (discussed in chapter 1), creating an overlapping array of organised crimes. However, there has been some difficulties in combatting TOC which are caused from the lack of international consensus for the crimes and definitions, similar to that of IWT. The United Nations Convention against Transnational Organised Crime of 2000 (Palermo Convention) took the initiative to establish a legal definition and framework for TOC, understanding that harmonisation allowed for more cooperation, mutual agreements and a collective approach. While the TOC loophole caused by *inter alia* the lack of domestic laws and disagreements of definitions has somewhat been solved, debates have risen on whether IWT should be considered as a form of TOC.

The idea of the IWT as a form of TOC means that all IWT is conducted by organised criminals. This however is not necessarily true (as discussed in chapter 2). However, what is pertinent about understanding the dynamics of IWT in relation to TOC is the use of harmonisation of laws. The way in which IWT is considered will determine the type of mechanisms used to combat the crime. While each country is responsible for combating organised crime at the national level, its transnational nature means that domestic efforts alone are not sufficient, this is both problematic for IWT and TOC in countries. Therefore, closer and more effective international cooperation is necessary. Given the diversity in domestic criminal laws and procedures, however, this is not an easy task (Obokata, 2017:39).

As mentioned in section 3.5.3, the differences amongst countries' domestic criminal laws affect a coordinated response to fighting transboundary crimes. According to article 3(2) of the UNTOC, signed in Palermo in 2000, "an offence is transnational in nature if: (a) It is committed in more than one country; (b) It is committed in one country but a substantial part of its preparation, planning, direction or control takes place in another country; (c) It is committed in one country but involves an organised criminal group that engages in criminal activities in more than one county; or (d) It is committed in one country but has substantial effects in another country".

This treaty is extremely important as it encourages countries to implement more effective action against TOC, not only through the enhancement of domestic criminal laws and procedures, but also through the promotion of international law enforcement co-operation. Considering the UNTOC definition, I revert to section 3.4.1 where wildlife crime national definitions are not harmonised. If organised crime offences and their serious nature were understood consistently, this would naturally lead to smoother inter-state cooperation in investigation, prosecution, and punishment, thereby reducing safe havens for criminals (Obokata, 2017:40). Similar to this is that of IWT, its problems are also prevalent in the variations of the crime. Making regional and international law enforcement co-operation more difficult, as countries can refuse measures such as extradition or mutual legal assistance in criminal matters if conduct is not regarded as sufficiently serious. It is therefore helpful to have a common understanding across the region, and international law on transnational crimes (Obokata, 2017:41).

Acknowledging that there are some elements of TOC within IWT allows for a broader and comprehensive approach to the criminal elements to combat the crime. Despite recent research done on IWT and TOC there are still a few countries that do not acknowledge the seriousness of IWT as much as TOC in Africa. (Keating & Haenlein, 2016:np). However, researchers from the Royal United Services Institute (RUSI) (2018:np) urge organisations to acknowledge IWT as a crime that exists purely for the enrichment of those who perpetrate the business, extending itself to other organised crimes. This is reiterated by Marquès-Banqué (2018:2) who defines the concept of transnational organised environmental crime "as a cross-border environmental crime involving organised criminal groups, syndicates and networks, which act in concert to obtain, directly or indirectly, a financial or another material benefit." Transnational organised environmental crime, like any other form of TOC, involves, in practice, a wide range of associated offences such as money laundering, tax evasion, fraud and corruption, thus having serious short-and long-term economic, social, political and environmental local and global impacts. On 21 November 2016, the UN General Assembly recognised, for the first time, environmental crime as a type of TOC (Marquès-Banqué, 2018:2). Therefore, the range of tools that exist to tackle TOC such as harmonisation should be brought to bear on IWT. There needs to be recognition that IWT is not only a crime against the environment, but also has some organised crime characteristics (Keating & Haenlein, 2016:np).

Another important aspect of harmonisation is punishment. By instituting similar forms of sanctions and penalties, countries could prevent forum shopping on the part of criminals (i.e. choosing countries where the punishment regimes are weaker and concentrating their criminal activities there) (Obakata, 2017:39). This also reduces the situations where perpetrators receive irregular punishments for the same offences committed, and therefore enhances a sense of fairness. Related to this, the harmonisation of punishments can promote shared understanding of its proportionality for organised crime. This is important as varied understanding of proportionality can also hamper regional or international co-operation in criminal matters and cause more political tensions (Obokata, 2017:42).

However, Marquès-Banqué's (2018) research of harmonisation of legal frameworks found difficulties at a regional level in the EU, specifically on the harmonisation of sanctions. Importantly her research looked at IWT as a form of transnational organised environmental crime. Her findings suggested that countries in the EU had different levels of sanctions, which coincided with the level of seriousness determined by each country. Therefore, depending on the level of seriousness a country considers IWT, will determine whether a country will use soft of hard law techniques to implement the law. Soft and hard law techniques will be discussed in the next section.

3.6. Harmonisation techniques and benefits

A distinct feature of contemporary harmonisation is the wide range of tools used to formulate and implement coordinating rules. There have been a variety of techniques used for harmonisation in the past, such as a conflict of laws convention, a uniform substantive law convention, community legislation, model law and guidelines. The distinction between and understanding of the differences between the various harmonisation techniques is important in many respects. That would include understanding the level of integration provided as well as the degree of ease or efficacy in using either of the techniques (Shumba, 2014:45).

The various techniques for the harmonisation of laws can be divided into hard and soft law methods. Hard law techniques lead to the highest degree of uniformity and are based on legislation. They are automatically binding to a country's legal framework once adopted. In the international or regional context, it would include a conflict of laws convention, a substantive law convention or a community law (Guzman & Meyer, 2010:177). Once ratified, these instruments have the effect of harmonising the law of these states with the sole exception

of specifically permitted reservations. The main disadvantage of this method is its inflexibility. Hence, states which do not subscribe to specific aspects of the law will simply decline from ratifying it or adhering to it where possible (Shaffer & Pollack, 2010:87).

The difference between the two law techniques is that hard law instruments are binding, whereas soft law instruments are not binding on the parties involved. Soft law techniques could consist of model laws, guidelines, customs, standards or principles and model contracts. Soft law has the advantage of being generally independent of legislative activity. As such, it is relatively simple to amend and keep pace with developments in TOC and environmental crimes that are constantly changing (Shumba, 2014:47).

However, soft law has been critiqued from the classical viewpoint. Many legal scholars use a simple binary binding/nonbinding divide to distinguish hard from soft law (Shaffer & Pollack, 2010:713). Soft law is considered as guiding principles and not as binding legislation. International environmental law is a part of the regulations of soft law, not mandatory and basically declarative. Which has become a problem considering the need for environmental crimes to be taken serious. Soft law refers to international norms that are deliberately non-binding in character but still have legal relevance, located in the twilight between law and politics (Guzman & Meyer, 2010:179).

Furthermore, soft law's association with international law, although more recently has been transferred to other branches of domestic law for its ability to be flexible. In the international law perspective, soft law generally indicates agreements entered into between or among the states which do not amount to international law in the strictest sense. It also includes certain types of resolutions of international organisations that consist of non-treaty obligations which are hence non-enforceable. This type of law is not legally binding and cannot be enforced in court though it may eventually be hardened into custom (Ahmed & Mustofa, 2016:2).

By contrast with this ideal type of hard law, soft law begins once legal arrangements are weakened along one or more of the dimensions of obligation, precision, and delegation. Thus, if an agreement is not formally binding, it is soft along one dimension. Similarly, if an agreement is formally binding but its content is vague, thus, leaving complete discretion to the parties during implementation, then the agreement is soft along a second dimension (Shaffer & Pollack, 2010:715). Finally, if an agreement does not delegate any authority to a third party to monitor its implementation or to interpret and enforce it, then the agreement again is said to

be soft (along a third dimension) because there is no third party providing a "focal point" around which parties can reassess their positions, and thus the parties can discursively justify their acts more easily in legalistic terms with less consequence, whether in terms of reputational costs or other sanctions (Shaffer & Pollack, 2010:715).

3.6.1. Advantages and disadvantages of hard and soft law

Countries and private actors have increasingly used a wide range of instruments having a relatively harder or softer legal nature in terms of precision, obligation, and delegation to advance their aims. These instruments offer particular advantages in different contexts. They are sometimes used alone and sometimes combined dynamically over time, resulting in a complex hybrid of hard and soft law instruments.

As an official form, hard law features many advantages. In particular, hard law instruments allow countries to commit themselves more credibly to international agreements. They achieve this by increasing the cost of reneging, whether on account of legal sanction or on account of the costs to a countries reputation, that has been found to have violated its legal commitments. Hard law instruments credibility stems from the direct effect they have in national jurisdictions or they can require domestic legal enactment (Shaffer & Pollack, 2010:719). When treaty obligations are implemented through domestic legislation, they create new tools that mobilise domestic actors, that increase the costs of a violation and thus making their commitments more credible. Hard law instruments better permit countries to monitor and enforce their commitments, including through the use of dispute-settlement bodies such as courts. States, as well as private actors working with and through state representatives, thus tend to use hard law where the "benefits of cooperation are great" and the "potential for opportunism and its costs are high." To control for the risks of opportunism, they can create third party monitoring and enforcement mechanisms, such as the system of committees (Shaffer & Pollack, 2010:719).

Defenders of soft law argue that soft law instruments, offer significant offsetting advantages over hard law. They find, in particular, that soft law instruments are easier and less costly to negotiate. Soft law instruments impose lower "sovereignty costs" on states in sensitive areas. Furthermore, they provide greater flexibility for states to cope with uncertainty and learn over time. Subsequently, it allows countries to be more ambitious and engage in "deeper" cooperation than they would if they had to worry about enforcement. Soft law instruments cope better with diversity and are directly available to non-state actors, including international

secretariats, state administrative agencies, sub-state public officials, and business associations and nongovernmental organisations (NGOs). The choice of harmonisation technique depends on the specific circumstances of countries seeking to harmonise their laws. In some situations, effective harmonisation may require a hard law approach involving legislative measures with a high degree of state participation. In other cases, a soft law approach might suffice to facilitate effective harmonisation (Shaffer & Pollack, 2010:719).

Although there are respective differences and benefits of hard and soft law, legal and political science scholars have moved increasingly towards a view that hard and soft law can interact and build upon each other as complementary tools for international problem solving. These scholars contend that hard and soft law mechanisms can build upon each other in two primary ways: (1) nonbinding soft law can lead the way to binding hard law, and (2) binding hard law can subsequently be elaborated through soft-law instruments (Shaffer & Pollack, 2010:720).

3.7.Conclusion

The chapter highlighted the efforts made in the international, regional and national communities in developing sound legislation to combat IWT. However, the levels of transnational wildlife crime have still managed to remain prominent in the SADC region. The existence of diverse national wildlife crime laws in the region act as a barrier to protecting wildlife. The harmonisation of wildlife crime laws is therefore a necessary component for combatting such a transboundary crime. Although harmonisation has some disadvantages, the benefits seem to outweigh the complexity of it. The next and final chapter will discuss the concept of having a common set of wildlife crime laws in the SADC region.

Chapter 4

4. A common SADC wildlife crime law

4.1 Introduction

In chapter 3, the discussion was on the laws at an international, regional and national level. This chapter will attempt to delve deeper into the national laws facilitating the illicit trade. By examining discrepancies found in neighbouring countries wildlife legislation. It is not the lack of wildlife crime laws that poses a threat but the differences of these laws that continue to facilitate the illicit trade.

4.2 National laws and the illicit abalone and wildlife trade

Overall, the principle regulatory frameworks in the region that aid in the protection and conservation of wildlife, appear to be robust and purposeful. The research study identified that wildlife laws are country-specific and although this might be effective for national movement of wildlife, it is not effective for a transnational problem. The complexity found in discordant laws is more complex than the simplicity required from harmonisation. It has been identified that all three SADC member countries are part of international and regional wildlife protection frameworks such as CITES, which is notably considered as a soft law. This creates a major loophole at the international level, which is exemplified by the abalone case study, where abalone is illegally harvested, exported and smuggled from one country through another. Chapter 3 (section 3.1) highlights the importance of CITES framework as a regulatory mechanism but it has no mandate when it comes to monitoring listed species. Therefore, it lacks the legal binding authority to enforce such international laws as there are species protected under specific national legislations that are not restricted in international trade. This means that illegal acquired wildlife can enter legal commercial streams. The illicit abalone trade in South Africa identifies how legislative loopholes in transit countries have facilitated the illicit trade. Between the years 2000 and 2016, abalone was imported by Hong Kong SAR (90%), Japan (3%), Singapore (2%), Taiwan (2%), Macau SAR (1%), China, Malaysia, USA and Canada (combined 2%) (TRAFFIC, 2018:17). Abalone was exported that through South Africa, Namibia, Angola, Republic of Congo, Democratic Republic of the Congo, Zambia, Zimbabwe, Mozambique and Swaziland. Therefore, the main legal loophole is presented

amongst national wildlife legislation, that is designed to protect country-specific animals. The research identifies that the laws often regulate the possession, use or sale of products of domestic species, and nothing regulating them in neighbouring countries. Furthermore, discrepancies identified amongst transit countries relates to inconsistencies between protecting wildlife and the criminalisation of wildlife crimes in supply, transit and destination countries. In the case of the illicit abalone trade, there are no identifiable laws permitting its movement out of neighbouring countries. This consequently highlights a lack in cooperation and responsibility in transit countries for transnational wildlife crimes. The process of the illicit trade moves through three main stages. Abalone that re-enters South Africa is often brought back from its neighbouring transit countries and is declared as a legal product, this has also been substantially proven in numerous Traffic reports. During the first stage, abalone is illegally poached and exported to nearby warehouses where the drying process takes place. Once the abalone is dried, it is containerised into consignments. After this, the second phase of the trade begins where the consignments are smuggled to neighbouring countries markets that lack the regulation for abalone. Once the abalone is in the transit country, shipment to its destination i.e. East Asian countries is declared legal. This indicates that transit countries domestic legislation does not criminalise the process of trafficking illicit wildlife products. This is a problematic loophole that allows the illicit trade to take place. Identifiably, this may raise the argument that one loophole does not obviate harmonisation of regional domestic laws. However, abalone is one animal that was used for the scope of this research amongst an array of other wildlife fauna and flora that are being trafficked through the same type of loophole. For example, the illicit (African) pangolin trade, has been called the worlds most trafficked wild mammal (Bega, 2017:np). Pangolins are being smuggled into South Africa (where laws on pangolin are not as strict as other African countries) from neighbouring countries such as Zimbabwe (where the trade in pangolin is prohibited) and Mozambique and are shipped to either China or Vietnam (Bega, 2017:np).

Furthermore, the argument that bilateral agreements would suffice in combatting wildlife crime is not entirely wrong. However, bilateral agreements and harmonisation of laws greatly differ with regards to their outcomes. Bilateral agreements are to expand across two countries, this would be ideal if IWT was contained between source and destination country. As discussed in chapter 1, efforts on a bilateral basis between South Africa and East Asian countries such as China have been unsuccessful. Furthermore, if the option is to use bilateral agreements between source country and transit country, this would assume that trafficking routes are fixed and

definite. These efforts could still encourage the illicit trade to shift to countries that do not have bilateral agreements. Consequently, still encouraging loopholes amongst other neighbouring countries. IWT needs more than the encouragement of bilateral cooperation and has been characterised as an informal method to aid in criminal investigation (van Asch, 2017:110). On the other hand, harmonisations of laws is a process that encourages more than a set of laws being the same but it supports legal and administrative regulations that encourage the exchange of evidence and criminal prosecution of wildlife crime. Furthermore, Alemika et al's (2014:np) research on harmonisation of legislation in West Africa emphasises that harmonisation allows for minimum standards amongst criminal laws that allow for a collective and coordinated approach in the region. Additionally, their research was to close the loopholes and inconsistencies found in the West African region on how such drug trafficking cases were dealt with (Alemika et al, 2014:4). Therefore, such legal loopholes highlight the lack of responsibility and coordination between neighbouring countries in regions.

Wildlife crime legislation as a whole, offers many other additional loopholes in the region. Such as the way in which wildlife crimes are defined to the way in which different types of sanctions are carried out. For instance, Zimbabwe's principle legislation the Environmental Management Act mainly focuses on the protection of land and not per se on any animals. South Africa on the other hand, uses their principle legislation NEMBA that protects both land and animals. Moreover, South Africa was the only country of the three that protected alien species and indigenous species from translocation or the intention of translocation through its principle laws. However, a copious amount of attention in wildlife protection laws are towards the more photogenic animals in the region. By default, this may allow law enforcement to overlook other wildlife crimes, i.e. crimes related to the much smaller animals. Furthermore, it has been identified that all three countries define wildlife crime to the applicability of their country, however this also poses a threat. Furthermore, the definition of smuggling is the main concern for wildlife crime in Mozambique and Zimbabwe. Consequently, this highlights the reluctance of acknowledging wildlife trafficking. South Africa, however has made a clear distinction between wildlife crimes such as poaching, hunting and trafficking. Whereas, Mozambique and Zimbabwe's legislation lack the criminalisation of wildlife trafficking. Nationally criminalising this action achieves two things; the acknowledgement of the trade being cross border and that there is a need for regional assistance.

There is an importance of having a harmonised framework that effectively describes wildlife trafficking as a criminal action aside from the protection and conservation of wildlife crime. This is supported by Araujo (2011:3) who posits that definitions not only describe the action but create awareness and help develop an understanding to effectively address the problem. The significance of having this definition allows law enforcement to be aware of the movement of wildlife from one country to the other and the awareness of non-indigenous animals and their respected products in the country. Furthermore, the definition allows for acknowledgement of a syndicate, that the product needs to move elsewhere than its original place. Consequently, it becomes a problem when neighbouring countries lack the same legal frameworks and understanding of the problem. This is not to say that Mozambique and Zimbabwe have ineffective wildlife crime laws and definitions, it is the omission of the criminalisation the illicit trade that creates discrepancies.

Additionally, the lack of harmonised laws shows considerable differences in the way wildlife crimes are prosecuted. Therefore, it may not be possible to bring justice to wildlife criminals who cross-borders. This is supported by the United Nations Inter-Agency Task Force on Illicit Trade in Wildlife and Forest products (2017:np) whose symposium report stresses the value and importance of harmonisation, not only at a national level but at a regional and international level. Harmonisation of national legal frameworks eliminates conflicts between issues such as species protection (which is evident in the case of the illicit abalone trade) and penalties which create barriers for enforcement (UN Inter-Agency Task Force, 2017:14).

The question one might ask is of the relevance of having national laws harmonised when regional frameworks are already established. The importance of this, was identified in the importance of ratification of laws discussed in chapter 3. The research identified that although all three countries comply with international and regional standards of wildlife protection in SADC, there are incomplete procedures that hinder the effectiveness of the regional framework. For example, Zimbabwe remains a signatory for the SADC Wildlife Conservation and Law Enforcement Protocol but it has failed to implement the guidelines into its domestic laws. The failure to ratify international and regional frameworks into national law is a result of a country's political preference as some often want to determine the domestic implications of the treaty. Historically, IWT was not considered as a priority crime however, its expansion over the years into an interrelated web with more serious crimes and its borderless reach calls for a collective understanding of the crime. However, not following the same standards,

procedures and guidelines for such a crime still hinders effective communication, mutual legal assistance and cooperation upon ratification. Therefore, by adopting similar standards and frameworks nationally it becomes each country's individual duty to combat IWT.

Ironically, harmonisation of criminal laws has been awarded much debate yet harmonisation of migration and economic trade laws have found to be beneficial throughout Africa, it would be injudicious not to consider harmonisation of criminal laws in this process. Now that differences have been identified, it is much easier to see what member states have in common, therefore to start a process of harmonisation or, at the very least, work towards a greater consistency between national laws of the countries that make up SADC. It is for this reason, that the full range of IWT needs to be criminalised. It is not sufficient to criminalise some of the offences related to the trade and not acknowledge the transnational organised nature of it. National legislation should adopt a broad definition of trafficking acknowledging that such a crime may occur both across and within countries borders.

4.3 Harmonisation of national laws as a preventive mechanism

Given the global scope of wildlife crime, the need for regional coordination is paramount in combatting IWT, particularly as both Mozambique and Zimbabwe play the role of transit countries. Countries are in need of identifying neighbouring countries' protective species within the region. For example, the previously mentioned EU's "monitoring list" is an effective way to have animals in the region identified by neighbouring countries. In the African context, the EAC exemplifies this by having made progressive strides towards the harmonisation of national laws in the East African bloc. According to an article written by Trade Mark East Africa (2016:np), East African countries such as Tanzania, Kenya and Ethiopia are using harmonisation as a mechanism to aid in the fight of the illicit trade. The motivation behind this emanates from the majority of East African countries being used as frequent transit routes for the illicit trade in the Eastern bloc. Uganda however has been specifically targeted by wildlife traffickers as a result of its porous borders and weak wildlife legislation as opposed to other neighbouring countries. Furthermore, the EAC is pushing for domestication of the CITES convention to protect international endangered species domestically. This is to aid in the prevention of commercial trade that involves endangered species outside of countries jurisdictions (Trade Mark East Africa, 2016:np). hence, the importance of harmonisation of wildlife crime laws cannot be overestimated.

The effectiveness of harmonisation can be used as a deterrent for criminals, who use neighbouring countries to exploit loopholes and create transit countries. it therefore provides for a uniformed approach when dealing with transnational crimes. Currently, neighbouring countries have "little bite" when dealing with international endangered species in their country. Against this background, one argument made in favour of harmonising wildlife crime throughout SADC region is that IWT could be addressed more effectively if member countries acknowledged other countries' resources being exploited. This research identified that South Africa has a similar list to the EU's monitoring list known as the TOPS list, within the NEMBA framework. This list was found to be useful in the sense that it helps law enforcement identify species that have been deemed as threatened. Consequently, a similar framework should be adopted by neighbouring countries to not only flag endangered species at the national but also regional level.

Additionally, harmonisation acts as a preventive mechanism by opening channels of cooperation between neighbouring countries. this is important when investigating and prosecuting wildlife crimes. It further makes it somewhat impossible for offenders to avoid liability when located in a transit country for instance. Moreover, harmonisation of national laws not only means the state has to comply with certain rules but individual citizens too have to act according to the laws. Therefore, legislation empowers government officials to act, regulates human behaviour and helps enforce policy that could be useful to conservation and trade in wildlife (Warchol & Harrington, 2016:25).

However, this is not to say harmonisation is the sole guarantee that these crimes will be reduced in number or avoided entirely but it will encourage cooperation and awareness. There are more factors at play that can affect harmonisation like the level of seriousness of the crime. IWT is often considered a low risk crime and as a result detection rates could below even when laws are harmonised. Furthermore, those in favour of harmonisation of wildlife crime laws argue that the existence of harmonised laws in different nations could be a sign that IWT is being recognised as a serious crime throughout the region, thus discouraging perpetrators.

Past research and the literature on the problems of harmonisation have been largely directed to harmonisation of the whole legal system. However, this is not the intention of this thesis, rather the intention is to look at harmonisation of legislation pertaining to one particular problem : transnational wildlife crime laws. The reason for this limited scope is due to the illegal trade having undergone unprecedented growth over the past years. Furthermore, it is more

manageable to focus on a set of laws and regulations to identify those minimum common denominators that can help foster international cooperation.

There is no denying that there are some formidable problems with the concept of harmonisation that should be addressed,with the bulk of these challenges from harmonisation of sanctions. The study undertaken by Marques-Banque (2018) is such an example. The study highlights the challenge found in harmonising transnational organised environmental crime sanctions in the EU. The results indicated that although member states are in favour of harmonisation there are difficulties in agreeing to the same IWT penalties in the region. In the SADC region, for instance, a number of countries are based on the common-law tradition, while others are strongly influenced by the civil-law tradition. Such a distinction cannot be drawn in many cases, as various countries are also influenced by other factors such as religion and local customs, or are based on hybrid systems such as in South Africa.

However, the unification or harmonisation of laws has its opponents, and they are at times very passionate. Replacing the existing local law with new rules common to a group of countries means losing the benefit of the expertise achieved in one's own system and having to learn a new set of rules. Time and effort will have to be exerted again to become initiated and competent, after an initial period of risk and uncertainty. Perhaps more important is that the change will mean abandoning a system often rooted in a long tradition and replacing it with new rules that may seem to be much less adapted to the local culture and environment.

Promoters of harmonisation projects are aware to varying degrees of the obstacles linked to the weight of existing local traditions. There is often concern to take such traditions into consideration when preparing uniform or harmonised rules. Care is then taken to identify the local features that will be affected if common rules come to replace them. In some cases, efforts are made to draft new rules that will not clash too strongly with the old ones, in order to facilitate the acceptance of the reform and enhance its chances of successful implementation. Obviously, this is no easy task, since, by definition, unification, or harmonisation, concerns several different legal systems, each with its own traditions, and is basically aimed at suppressing differences (Fontaine, 2013:51)

4.4 What can SADC do to implement harmonisation?

Research conducted by Donnenfeld and Naidoo (2016:np) at the Institute of Security Studies (ISS) found that combatting organised transnational crimes including wildlife crimes requires governments to cooperate. Governments thus should implement a transboundary methodical and structured response to organised wildlife crime. Through globalisation, innovative and new opportunities are easily created that facilitate organised crimes as national borders and economic barriers are fading out (Calderoni, 2009:22). The action known as "round-tripping," where abalone is smuggled to Asia through landlocked neighbouring countries is a result of this (TRAFFIC, 2017:np). The purpose of this is to import the dried abalone back into South Africa before re-exporting to Hong Kong under falsely declared origins (TRAFFIC, 2017:np). This has been made possible from the lack of cooperation and legal obligation between neighbouring countries. It is for this purpose that harmonisation of wildlife legislation in SADC has become a current and meaningful process.

4.4.1 Regional efforts to implement harmonisation

As a region, harmonisation can be implemented through the use of a legal framework that contains member countries domestic animals and plants. This section might seem repetitive in the sense that SADC already has regional frameworks to combat wildlife crime, but as discussed in chapter 3, the regional frameworks are broad and lack defined concepts. Therefore, instead of having a broad overarching framework SADC needs to create specific and more targeted approach. For example, regional definitions of IWT *inter alia* trafficking, poaching and smuggling need to be defined. Subsequently, a set definition for both the legal and illegal trade should be defined. Lists of animals and plants located in the region need to be identified and importantly, a regional list with threatened species across the region should be created. Additionally, agreements should be made where countries reciprocally protect one another's species by penalising violations of the agreement. This is to help the implementation process as wildlife crime needs to be prioritised in countries.

4.4.2 National efforts to implement harmonisation

As previously discussed in chapter 3, adopting wildlife crime national legislation plays an important role in harmonisation of regional laws. Each country would firstly need to ratify the regional framework into their domestic laws, specifically the list of threatened species. To

avoid the creation of transit countries and the creation of "safe havens" for offenders, countries need to developed a set of harmonised sanctions that at least contain a minimum penalty. Coupled with this, countries should aim to have a regional extradition clause that allows offenders found in other countries to be extradited back. moreover, an important aspect in combatting IWT is law enforcements ability to enforce the law. However, it is often problematic when national law enforcements are trained for domestic wildlife crimes only. Member countries should have a collaborative approach with their techniques and intelligence training for law enforcement to be able to identify neighbouring countries wildlife. Importantly, both on a regional and national level, priority should be given to combatting wildlife crime. without prioritising wildlife crime, there will be an insufficient amount of resources spent.

4.5 Conclusion and research findings

The overall findings of the research highlighted that legislation plays a pivotal role in IWT. Through examining the illicit abalone trade, chapter 2 examined the extent of the trade and how this crime has become an entanglement of other transnational crimes. The chapter proceeded to emphasise how abalone is being smuggled into other neighbouring countries by TCN's who are exploiting discordant legislation. Thus, chapter 2 highlights the seriousness of the trade and its connection to other serious organised crimes in the region.

Chapter 3 identified that although all three countries had sufficient legislation for the protection of domestic wildlife crime the illicit trade still continues to grow. Therefore, the chapter highlighted the shortcomings that each countries laws possess. Furthermore, it was identified that shortcomings were manly created from having laws, regulations and penalties that are country specific to protect domestic animals. This can be seen as an unintentional loophole, that is discussed in chapter 4.

Chapter 4 identified that while having domestic legislation is effective it is however identified as a facilitating loophole for transnational crimes, especially for crimes that are not criminalised or prohibited in neighbouring countries. By identifying differences found between the wildlife crime laws in South Africa, Mozambique and Zimbabwe, the evidence highlights that although countries laws may seem to have significant differences, their core function to combat IWT is the same. Therefore, that similarity is the foundation to which harmonisation of national laws may take place. Thus, harmonisation of wildlife crime laws is needed and plays an important role in combatting the trade as it allows a more synchronised and cooperative approach.

Chapter 5

5. Conclusion

IWT has become a serious and global problem that is a threatening the survival of many species. It has developed into a crime that undermines national security and the rule of law. The illicit trade has developed into a well organised criminal activity, involving multiple TCN's. Its clandestine nature, coupled with it being deemed as a low risk crime has allowed it to extend into other forms of TOC's in the SADC region. The illicit trade robs SADC countries and their communities of their natural resources and cultural heritage, with serious economic and social ramifications. Over the past years, the more photogenic animals have been the pinnacle of discussion in the SADC region, while other smaller animal and plant species are grossly depleted, with the South African abalone being a key example. South Africa's abalone crisis has moved from a national wildlife crime to that of a regional one. This is as a result of the TCN's being involved in the poaching and smuggling of the marine mollusc at a rapid rate. Furthermore, East Asian criminal groups in collaboration with local Cape Flats gangs have successively used the illicit abalone trade to facilitate the drug trade in Cape Town.

Although great efforts have gone into the protection of wild fauna and flora there has still been an increase in the number of IWT incidences globally and regionally. In addition, the low risk of detection and weak deterrence due to low penalties in neighbouring SADC countries aid in the illicit trade. International regulatory frameworks such as CITES have undoubtedly been a key factor both in terms of raising awareness and developing collective responses and strategies to control the wildlife trade. However, like that of CITES, most international and regional treaties are only regulatory and require domestic laws to regulate the regional trade in endangered species. Ultimately, what is required is a domestic consensus in neighbouring countries laws to stop IWT.

My intentions for this research was not to disregard the substantial efforts that have been made internationally and regionally to conserve and protect wildlife but rather to shed light on how discordant national laws hinder effective combatting of the trade. Building onto this thought implies scepticism about the actual effects of international cooperation as it anticipates conflicting interests and some countries do not abide to the agreed rules. Institutions such as

CITES do not have real power over the sovereign states, which ultimately leaves the issues open to each state to handle. Similarly, regional frameworks present a similar problem and require individual states to ratify their laws. Solving the IWT crisis is an impossible task for any single country in the region as it would need to rely on cooperation of neighbouring countries.

This research paper attempted to highlight legislative loopholes amongst national legal frameworks that may be facilitating the trade. Although loopholes are unintended consequences they can be beneficial to criminal syndicates that wish to move their products from one country to another. This research paper does not disregard the multiple elements that contribute to IWT however, proposes that the lack of harmonisation between neighbouring countries in the region contribute to the illicit (abalone) trade being able to be smuggled from the range state into Mozambique or Zimbabwe, from there it is considered legal and is able to sold to East Asia or brought back into South Africa legally. Considering the geographical placement and lack of criminalising legislation for the illicit (abalone) trade, neighbouring countries become ideal transit destinations for illegal contraband.

Previous research on combatting IWT highlights that individualised preventive measures have been somewhat unsuccessful; this is due to the transnational nature of the trade. This then requires a more collaborative and cooperative approach amongst neighbouring countries. which can be facilitated by harmonisation of laws. The study submits that in the SADC regions diverse and discordant laws are a major barrier in combatting IWT. Having diverse laws places no bearing on a country to legally assist another or be knowledgeable of their wild fauna and flora being smuggled into the country. In the modern world, where organised crimes such as IWT are growing, a multi-disciplinary and harmonised approach is needed to effectively prevent and counter it. It therefore crucial to consider harmonisation of laws as a necessity and a mechanism that can aid in the prevention of IWT.

For further research on the topic of IWT, I think it is needed to examine the supply-chain dynamics in the SADC region. There is a need to better understand the social, political and economic dynamics in the region that facilitate IWT. This would help greatly when developing effective implementation plans to combat the trade. Furthermore, acknowledging that this study focused on harmonisation of wildlife crime laws in the SADC region it would be insightful to conduct a research study into the recent harmonisation of wildlife crime laws in the Eastern African bloc to examine its success in combatting the illicit trade. Lastly, I hope

that the use of the abalone case study was able to stand as an example for other animals and plants that are being smuggled through neighbouring countries in the SADC region. Therefore, I hope that this research study was able to highlight the importance of harmonisation despite however daunting it may initially seem.

Bibliography

Abotsi, K.E., Galizzi, P. and He-klotz, A. (2016). Wildlife crime and degradation in Africa: An analysis of the current crisis and prospects for a secure future. *Fordham Intellectual Property, Media and Entertainment Law Journal*, 12(3):394-441.

Adal, L. (2018). Organised crime in Africa: Weak laws make tackling organised crime harder. Enhancing Africa's Capacity to Transnational Organised Crime (ENACT). Available at: https://enactafrica.org/enact-observer/weak-laws-make-tackling-organised-crime-harder. (accessed on: 31 January 2019).

Ahmed, A. and Mustofa, J. (2016). The role of soft law in environmental protection: An overview. *Global Journal of Politics and Law Research*, 4(2):1-18.

Ajayi, O.V. (2017). Distinguish between primary sources of data and secondary sources of data. Research Gate. Available at: https://www.researchgate.net/publication/320010397. (accessed on: 28 December 2018).

Alao, A. (2014). China and Zimbabwe: The context and contents of a complex relationship. South Africa Institute of International Affairs. Available at: https://www.africaportal.org/documents/12598/saia_sop_202_alao_21041017.pdf. (accessed on: 22 November 2018).

Alemika, E., Aning, K., Loua, F. and Cisse, A. (2014). Harmonising drug legislation in West Africa: A call for minimum standards. West Africa Commission on drugs. Available at: www.wacommissiondrugs.org. (accessed on: 30 January 2019).

Araujo, E. (2011). The need for human trafficking policy. African Institute of South Africa. Available at: http://www.ai.org.za/wp-content/uploads/downloads/2011/11/No-37.-The-need-for-Human-Trafficking-Policy.pdf. (accessed on: 8 January 2019).

Avis, W.R. (2017). Criminal networks and illicit wildlife trade. Knowledge for Development. Available at:

https://assets.publishing.service.gov.uk/media/5975df3ded915d59ba00000a/150-Illicit-Wildlife-Trade.pdf. (accessed on: 20 November 2018).

Ayling, J. (2012). What sustains wildlife crime? Rhino horn trading and the resilience of criminal networks. *Journal of International Law and Policy*, 16(1):57-80.

Bega, S. (2017). Fighting to save the worlds most trafficked mammal. Independent Online Web. Available at: https://www.iol.co.za/saturday-star/fighting-to-save-the-worlds-most-trafficked-mammal-12503369. (accessed on: 11 February 2019).

Bengtsson, M. (2016). Hot to plan and perform a qualitative study using content analysis. *NursingPlus Open*, 8-14.

Berger-Walliser, G. (2012). The past and future of proactive law: An overview of the proactive law movement. Research Gate. Available at: https://www.researchgate.net/publication/273440662 (accessed on: 22 June 2018).

Berry, L.B., Curtis, G.E., Elan, S.L., Hudson, R.A. and Kollars, N.A. (2003). Transnational activities of Chinese crime organisations. The Library of Congress. Available at: https://www.loc.gov/rr/frd/pdf-files/ChineseOrgCrime.pdf. (accessed on: 24 January 2019).

Biegus, O. and Bueger, C. (2017). Poachers and pirates: Improving coordination of the global response to wildlife crime. *South Africa Crime Quarterly*, 60:29-36.

Bomdaroff, T.P., van der Werf, W. and Reitano, T. (2015). The illegal fishing and organised crime nexus: Legal fishing as transnational organised crime. The Global Initiative Against Transnational Organised Crime. Available at: https://globalinitiative.net/wp-content/uploads/2015/04/the-illegal-fishing-and-organised-crime-nexus-1.pdf. (accessed on: 21 November 2018).

Blum, C. (2016). Transnational organised crime in Southern Africa and Mozambique. Friedrich-Ebert-Stifung Mozambique. Available at: http://library.fes.de/pdf-files/bueros/mosambik/13193.pdf. (accessed on: 20 November 2018).

Byiers, B. (2009). Informality in Mozambique. USAID. Available at: http://www.acismoz.com/wp-content/uploads/2017/06/Byiers_InformalityInMozambique_18%2011%2009.pdf. (accessed on: 27 November 2018).

Calderoni, F. (2009). *Harmonisation and approximation polices in the European Union.* Springer Heidelberg Dordrecht, London.

Chigumira, G. (2016). Maximising niche markets: SA abalone. Trade and Industrial Policy Strategies. Available at: http://www.tips.org.za/policy-briefs/item/3128-maximising-niche-markets-south-african-abalone. (accessed on: 31 November 2018).

Chow, C. (2017). The ecological industrial and drug war behind the abalone on your dinner table. Wits Journalism. Available at: http://africachinareporting.co.za/2017/05/the-ecological-industrial-and-drug-war-behind-the-abalone-on-your-dinner-table/. (accessed on: 12 August 2018).

Convention on International Trade in Endangered Species of Wild Fauna and Flora. (2018). Convention on International Trade in Endangered Species of Wild Fauna and Flora. Available at: https://www.cites.org/eng. (accessed on: 20 June 2018).

Cirelli, M.T. and Morgera, E. (2010). Widllife law in the Southern African Development Community. Available at: http://www.cic-wildlife.org/wp-content/uploads/2012/12/Technical_series_9.pdf. (accessed on: 27 November 2018).

Cuming, R.C. (1985). Harmonisation of law in Canada: An overview. In Shumba, T. (2014). *Harmonising the law of sale in the SADC: An analysis of selected models.* Unpublished Ph.D. Thesis, University of Stellenbosh, Western Cape.

Dasgupta, A. (2017). Drugs of abuse: An overview (Pp. 23-51). In Dasgupta, A. (Eds). *Alcohol, drugs, genes and the clinical laboratory: An overview of healthcare and safety professionals*. Houston: Academic Press.

Department of Environmental Affairs. (2018). South Africa arrests poachers during operation thunderstorm. Department of Environmental Affairs. Available at: https://www.environment.gov.za/mediarelease/southafricaarrestspoachersduringoperationthunderstorm (accessed on: 2 December 2018).

Department of Environmental Affairs and Tourism, South Africa. (1990). Marine Living Resources Amendment Act 68 of 2000. *Government Gazette*, 426(21844). Cape Town: Government Printers.

Department of Justice, South Africa. (1998). Prevention of Organised Crime Act 121 of 1998. *Government Gazette,* 415(19914). Pretoria: Government Printers. 1 April.

De Greef, K. (2013). *The booming illegal abalone fishery in Hangberg: Tough lessons for small-scale fisheries governance in South Africa.* Published MA Dissertation, University of Cape Town, Cape Town.

De Greef, K. and Raemaekers, S. (2014). South Africa's illicit abalone trade: An updated overview and knowledge gap analysis. Traffic. Available at: https://www.traffic.org/site/assets/files/8469/south-africas-illicit-abalone.pdf. (accessed on: 24 January 2019).

De Vos, A.S., Strydom, H, Fouche, C.B. and Delport, C.S.L. (2011). *Research at Grass Roots: for the social sciences and human service professions.* (4th edition). Pretoria: Van Schaik.

Donnenfeld, Z. and Aucoin, C. (2017). Guns, poison and horns: Organised wildlife crime in Southern Africa. Institute of Security Studies. Available at: https://issafrica.org/research/papers/guns-poison-and-horns-organised-wildlife-crime-in-southern-africa. (accessed on: 19 June 2018).

Donnenfeld, Z. and Naidoo, J. (2016). Ivory poaching: not just a conservation issue. Institute of Security Studies. Available at: https://issafrica.org/iss-today/ivory-poaching-not-just-a-conservation-issue. (accessed on: 28 December 2018).

Duffy, R. (2016). The illegal wildlife trade in global perspective. Handbook of transnational environmental crime (p109-128). In Elliot, L. and Schaelda, W. H. (Eds). *Handbook of transnational environmental crime.* London, Edward Elgar Pub.

EuroJust. (2014). Strategic project on environmental crime. EuroJust. Available at: https://www.actu-environnement.com/media/pdf/news-23861-rapport-eurojust.pdf. (accessed on: 28 November 2018).

European Union Action to Fight Environmental Crime. (2014). Limitations and challenges of the criminal justice system in addressing environmental crimes. EFFACE. Available at: https://www.ecologic.eu/sites/files/publication/2015/efface_policy_brief_1_29oct14.pdf. (accessed on: 14 May 2018).

Fagbayibo, B. (2009). Towards the harmonisation of laws in Africa: Is OHADA the way to go? *The Comparative and International Law Journal of Southern Africa*, 42(3):309-322.

Fajardo, T. (2017). Transnational environmental crime: A challenging problem but not yet a legal concept. Research Gate. Available at: https://www.researchgate.net/publication/314087698_Transnational_environmental_crime_a_challenging_problem_but_not_yet_a_legal_concept_A_response_to_Lorraine_Elliott. (accessed on: 20 October 2018).

Faure, M. G. (2000). *The harmonisation, codification and integration of environmental law: A search for definitions*. European Environmental Law Review. Metro Institute, Maastricht University.

Fontaine, M. (2013). Law harmonisation and local specifities - a case study: OHADA and the law of contracts. *Uniform Law Review*, 18(1):50-64.

Fourie, M. (2008). *The constitutionality of forfeiture of property.* Unpublished LLM Dissertation, North-West University, Potchefstroom.

Freilich, J.D. and Newman, G.R. (2017). Oxford Research Encyclopaedia of Criminology and Criminal Justice. Oxford Research Encyclopaedia. Available at:

https://www.criminology.oxfordre.com/view/10.1093/acrefore/9780190264079.001.0001/acr https://disqus.com/embed/comments/?base=default&f=mwp2&t_i=8749%20http%3A%2F%2Fwww.mrworldpremiere.tv%2F%3Fp%3D8749&t_u=https%3A%2F%2Fwww.mrworldpremiere.tv%2F%3Fp%3D8749&t_e=Surviving%20R.%20Kelly%20Part%203&t_d=Surviving%20R.%20Kelly%20Part%203%20–%20Mr.%20World%20Premiere&t_t=Surviving%20R.%20Kelly%20Part%203&s_o=default#efore-9780190264079-e-3?print=pdf. (accessed on: 20 November 2018).

Frith, R. (2012). Preventing and avoiding loopholes and unintended consequences in legislation. National Conference of State Legislatures. Available at: http://www.ncsl.org/documents/lsss/spotloophole1.pdf. (accessed on:20 November 2018).

Gaustadsaether, I. W. (2016). *A critical analysis of the relationship between the state and wildlife crime case: Rhino poaching in South Africa.* Unpublished MA Dissertation, University of Stellenbosch, Stellenbosch.

Goga, K. (2014). The illegal abalone trade in Western Cape. Institute for Security Studies. Available at: https://www.files.ethz.ch/isn/183159/Paper261.pdf. (accessed on: 19 June 2018).

Golub, S.S. (2015). Informal cross boarder trade and smuggling in Africa (p. 108-209). In Morrissey, O., Lopez, R. and Sharma, K. (Eds). *Handbook of trade and development.* London: Edward Elgar.

Gosling, J. (2014). The global response to transnational organised environmental crime. The Global Initiative against transnational Organised Crime. Available at: http://www.stoprhinopoaching.com/UploadedFiles/Knowledge/Global%20Initiative%20-%20Organized%20Environmental%20Crime%20-%20Baseline%20Assessment%20-%20June%202014.pdf. (accessed on: 20 October 2018).

Guzman, A. T. and Meyer, T.L. (2010). International Soft Law. *Journal of Legal Analysis*, 2(1):171-225.

Harrison, M., Roe, D., Baker, J., Mwedde, G., travers, H., Plumptree, A., Revetsiba, A. and Milner-Gulland, E. J. (2015). Wildlife crime: A review of the evidence on drivers and impacts in Uganda. International Institute for Environment and Development. Available at: www.iied.org. (accessed on: 27 January 2019).

Hübschle, A. (2010). Organised crime in Southern Africa: First annual review. Institute for Security Studies. Available at: https://www.africaportal.org/documents/3448/OrgCrimeReviewDec2010.pdf. (accessed on: 20 June 2018).

Hübschle, A.M. (2016). *A game of horns: Transnational flow of rhino horn.* Published Ph.D. Thesis in Economic Sociology. International Max Planck Research School on the Social and Political Constitution of the Economy, Germany.

Hübschle, A.M. (2017). Contested illegality: Processing the trade prohibition of Rhino horn (p.177-193). In Beckert, J. and Dewey, M. (Eds). *The architecture of illegal markets: Towards an economic sociology of illegality in the economy.* London, Oxford University Press.

Hübschle, A. (2017). The Groenewald Criminal Network: Background, legislative loopholes and recommendations. The Global Observatory of Transnational Criminal Networks. Available at: https://pure.mpg.de/rest/items/item_2491735/component/file_2491733/content. (accessed on:27 January 2019).

Imprensa Nacional De Moçambique, E. P. (2017). Publicação official da republica de Moçambique. Imprensa Nacional De Moçambique, E. P. Available at: http://extwprlegs1.fao.org/docs/pdf/moz168082.pdf. (accessed on: 31 January 2019).

Institute for Security Studies. (2017). Horns, guns and drugs: The real cost of wildlife crime. Institute for Security Studies. Available at: https://issafrica.org/about-us/press-releases/horns-guns-and-drugs-the-real-cost-of-wildlife-crime. (accessed on: 29 November 2018).

International Conservation Caucus Foundation (2018). Magistrates in Mozambique look for solutions on environmental crime management. International Conservation Caucus

Foundation. Available at: https://www.internationalconservation.org/africa/international/magistrates-in-mozambique-look-for-solutions-on-environmental-crime-management. (accessed on: 28 December 2018).

Izzo, J.B. (2010). DC pets for a price: Combating online and traditional wildlife crime through international harmonisation and authoritative policies. *William and Mary Environmental law and policy Review*, 3493):965-997.

Jordaan, N. (2017). Wildlife crime is expensive security challenge. *Sunday Times*. 21 September: np.

Lau, W. (2018). *An assessment of South African dried abalone Haliotis Midae consumption and trade in Hong Kong.* TRAFFIC. Pembroke Street, Cambridge, United Kingdom.

Kamminga, J., Ayele, E., Meratria, N. and Havinga, P. (2018). Poaching detection technologies. Sensors. Available at: https://www.ncbi.nlm.nhi.gov/pmc/articles/PMC5982520/pdf/sensors-18-01474.pdf. *Sensors Journal*, 1474:1-27.

Katz, L. (2010). A theory of loopholes. *The Journal of Legal Studies,* 39(1):1-31.

Kavanagh, C. (sa). Harmonizing drug legislation in West Africa: A call for minimum standards. West African Commission on Drugs. Available at: http://www.globalcommissionondrugs.org/wp-content/uploads/2017/02/20140804-Harmonizing-Drug-Legislation-in-West-Africa.pdf. (accessed on: 24 January 2019).

Keatridge, T. and Haenlein, C. (2016). Wildlife crime is financial crime: The response needs to reflect this. Centre for Financial Crime and Security Studies, AML/CTF, Organised Crime Africa. Available at: https://rusi.org/commentory/widlife-crime-financial-crime-response-needs-reflect. (accessed on: 29 November 2018).

Khan, S. and Singh, S.B. (2014). The economics of transnational organised crime in the maritime domain: Drug trafficking in Africa and the Southern African Continent. *Journal of Social Science,* 41(3):523-534.

Lehmacher, W. (2016). Wildlife crime: A $23 billion trade that's destroying our planet. Wold Economic Forum. Available at: https://www.weforum.org/agenda/2016/09/fighting-illegal-wildlife-and-forest-trade/. (accessed on: 21 November 2018).

Luttenberger, A. and Luttenberger, L.R. (2017). Challenges in regulating environmental crimes. International Maritime Science Conference. Available at: https://bib.irb.hr/datoteka/871672.IMSC2017_Luttenberger_and_Runko_Luttenberger.pdf. (accessed on: 31 January 2019).

Marquès-Banqué, M. (2018). The utopia of the harmonisation of legal frameworks to fight against transnational organised environmental crime. *MDPI Journal of Sustainability*, 10(3576):1-19.

Medina, L. and Schneider, F. (2018). Shadow economies around the world: What did we learn over the last 20 years? International Monetary Fund. Available at: https://www.imf.org/en/Publications/WP/Issues/2018/01/25/Shadow-Economies-Around-the-World-What-Did-We-Learn-Over-the-Last-20-Years-45583. (accessed on: 28 November 2018).

Miller, B. J. (2007). Lining outside the law: How the informal economy frustrates enforcement of the human rights regime for billions of the worlds most marginalised citizens. *North Western Journal of International Human Rights*, 5(1):127-152.

Minnaar, A., van Schalkwyk, L. and Sarika, K. (2018). The difficulties in policing and combatting of maritime crime: The case of abalone poaching along South Africa's coastline. *Journal of the Indian Ocean Region*, 14(1):71-87.

Mothibi, K.A., Raelofse, C.J. and Maluleke, A.H. (2015). Organised crime in South Africa since transition to democracy. *Sociology and Anthropology Journal*, 3(12):649-655.

Muposhi, V.K., Gandiwa, E., Bartels, P. and Makuza, S.M. (2016). Trophy hunting conservation and rural development in Zimbabwe: Issues, options and implications. *International Journal of Biodiversity*, 1-16.

Mutombozi, A. (2007). Regional cooperation in transit transport: Solution for landlocked and transit developing countries. United Nations Trade and Development. Available at: https://unctad.org/sections/wcmu/docs/c3em30p02_en.pdf. (accessed on: 10 January 2019).

Mutume, G. (2007). Organised crime targets weak African states. African Rewnewal. Available at: https://www.un.org/africarenewal/magazine/july-2007/organized-crime-targets-weak-african-states. (31 January 2019).

Nowak, K. (2016). CITES alone cannot combat illegal wildlife trade. South African Institute of International Affairs. Available at: http://www.saiia.org.za/policy-insights/1092-cites-alone-cannot-combat-illegal-wildlife-trade/file. (accessed on: 10 May 2018).

South African Police Service. (2017). National Integrated Strategy to Combat Wildlife Trafficking. South African Police Service. Available at: http://pmg-assets.s3-website-eu-west-1.amazonaws.com/170530NISCWT.pdf. (accessed on: 14 November 2018).

Obank, R., Schatz, A., Flick, A., heading, A., Kuzmierkrevicz, S. and Brozkes, E. (2015). Empty threat 2015: Does the law combat illegal wildlife trade? DLA Piper. Available at: https://www.dlapiper.com/~/media/files/News/…/IllegalWildlifeTradeReport2015.pdf. (accessed on: 12 November 2018).

Obokata, T. (2017). The value of international law in combating transnational organised crime in the Asia-Pacific. *Asian Journal of International Law*, 7(1):39-60.

Organisation of Economic Cooperation and Development. (2018). Governance frameworks to counter illicit trade. OECD Publishing Paris. Available at: https://read.oecd-ilibrary.org/governance/governance-frameworks-to-counter-illicit-trade_9789264291652-en#page3. (accessed on: 29 November 2018).

Pienaar, L.E. (2014). *Serious crime as a national threat in South Africa since 1994.* Unpublished Ph.D. Thesis, University of Pretoria: Pretoria.

Pires, S.F. (2015). Introduction: Wildlife crime. *European Journal on Criminology Policy and Research*, 21(3):299-302.

Preston, B.J. and Hanson, C. (2013). The globalisation and harmonisation of environmental law. *Asia Pacific Journal of Environmental Law*, 16:1-36.

Price, R. (2017). National and regional legal frameworks to control the illegal wildlife trade in sub Saharan Africa. *Institute of Development Studies*, 1-23.

Qudah, H. (2014). *Towards international criminalisation of transboundary environmental crimes.* Unpublished Ph.D. Thesis, Pace Law School, New York.

Rossouw, M. (2016). *The harmonisation of rules on the recognition and enforcement of foreign judgements in the Southern African customs union.* Pretoria, Pretoria University Law Press.

Runhovde, S.R. (2017). Merely a transit country? Examining the role of Uganda in the transnational illegal ivory trade. Trends in Organised Crime. Available at: https://brage.bibsys.no/xmlui/bitstream/handle/11250/2427085/merely_a_transit_country.pdf?sequence=1. (accessed on: 4 December 2018).

Sal and Calderia Advogados. (2014). Analysis of the conservation law: Practical aspects for its application. Biofund. Avaialable at: www.biofund.org.mz/wp-content/uploads/2017/03/Interpretacao-da-Lei-de-Conservacao-/NG.pdf. (accessed on: 26 June 2018).

Salum, J., Eustace, A., Malata, P.F. and Mbangwa, O.F. (2017). Wildlife crime promoted by weak governance. *African Journal of Ecology*, 56:101-108.

Southern African Development Community. (2016). Trafficking in persons in the SADC region: Baseline report. Southern African Development Community. Available at: https://www.sadc.int/files/3514/7505/0085/SADC_Basline_Report_Low_Resolution.pdf. (accessed on: 28 November 2018).

South African Institute of International Affairs. (2016). A cry for recognition and protection: Zimbabwe's forgotten informal cross border traders. South African Institute of International Affairs. Available at: http://saiia.org.za/research/a-cry-for-recognition-and-protection-zimbabwes-forgotten-informal-cross-border-traders/. (accessed on:4 December 2018).

Shaffer, G. and Pollack, M.A. (2010). Hard vs soft law: Alternatives, complements and antagonists in international governance. *Minnesota Law Review*, 94:706-799.

Shumba, T. (2014). *Harmonising the law of sale in the SADC: An analysis of selected models*. Unpublished Ph.D. Thesis, University of Stellenbosh, Western Cape.

Steyn, P. (2017). Poaching for abalone Africa's white gold, reaches fever pitch. National Geographic. Available at: https://news.nationalgeographic.com/2017/02/wildlife-watch-abalone-poaching-south-af. (accessed on: 10 May 2018).

Trade Mark East Africa. (2016). East Africa to harmonise laws on wildlife trafficking. Trade Mark East Africa. Available at: https://www.trademarkea.com/news/east-africa-to-harmonize-laws-on-wildlife-trafficking/. (30 January 2019).

TRAFFIC. (2008). What's driving the wildlife trade: A review of expert opinion on economic and social drivers of the wildlife trade and trade control efforts in Cambodia, Indonesia, Lao PPR and Vietnam. Traffic. Available at: https://www.traffic.org/site/assets/files/5435/whats-driving-wildlife-trade-executive-summary.pdf. (accessed on: 19 November 2018).

TRAFFIC. (2017). UN reaffirms commitment to address illlicit wildlife trafficking through powerful new resolution. TRAFFIC. Available at: https://www.traffic.org/news/un-reaffirms-commitment-to-address-illicit-wildlife-trafficking-through-powerful-new-resolution/. (accessed on: 11 February 2019).

TRAFFIC and van Asch, E. (2013). Wildlife (p.77-86). In United Nations Office of Drugs and Crime. Transnational organised crime in East Asia and the Pacific: A threat assessment. United Nations Office of Drugs and Crime. Available at: http://www.unodc.org/res/cld/bibliography/transnational-organized-crime-in-east-asia-and-

the-pacific-a-threat-assessment_html/TOCTA_EAP_web.pdf. (accessed on: 27 November 2018).

United Nations Environmental Programme. (2016). Global partnership in the EU action plan against wildlife trafficking. United Nations Environmental Programme. Available at: www.europarl.europa.eu/cmsdata/106528/Wildlife%trafficking_UNEP.pdf. (accessed on: 25 January 2019).

United Nations Office of Drugs and Crime. (2002). Results of a pilot survey of 40 selected organised criminal groups in 16 countries. United Nations Office of Drugs and Crime. Available at: https://www.undoc.org/pdf/crime/publications/Pilot_survey.pdf. (accessed on: 22 November 2018).

United Nations Office on Drugs and Crime. (2016). *World wildlife crime report: Trafficking in protected species.* New York, United Nations

United Nations Office of Drugs and Crime. (2018). Wildlife and forest crime. United Nations Office of Drugs and Crime. Available at: https://www.unodc.org/southeastasiaandpacific/en/what-we-do/toc/wildlife-forest-crime.html (accessed on: 4 December 2018).

United Nations Office of Drugs and Crime. (2016). World wildlife crime report: Trafficking in protected species. Available at:https://www.unodc.org/documents/data-and-analysis/wildlife/World_Wildlife_Crime_Report_2016_final.pdf. (accessed on: 28 January 2019).

United Nations Inter-Agency Task Force on Illicit Trade in Wildlife and Forest products. (2017). Africa-Asia Pacific symposium on strengthening legal frameworks to combat wildlife crime. United Nations Development Programme. Available at: http://www.undp.org/content/dam/undp/library/Environment%20and%20Energy/biodiversity/Africa-AsiaPac-Wildlife-law-symposium-wo.pdf. (accessed on: 30 January 2019).

Van Asch, E. (2017). *Exploring the effectiveness of international cooperation to combat transnational organised wildlife crime: Lessons learned from initiatives in Asia.* Unpublished Ph.D. Thesis, University of Sheffield, England.

Van Uhm, D.P. (2012). *Organised crime in the wildlife trade.* Unpublished MA Dissertation, Utrecht University, Netherlands.

Van Uhm, D. P. (2018). Wildlife crime and Security (p. 73-96). In Reichel, P. and Ronda, R. *Transnational crime and global security*. United States: Praeger.

Warchol, G. and Harrington, M. (2016). Exploring the dynamics of South Africa's illegal abalone trade visa routine activities theory. *Springer Trends Organised crime*, 19:21-41.

Wasser, S.K., Torkelson, A., Winters, M., Horeaux,Y., Tucker, S., Otiende, M.Y., Sitam, F.A.T., Buckleton, J. and Weir, B.S. (2018). Combatting transnational organised crime by linking multiple large ivory seizures to the same dealer. *Science Advances*, 4(9):1-10.

Winterdyk, J., Reichel, P.L. and Danner, H.R. (2009). *A guided reader to research in comparative criminology/criminal justice*. Im Haatmanns: Universitatsverlag.

Wyatt, T., Johnson, K., Hunter, L., George, R. and Gunter, R. (2017). Corruption and wildlife trafficking: Three case studies involving Asia. *Asian Criminology*, 13:35-55.