

INVESTIGATING AND PROSECUTING ENVIRONMENTAL CRIMES – GENERAL

OVERVIEW

BY

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INTRODUCTION



- Environmental crime covers acts that breach environmental legislation and cause significant harm or risk to the environment and human health
- But they provide very high profits for perpetrators and relatively low risks of detection.
- Very often, environmental crimes have a cross border aspect
- Environmental crime is a serious and growing problem and needs to be tackled

DEFINITION OF ENVIRONMENT



- Environment is broad and is problematic to define
- Einstein defined it as everything else around you except yourself

INTRODUCTION – Cont...

- Environment is the sum total of all surroundings of a living organism, including natural forces and other living things, which provide conditions for development and growth as well as of danger and damage. Living things do not simply exist in their environment. They constantly interact with it. Organisms change in response to conditions in their environment. The environment consists of the interactions among plants, animals, soil, water, temperature, light, and other living and non-living things. (Wikipedia, 2014).

EXTENT AND IMPACTS OF ENVIRONMENTAL CRIME

Common areas of environmental crime are:

- the illegal emission or discharge of substances into air, water or soil;
- illegal logging and transportation of timber;
- illegal trade in wildlife;
- illicit trade in plants and animals;
- illegal fishing;
- illegal trade in ozone-depleting substances and the illegal shipment or dumping of waste ; and
- In addition to these clear and present crimes, new types of environmental crime are emerging, such as carbon trade and water management crime

EXTENT AND IMPACTS OF ENVIRONMENTAL CRIME Cont...

- Pollution crime has a clear and direct human impact
- The effect of pollution crime on the natural environment can be global, and contributes directly to the worldwide issue of climate change,
- as hazardous waste especially from more developed nations where it is strictly controlled can be illegally disposed of in less developed countries,
- taking advantage of lax or non-existent environmental controls or effective enforcement,
- The most fragile countries, those lacking infrastructure and effective policing but often rich in untapped natural resources are the most vulnerable to exploitation, and the poorest communities suffer the most

EXTENT AND IMPACTS OF ENVIRONMENTAL CRIME Cont...

Illustration of cases of environmental crimes:

- Toxic Waste Dumping in Abidjan, Ivory Coast;
- African countries consent to tackle illegal timber trade in Congo Basin ; and
- Killing for Profit: Exposing the Illegal Rhino Horn Trade

ENFORCING ENVIRONMENTAL LEGISLATION

- Enforcing environmental laws and regulations is an important ingredient in protecting the environment and reducing environmental harm
- generally achieved by various environmental law enforcement agencies operating at an International, Regional, National, State and Local level
- depends on how deterrent those laws can be on corporations, individuals or governments for them to comply
- In some cases, as was the case with Zambia before its environmental law was revised, environmental legislation, violations carry largely insignificant civil fines and penalties

ENFORCING ENVIRONMENTAL LEGISLATION Cont...



- A major source of failure of environmental protection legislation is the civil character of enforcement actions, where their chief sanction are fines, which many corporations take in as a cost of doing business;
- corporations find it more cost-effective to continue to pollute and pay the associated fines;
- adverse public opinion regarding the management of the environment;

ENFORCING ENVIRONMENTAL LEGISLATION Cont...



- Prosecution is one of the mechanisms of enforcing environmental law and thereby curbing environmental crime.
- It is given that before prosecution can take place, investigations must be conducted to determine whether an offence has been committed and whether there is evidence to warrant the prosecution

Legal Powers of Environmental Investigators

- Legislation makes various provisions in order to aid the investigations
- E.g. in Zambia, Environmental Management Act, 2011, in sections 15 and 16 provides inspectors with powers:
 - to enter and search any facility or plant, business or any other premises;
 - search persons;
 - examine documents;
 - require information;
 - take extracts from or copy sections of a book or document;
 - use any computer system to search data or record;
 - seize and detain substances; and
 - powers of arrest

Legal Powers of Environmental Investigators Cont...

- In Zambia, the Zambia Environmental Management Agency has developed a tool box with regard to water and air pollution to assist Inspectors to sample for legal purposes

Criminal Sanction



A sanction is imposed either

- as a primary or independent sanction; and
- or as a subsidiary or supporting sanction, secured mainly through the means of administrative controls (e.g. permits) and sanctions are applied only when the administrative control fails
- An offence involving the lack of a permit or authorization and lack of fulfillment of the conditions in the permit would be easier to prove than in the case of a primary sanction

Inherent weaknesses of sanctions in prosecution



- ❑ Burden of time and cost
- ❑ Reactive nature of criminal law
- ❑ Problems of proof
- ❑ Procedural safeguards
- ❑ Officials' attendance in Court
- ❑ The 'moral' aspect of criminal law

Contingent weaknesses



- These are weaknesses present in a particular country because of prevailing attitudes or resource constraints or similar characteristics of that society. These include: inadequate policing; lack of public awareness; difficulties of investigation; lack of expertise of court officials; and inadequate penalties

TAKING ACTION AGAINST ENVIRONMENTAL CRIME

- The trans-boundary nature of environmental crime requires that countries act together to combat it
- A directive can be issued by member states on the requirements to be implemented in national criminal laws
- A laid down list of environmental offences that must be considered criminal if committed intentionally or with serious negligence can be agreed upon by all member states
- Member States must ensure that the commission of the offences is subject to effective, proportionate and dissuasive criminal sanctions