



Republic of Malawi

SPEECH BY
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AT THE
Wildlife Inter-Regional Enforcement (WIRE) Meeting
PULLMAN BANGKOK KINGPOWER HOTEL
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Pol. Lt. Gen. Prachaub Wongsuk, Assistant Commissioner General of the Royal Thai Police,

Mrs. Liz Patricia Benavides Vargas, General Attorney of Peru,

Mr. Abdulla Shareef, Commissioner General of Customs of Maldives,

Daniel Lamm, Regional Programme Coordinator, Bureau of International Narcotics and Law Enforcement Affairs, US Embassy in Thailand

Giovanni Broussard, Regional Coordinator of the UNODC Environment Team for Eastern and Southern Africa,

Distinguished participants,

Ladies and Gentlemen

My name is Thabo Chakaka-Nyirenda, Attorney General for the Republic of Malawi. I believe I am currently the youngest serving Attorney General on earth.

I sincerely feel greatly honoured, proud and highly privileged to be invited by the United Nations Office on Drug and Corruption (UNODC) as one of the keynote speakers at this auspicious meeting on Wildlife Inter-Regional Enforcement (WIRE). It is a huge honour to be associated with the works of UNODC regarding the conservation of wildlife.

Special greetings from Malawi, the Warm Heart of Africa, a country endowed with peace, tranquillity, wildlife and natural beauty, chief among them being Lake Malawi, the 3rd largest fresh water lake in Africa and the 5th largest fresh water lake in the world.

First and foremost, we should be reminded with great emphasis that wildlife plays a very critical role in the ecosystem. Crucially, it is a notorious fact that the ecosystem controls vital ecological processes that promote lives. In this regard, there is need to be steadfast in ensuring conservation of the wildlife. We must not lose sight of the fact that by design, the preservation of wildlife is broad covering both animals and natural vegetation. Wildlife conservation guarantees the enjoyment of the natural

world by human beings. It is, thus, safe to say that wildlife is a basic necessity of human life.

Distinguished participants, it is basic knowledge that wildlife is also a source of foreign currency for most countries as it attracts tourism and invariably contributes to the country's balance of payment and overall Gross Domestic Product (GDP). Malawi is a living example of that great wildlife contribution to her economy. The major vice to this, however, is wildlife crime which has its own associated ills or ripple effects. According to studies, wildlife crimes perpetuate money laundering and sponsors terrorism. The wildlife offences being complained about, include hunting of animals, possession, trafficking of trophies and sale of specimens and trophies. It is common knowledge that wildlife offences pose a significant threat to endangered species and the ecosystem hence also affecting our normal living. This, therefore, requires relentless coordinated effort to curb wildlife offences.

To this end, allow me to quote and share with you what the High Court of Malawi, Mwaungulu, J as he then was succinctly observed in **R v Akimu** (Revision Case 9 of 2003) [2003] MWHC 96 (28 December 2003):

‘Possessing, trafficking, hunting of trophies should in recent times be considered as a serious offence sui generis. Much of the trafficking, hunting and possession of trophies affects animals that are endangered species under many international and regional instruments or arrangements to which Malawi is a party. Under these, Malawi must not only resort to steps reducing threats to the species but eliminate completely all conduct that threatens these species. These steps, apart from the ornamental aspects for preservation of these species, enhance the ecological balance that environmentalists have

advocated for long. There is huge and committed human and financial investment to enable communities around these ecosystems to harness the benefits of preserving and nurturing the endangered species populating these ecosystems. These grandiose and useful efforts are far from achieved by the conduct displayed by the defendant.'

Distinguished participants, Goal 15 of the United Nations Sustainable Development Goals sets out twelve targets relating to the sustainable use of the land ecosystems which include protection of wild animals. Specifically, Goal 15.7 enjoins member states *'to take urgent action to end poaching and trafficking of protected species of flora and fauna and address both demand and supply of illegal wildlife products.'* It has been recognized that the smuggling of protected flora and fauna has been facilitated through corruption and bribery. Consequently, to make meaningful strides in eradicating smuggling of wildlife products and specimens, State Parties are required to take measures aimed at substantially reducing corruption and bribery in all their forms.

The Financial Action Taskforce (FATF) laments that the illegal wildlife trade is a major transnational organised crime, which generates billions of dollars' worth of criminal proceeds annually. Wildlife traffickers are opportunists. They exploit loopholes in the financial and non-financial sectors, to move, hide and launder their proceeds, brooding further wildlife crimes and in the process causing damage to the financial integrity. FATF recommends the identification of the broader criminal networks and disgorgement of the profit out of wildlife crime by tracking the financial trails of wildlife traffickers to effectively root out illegal wildlife trade.

I believe you are all here familiar with the subject of money laundering and, consequently, that you would agree that wildlife offences constitute major underlying offences to money laundering. As such, FATF's plea to countries to put efforts on tracing and combating financial flows from the trade of wildlife trophies and specimens must be heeded. Nations are now enjoined to frame laws empowering law enforcement authorities to pursue finances of wildlife traffickers, and to institute financial investigations. As participants to this Conference, I trust you will guide your authorities to act according to FATF's recommendations, that is, if that guidance has not already been given by you to your authorities.

The organisers of this Conference requested me to share Malawi's experience regarding the fight against wildlife crimes. I am pleased to announce that Malawi is a state party to the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES). It has taken great strides in implementing the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES). Earlier in my speech I shared with you a quotation of a High Court judgment on wildlife offences. The pronouncement by the High Court shows how committed and decisive Malawi is in the fight against wildlife crime. However, there have been lows and downs in as far as the pursuit against wildlife crimes is concerned.

Before the year 2016, Malawi was considered as a hub for trafficking of wildlife trophies and products. This was blamed on weak law enforcement and too lenient sanctions imposed on convicts of wildlife related offences and on disparate sentencing schemes. The destination of most of these wildlife trophies was the Far East, notably China and Hong Kong, thereby cementing assertions that wildlife crimes are transnational in nature. The products include pangolin skins, ivory, hippo teeth and rhino horns. Convicts usually escaped with the payment of fines. This was

not considered dissuasive enough as it was incompatible with the scale and gravity of the offences that were committed. For example, around 2013, two Malawian nationals were found in possession of 781 pieces of ivory weighing 2,640 kilograms which was valued at K4, 393,125.00. The state charged them for possession of specimen of protected species and money laundering and was convicted on both charges. The court imposed a fine of K2, 500,000.00 on each of the convicts or in default serve 5 years in prison. The convicts readily paid the fine imposed and escaped jail. The case was of course appealed to the Malawi Supreme Court of Appeal. I will discuss this case in details later.

To address the concerns that Malawi was a hub for illicit trade in wildlife products, Malawi amended its National Parks and Wild Life Act in 2017 to enhance punishment in relation to wildlife offences. The punishment is now up to 30 years' imprisonment. Since wildlife offences are money laundering predicate offences; the maximum punishment for money laundering is life imprisonment. According to the broad scope of money laundering offence, mere possession of wildlife specimen would amount to a substantive money laundering offence.

Malawi has provided extensive training to law enforcement officers and judicial officers. Not only that, there has been extensive public awareness regarding wildlife offences and the need to refrain from engaging in wildlife related offences. The initiation of criminal prosecutions against perpetrators of wildlife crimes and the resultant verdicts are being widely reported in both the print and the electronic media including social media. This serves as a deterrent to would be offenders. Since June 2016 over 600 convictions have been registered.

There is also great coordination among law enforcement agencies when pursuing wildlife related offences. As a result of these strides and the recalibration of the sentencing scheme in wildlife related offences, trafficking of wildlife offences has significantly declined. But we know that criminals think way ahead of us. This, we are addressing as a country but limited resources, given Malawi's poor economic situation, continue hamstringing these efforts.

Let me reiterate that the smuggling of wildlife specimens is an indication that wildlife offences are transnational in character. Because of this, international cooperation in the form of mutual assistance in criminal matters, and extradition of accused persons, is required. Malawi has had difficulties in getting cooperation from countries such as China, Hong Kong and Thailand. I believe this conference will help us consider a recalibration of the mutual legal assistance requests that Malawi submitted.

Sometimes, criminal prosecution may be difficult to achieve meaningful results. In such case, there is need for effective coordination among countries and intra-agency coordination to pursue civil litigation targeting proceeds of illegal wildlife trade and trafficking including enforcement of civil judgments.

The following are the strategies that Malawi has devised to reduce wildlife crimes:

- (a) Establishment of Inter Agency Committee on Combating Wildlife Crime (IACCWC);
- (b) Amendment of the National Parks and Wildlife Act (Cap. 66:07 of the Laws of Malawi) providing for maximum penalty of 30 years imprisonment with hard labour. At the moment, two convicts are each serving 18-year jail sentences for poaching a black rhino. Further a

Chinese national, Yun Hua Lin is currently serving a 14-year jail sentence following his conviction of wildlife related offences;

- (c) Establishment of wildlife crimes Investigation Unit;
- (d) Introduction of Wildlife Dog Directive Unit;
- (e) Deployment of wildlife officers at the ports of entry and ports of exit;
- (f) Collaboration with neighbouring countries, namely, Mozambique, Zambia and Tanzania, on investigation and prosecution of wildlife offences;
- (g) Prosecution of wildlife offences by wildlife prosecutors;
- (h) Conducting wildlife aware through jingles and billboards.

The following are the success stories:

- (a) Reduced poaching in national parks and game reserves;
- (b) Increased number of key species in most protected areas;
- (c) Malawi is no longer a country of primary concern declared at COP 18 of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) in Geneva, Switzerland in 2019;
- (d) The Malawi National Parks and Wildlife Act (Cap. 66:07 of the Laws of Malawi) is now in category one of CITES.

Distinguished participants, allow me to give you a living example of a case in the courts in Malawi where law enforcement coordination was achieved.

The case involved two Malawian brothers who were on 31st May 2013 found in possession of 781 pieces of ivory concealed under bags of cement in a truck that was being driven from Mbeya in Tanzania and destined to Lilongwe, Malawi. The

seizure of the contraband and the subsequent arrest of the accused persons occurred at Phwezi roadblock, in Rumphu District, Northern Region of Malawi. The roadblock was mounted jointly by the Malawi Police and the Malawi Revenue Authority. The ivory which weighed 2,640 kilograms was valued at K4.4-billion (then equivalent to approximately US\$5.9-million). The investigators estimated that around 435 elephants were killed in order to obtain the tusks. The accused persons denied that they had either constructive/implied or actual possession of the ivory on account of the fact that as mere transporters they had no knowledge that the ivory has been stashed under the bags of cement since they were not present when the loading of the cement was being done. They argued that because they were not present when the bags of cement were being loaded onto the truck it was impossible for them to know that the consignment included ivory as well. As such, knowledge that the consignment comprised ivory could not be imputed on them.

Malawi's Financial Intelligence Authority FIA was called upon to analyse financial transactions by the accused persons. The analysis uncovered funds remittances from senders located in Hong Kong and China through Western Union in favour of the accused persons. These remittances, according to the analysis by Malawi's Financial Intelligence Authority, did not make business or economic sense. The only inference that was drawn was that the senders of the money were part of the criminal syndicate to smuggle ivory and that the transmitted funds constituted part of the illegal operation value chain. Therefore, the accused persons had both actual and constructive/implied possession of the ivory. Let me mention here that Malawi's Department of the National Parks and Wildlife was also involved in the investigation and prosecution of this case.

The accused persons were charged in the High Court with money laundering and illegal possession of protected specimens. They were convicted of both offences on 28th July, 2015 and were each ordered to pay a fine of K2.5 million each or in default to serve 5 years' imprisonment and they paid the fine. The state appealed against the sentence arguing that the non-custodial sentence (the sentence of a fine) was manifestly low and inadequate in the circumstances. The Malawi Supreme Court of Appeal upheld the appeal and substituted the sentence of a fine for custodial sentences of 8 years Imprisonment with hard labour considering that the fines were insufficient punishment for the type of the offences proven to have been committed by the convicts.

This case is a classic testament to the benefit of coordination amongst different law enforcement agencies in investigating and prosecuting of wildlife crimes and related offences as well as teamwork. Five different law enforcement agencies, namely, the Malawi Police Service, the Directorate of Public Prosecutions (Malawi), the Financial Intelligence Authority (Malawi), the Department of the National Parks and Wildlife (Malawi) and the Malawi Revenue Authority each played a role in the investigation and eventual prosecution of the case respectively. Without such coordination and team working spirit it would have been difficult to gather sufficient evidence to lead to the successful prosecution of the accused persons. There was also a sharing of information amongst the different law enforcement on the appropriate law to apply on the case. The Court was able to impose meaningful sentences using different pieces of legislation by not merely applying the Wildlife Act as it had been the custom in such cases.

As the old adage says, *'No man is an island, no man lives alone'*, law enforcement agencies are called upon to work together in the fight against wildlife crimes and

related crimes. I, therefore, urge countries participating in this conference to learn from, adopt and adapt the coordination and teamwork that happens in Malawi, of course taking into account the unique cultural, economic and social factors that prevails in your countries. This kind of coordination should be tailor-made for international coordination since we recognize that wildlife crimes are extra-territorial in nature. This kind of international cooperation would lead to countries agreeing on which country should prosecute the particular wildlife offences by taking into account the connection of the accused persons with the country and by assessing the significance of the harm that crime may have been inflicted on any of the country most closely connected with the harmful effects of the crime and with the accused persons. Speedy processing of extradition requests and mutual legal assistance requests are key to the reducing or eradicating these wildlife crimes. Because there would be occasions in which civil recovery of proceeds of illegal wildlife trade would be desirable, it is high time that countries worked on legal frameworks for mutual legal assistance in civil and commercial cases. It is imperative that extradition treaties, Mutual Legal Assistance Agreements in Criminal Matters and Mutual Legal Assistance Agreements in Civil Matters are negotiated and signed by countries that are vulnerable to wildlife crimes. I believe United Nations Office on Drug and Corruption (UNODC) is very suited to facilitate the drafting and execution of such agreements or treaties. I accordingly request UNODC to facilitate such noble cause including providing financing of the activities associated with the signing of the suggested international agreements. Owing to the transnational character of the wildlife crimes, no single country acting as an island can win the battle against wildlife crimes no matter how steadfast its law enforcement agency can be.

Special thanks should go to UNODC for organizing and sponsoring this workshop. The knowledge and skills to be gained from this workshop and the networking would be very useful in tackling wildlife offences. A mere phone call or an email to compatriots would help to get the desired information relating to particular suspects. The legal formalities would be done after information has been informally shared. I am encouraged to note that UNODC's support towards tackling wildlife crimes has grown over several years. It is my sincere hope that UNODC will continue to render such support and improve on it.

Accordingly, I call upon each and every one of you to seriously participate in this workshop so that the efforts made in organizing this workshop do not go to waste.

Further, special gratitude should also be extended to the Thailand Government for allowing us to come to attend this important meeting.

I also recognize the management and Staff of this beautiful hotel for allowing us to have this meeting here.

Last but not least, I believe that at the end of the day on 2nd December, 2022 the purpose of the workshop would have been achieved.

Thank you very much for listening!

May God Bless you!