



GUNN
ATTORNEYS | COMMERCIAL
MINING
ENVIRONMENTAL

FEBRUARY NEWSLETTER 2019

Dear Readers,

We hope you have had a fabulous month of February!



The February edition of this newsletter will look at updates in the wildlife conservation and energy sectors while also focussing on recent legal notices and amendments.

****We are proud to announce that Gunn Attorneys will be conducting monthly environmental training workshops. The details of which are provided at the end of this Newsletter.**

NATIONAL LEGISLATION

❖ **PLANT BREEDERS' RIGHTS ACT 15 OF 1976**

Regulations relating to plant breeders' rights amended with effect from 1 April 2019
- GN 132 in GG 42230 of 15 February 2019 (p21)

❖ **GENETICALLY MODIFIED ORGANISMS ACT 15 OF 1997**

Regulations amended with effect from 1 April 2019 - GN 131 in GG 42230 of 15
February 2019 (p19)

❖ **PERFORMING ANIMALS PROTECTION ACT 24 OF 1935**

Performing Animals Protection Regulations, 2016 amended - GN 130 in GG 42230 of 15 February 2019 (p18)

PROVINCIAL LEGISLATION

❖ **EASTERN CAPE**

NATURE AND ENVIRONMENTAL CONSERVATION ORDINANCE 19 OF 1974 AND PROBLEM ANIMAL CONTROL ORDINANCE 26 OF 1957

Determination of hunting season, daily bag limits and hunting by the use of prohibited hunting methods - Proc 1 in PG 4184 of 11 February 2019 (p11)

FOR COMMENT

- ❖ **NATIONAL ENVIRONMENTAL MANAGEMENT: PROTECTED AREAS ACT 57 OF 2003** - Intention to declare respective land parcels as a nature reserve: Nungu Nature Reserve - PN 21 in PG 2975 of 22 February 2019

Sekhukhune District Municipality - Declaration of respective land parcels as protected environment: De Hoop Dam Nature Reserve - PN 22 in PG 2975 of 22 February 2019

POLICY

- ❖ Department of Transport “Green Transport Strategy for South Africa: (2018-2050)”

Chinese 'Ivory Queen' who smuggled tusks of more than 350 elephants jailed for 15 years

By Adrian Blomfield, 19 February 2019

A court in Tanzania convicted a notorious Chinese trafficker known as “the Ivory Queen” on Tuesday (12 February 2019), dealing a significant blow against the Asian crime networks behind much of the slaughter of Africa’s elephants.

Yang Fenlan, a 69-year-old businesswoman who for years passed herself off as a respectable member of Tanzania’s Chinese expatriate community, was jailed for 15 years after being found guilty of smuggling the tusks of more than 350 elephants to Asia. She faces an additional two years in prison if she fails to pay a fine of £2.8 million.

The verdict, the most-high profile conviction of an Asian poaching syndicate kingpin by an African court, was welcomed by conservationists, who said it would send a powerful message to other Chinese smugglers.

“It’s hugely significant,” said Tom Milliken, who monitors the illegal trade in ivory for CITES, the Convention on International Trade in Endangered Species.

“These large shipments of ivory moving off the African continent are almost inevitably being moved by Asian transnational criminal syndicates. As her jail sentence pulses through the Chinese community, the prospect of spending that long in an African jail is certainly going to be a deterrent for certain individuals.”

Tanzania has been the epicenter of elephant poaching in east Africa for the past decade. A surge in demand for ivory from China, Vietnam and other southeast Asian states has devastated one of the continent’s largest elephant populations. Census figures show that Tanzania’s elephant numbers fell from 110,000 in 2009 to just 43,000 by 2014.

Prosecutors said that Fenlan was a key figure in the slaughter. Although she was charged with smuggling 706 tusks, bought from poachers through intermediaries, the true scale of her smuggling, which spanned 14 years, may never be known.

Many in Dar es-Salaam, Tanzania’s biggest city were astonished when she was finally unmasked by the country’s serious crimes squad in 2015. Until then, she had been known as the proprietor of The Beijing, a modest Chinese restaurant with a palm-thatch roof and red lanterns.

But she was also a keen businesswoman, who used her access to powerful government officials to help Chinese companies gain a foothold in Tanzania.

She also served as secretary-general of the China-Africa Business Council of Tanzania, something she insisted was entirely innocent. “I am the best illustration of China-Tanzania friendship,” she told a Chinese newspaper in 2014.



Prosecutors, however, presented her as a dangerous criminal mastermind who had cherished ambitions of smuggling ivory ever since she had briefly lived in Tanzania in 1975, working as a translator for a Chinese railway project.

The railway passed through the Selous, one of Africa’s last great wildernesses and home to some of the continent’s biggest elephant populations, the sight of which may have inspired her criminal career. No wildlife reserve in Africa has been as badly poached in the past decade.

A huge international effort, comprising Interpol, conservationist groups and African governments, has mounted a concerted campaign in recent years to infiltrate and expose the Asian wildlife crime networks.

In Tanzania, in particular, it was highly dangerous work. Wayne Lotter, a South African conservationist group that funded and backed the operation to capture Fenlan, was shot dead by a suspected hitman in Dar es Salaam in 2017. The previous year, a British pilot, Roger Gower, was killed by poachers who fired at his helicopter as it approached an elephant carcass

in the Maswa Game Reserve.

Despite the human cost, the operation has had an impact. Elephant poaching has fallen significantly since Fenlan's arrest. China, which banned the domestic trade in ivory last year, has also mounted operations against the crime syndicates.

The China Customs Anti-Smuggling Bureau, acting on information provided by Britain's Environmental Investigation Agency, raided and dismantled a major ivory smuggling network in the Chinese town of Shuidong last year. Chinese authorities announced the arrest of the last of the group's three leaders last month.

"I think that if this kind of pressure both within China and here in Africa can be maintained we will see a different landscape in the future," Mr Milliken said.

Kenya May Fast-Track Death Penalty Law for Poachers

By The Independent-Global Citizen, 27 February 2019

Kenya's current Cabinet Secretary for Tourism Najib Balala has reportedly announced the implementation of the death penalty for wildlife poachers, causing a wide spectrum of response.

Tourism officials credit augmented law-enforcement and conservation efforts, which have led to an 86 percent decline in rhino poaching and 79 percent decline in elephant poaching. Balala has said that the current deterrents in place against wildlife poaching are not adequately protecting the country's wide variety of species, which includes lions, black rhinos, ostriches, hippos, buffalos, giraffes, zebras and the recently spotted rare black leopard.

If the law, which Balala warned would be fast-tracked into legislation, is passed, poachers will face capital punishment.

"We have in place the Wildlife Conservation Act that was enacted in 2013 and which fetches offenders a life sentence or a fine of US\$200,000," Balala said. "However, this has not been deterrence enough to curb poaching, hence the proposed stiffer sentence."



Out of a population of 34,000 elephants, 69 were killed in the country last year. Out of a population of fewer than 1,000 rhinos, nine were killed. Three rhinos are poached every day across the continent, and losses are high enough to cancel out population growth, according to a report by the Save the Rhino organization.

Organized poaching is a highly lucrative criminal operation, and is currently the largest threat to big game wildlife. Capital punishment would mean the most intense penalty in the world for the crime, which is supported by some but considered extreme by others.

According to Amnesty International, this would also signal a shift from Kenya's efforts to eradicate the death penalty in the country.

If the new law is passed it could also potentially put Kenya against the United Nations, which has urged for a worldwide elimination of the death penalty.

Others have called for authorities to target higher-ups in trafficking circles, pointing out that small-scale poaching criminals often do so out of experiences of poverty and benefit less from selling animal products than kingpins do.

While the threat of poaching is undeniable, animals are also being affected by habitat depletion, climate change, and disease. Half of all individual animal populations have been devastated to the point of extinction in recent decades.

If the new Kenyan poaching law is passed, the short-term threats to wildlife may be addressed, but uncertainty still looms for the long-term threats that lead to endangerment and extinction.

INTERESTING ENVIRONMENTAL TOPICS

- ❖ ***What NEMLA IV could mean for mine closures***
<https://www.bizcommunity.com/Article/196/638/187233.html#more>
- ❖ ***Green energy back in vogue as Eskom misfires***
<https://www.fin24.com/Economy/Eskom/green-energy-back-in-vogue-as-eskom-misfires-20190227>
- ❖ ***Sasol intentionally polluted the Vaal River, SAHRC inquiry hears***
<https://www.news24.com/SouthAfrica/News/sasol-intentionally-polluted-the-vaal-river-sahrc-inquiry-hears-20190221>

WORKSHOPS

- ❖ **Introduction to Environmental Law**
Date: Wednesday, 27 March 2019
- ❖ **Climate Change**
Date: Wednesday, 24 April 2019
- ❖ **Mining and Environmental Law**
Date: Wednesday, 29 May 2019
- ❖ **Water Law**
Date: Wednesday, 26 June 2019

Additional information**Details for all the above workshops**

Venue: Gunn Attorney's offices, 11 Greenway Road, Greenside, Johannesburg

Time: 08h30 to 16h00

Expert Environmental Presenters**Adam Gunn**

Adam completed his BCom Law LLB at the University of KwaZulu-Natal and his LLM in Environmental Law at the University of the Witwatersrand. Adam was admitted as an attorney of the High Court of South Africa in 2001, since then gaining over 18 years of experience in providing legal advice to clients in the resources sector. Adam is considered one of the foremost environmental law experts in South Africa and has extensive experience in presenting training workshops.

Sonam Mansingh

Sonam completed her Law LLB at the University of KwaZulu-Natal and LLM in Environmental and Marine Law at the University of Cape Town. The LLM program was a combination of coursework and a dissertation. The courses covered include International Environmental Law, International Law of the Sea, Natural Resources Law and Land Use Planning Law. Her dissertation highlighted the principles of intergenerational equity and fairness at the forefront of climate change law in an effort to safeguard the interests of poor and vulnerable people and countries.

Workshop Information

All attendees will be supplied with the presentation handout, which will be loaded onto a shared Dropbox site.

The cost to attend will include a full day of training, tea, coffee, lunch and ample secure parking.

The workshop style will be interesting, enjoyable and interactive. All attendees will obtain a certificate of attendance upon completion.

Please RSVP to sonam@gunnattorneys.co.za

ABOUT GUNN ATTORNEYS

Gunn Attorneys was established in 2014 by Adam Gunn, leveraging on many years of experience in the natural resources sector. Amongst other things Adam was legal counsel to Ridge Mining and First Uranium Corporation and a partner at Edward Nathan Sonnenbergs and Eversheds. The vision of the firm continues to be to provide exceptional service to our clients in the natural resources sector.



Sonam Mansingh and Adam Gunn outside our offices at 11 Greenway Road, Greenside.

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Disclaimer:

This newsletter does not aim to provide a summary of all the legal developments in the environmental, mining and natural resources sectors. For professional legal advice on any particular issue, please contact us.