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STOP ILLEGAL FISHING CASE STUDY SERIES 02



Environmental Courts

PROVE TO BE EFFECTIVE

Background

Since the 1960s, the south-western coast of South Africa had been plagued with the illegal harvesting of abalone. The key elements that contributed to the abalone poaching and associated criminal activities included: the high value of the mollusc, the low risk of detection, and weak deterrence due to low fines and penalties as well as poor conviction rates. This was exasperated further by the low priority given to environmental cases in general courts combined with prosecutors often not having the expertise needed to successfully prosecute.

At this time, the conviction rate for environmental crimes in South Africa was around 10%.¹ In an effort to improve this rate, the South African Department of Justice and Constitutional Development's National Prosecuting Authority (NPA) and its Directorate of Public Prosecution (DPP) in the Western Cape worked in collaboration with the then Department of Environmental Affairs and Tourism's (DEAT) Marine and Coastal Management (MCM) branch to establish a dedicated environmental court in the Western Cape.

The creation of this first environmental court was strongly supported by the Ministers responsible for justice and environmental affairs, which lead to the court being established smoothly and quickly.²

The environmental court which opened in Hermanus, in 2003, was the first court in South Africa specifically established to combat environmental crime. Its primary purpose was to prosecute abalone poachers, although cases relating to other environmental issues such as the illegal trade in rhinoceros horns, water pollution and other marine offences were also heard.³

The court's first cases were heard within three months of the decision for its establishment. In its first year the court heard 74 cases, of which 51 resulted in successful prosecutions.⁴ This translated into a 70% success rate, dramatically increasing the number of convictions for environmental crimes.

In parallel with the establishment of the Hermanus court, South Africa's Marine Living Resources Act (MLRA) was amended. The changes allowed prosecutors to build stronger cases and obtain a higher number of custodial sentences. Fines appeared to have had little effect as a deterrent to poaching, as crime syndicates could easily cover any financial penalty incurred. Therefore, prison sentences were pursued. The court was successful in not just prosecuting individual poachers, but also in convicting other key players such as buyers, transporters and processors. Whenever possible, prosecutors requested the court to order the forfeiture of boats, vehicles, and equipment to the State to prevent them from further use by abalone poachers.

STOP ILLEGAL FISHING CASE STUDIES aim to:

Define best practice by analysing practical examples of different approaches in the fight against IUU fishing. They also demonstrate the magnitude of activities and partnerships underway to stop illegal fishing and provide the basis for policy advice.



The Story (cont'd)

The regional status of the Hermanus court was particularly important as it meant it could deal with environmental offences committed throughout the Western Cape Province, rather than just those in the municipal area. As the court could apply regional law, the prosecutors were also able to issue higher penalties.

Although it is difficult to verify, it was suspected that the Hermanus court had a displacement effect on abalone poaching with some poaching syndicates relocating their operations out of the court's jurisdiction. This resulted in an increase in abalone cases in the Eastern Cape, prompting the placing of an environmental prosecutor in the Port Elizabeth district court. However, as a district court Port Elizabeth had a more limited jurisdiction than that of the regional Hermanus court. Nevertheless, by 2005, the combined environmental prosecution rate of the two courts was 90%.⁵

The Hermanus court was originally meant to be a permanent institution. However, in 2006 a high level political decision was taken to close a number of specialised courts that lacked legislative mandates, which included the environmental court in Hermanus. Persons charged with environmental offenses were transferred back into the general court system.

During the last twelve months of its operation, the environmental court in Hermanus achieved an 85% conviction rate. Over the court's tenure, 49 people were imprisoned for poaching-related offences, and numerous others received correctional supervision, fines or suspended sentences.⁶

The National Environmental Compliance and Enforcement Report released in 2009 revealed that the total number of cases in which the NPA declined to prosecute increased from 16 in 2007/08 to 100 in 2008/09 and the number of convictions decreased from 748 in 2007/08 to 258 in 2008/09.⁷

Key features and outcomes

- Having a specialised court and prosecutors allowed for the **building of expertise and experience** in South African environmental law which meant prosecutors were more able to identify effective arguments and block the defences that had previously set poachers free.
- Collaboration and sharing of expertise** between law enforcement agencies increased in order to ensure sound legal standing of cases and the success of the court rested largely on this collaborative effort.
- A **training manual** was developed by the prosecutors, detailing the proper application of South African marine regulations, including information needed to successfully prosecute poaching cases. The manual was distributed at training sessions and posted on-line.
- Environmental cases were given **prioritised attention** resulting in the rapid hearing of cases and the prosecution of an unprecedented number of environmental criminals.
- Increase in poaching convictions **boosted the morale** of environmental enforcement officers and validated the dangerous actions required to apprehend offenders.

Drivers

The main driver behind the decision to create a specific environmental court was the political recognition for the need for stronger deterrence for poachers in an effort to protect the valuable natural resources in South Africa, especially abalone.

Lessons learned

- Increasing the level of deterrence** through the high probability of conviction and severe punishments contributes to the reduction of environmental crimes.
- Sharing of knowledge** among prosecutors and other law enforcers both formally, through tools such as training programmes and manuals, and informally through relationship building is vital.
- Providing high penalty jurisdiction** to courts is important and this can be achieved through, for example, giving environmental courts regional status.
- Utilising the media** to draw attention to, and help attract public support against, environmental crimes is a strong tool. In this case, the media was briefed on high profile convictions and the resulting publicity increased public faith in the system, encouraging bystanders to report crimes and come forward as witnesses.

Players involved

- High level political decision makers:** The support by the Ministers responsible for justice and environmental affairs ensured the smooth and quick establishment of the court.
- Leading prosecutor:** A state advocate with the knowledge and interest to take on cases and secure convictions ensured that the process was guided and driven.
- State agencies:** the South African Department of Justice and Constitutional Development's National Prosecuting Authority and its Directorate of Public Prosecution in the Western Cape, provided facilities, covered court-related expenses and, jointly with MCM, funded prosecutors' salaries and operating costs.
- Training institutions:** The Paarl Detective Academy provided training courses in the interpretation and application of the legislation for South African Police officers and compliance personnel from conservation bodies.
- Enforcement personnel:** Fisheries officers, police officers and compliance personnel with knowledge of the specific laws applicable contributed to the securing of suitable evidence.

Challenges

- Limited availability of specialist prosecutors and magistrates in environmental law** – it was a struggle ensuring sufficient prosecutors and magistrates trained in environmental law to cover all of the cases that required this expertise.
- Lack of environmental jurisdiction to provide full geographical coverage of the abalone fishery** – it was believed that some poaching syndicates simply relocated their operations out of the Hermanus court's jurisdiction.
- Lack of training for enforcement officials in legislation, policy and procedure** – initially this hindered having proper and sufficient evidence for conviction until training was provided.
- Lack of a legislative mandate for the Hermanus court** – this contributed to the closure of the court.



Policy implications

- Sufficiently robust environmental legislation is needed to allow courts to deliver strict penalties and custodial sentences for environmental crimes.
- A clear legal mandate needs to be ensured so that environmental courts can be established and operate continuously and throughout the geographical area of the environmental resource.
- Sufficiently qualified magistrates and prosecutors are needed to preside over and prosecute environmental cases.

Acknowledgements

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Next steps

In order to increase awareness of the effectiveness of environmental courts in the fight against illegal, unreported and unregulated activities, efforts should focus on:

- Encouraging advocacy campaigns that **inform and educate** the public and government officials about the benefits of such courts.
- Sharing **best practice** on how to establish these specialised courts.
- Sharing case studies on the widespread and **positive effects** of the courts.

Furthermore, to strengthen existing environmental courts the focus should be on:

- **Promoting partnerships** between the prosecutors and law enforcement officials so that legally sound procedures are followed which increase the likelihood of successful prosecutions.
- **Working with governments** to ensure that there are no geographical areas where poachers will not be prosecuted by a specialised environmental court or a prosecutor.
- **Assisting to build proficiency** of prosecutors and magistrates in environmental law through training, mentoring and experience sharing.

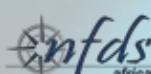
Further information



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Footnotes

- ¹ F. Nxumalo, "Second Environmental Court cuts poachers' hiding space." Business Report, February 25, 2004. <http://www.busrep.co.za> (accessed May 20, 2010)
- ² Ministry of Environmental Affairs and Tourism. "Ministers Launch First-Ever Environmental Court." March 6, 2003. <http://www.info.gov.za/speeches/2003/03030616461002.htm>
- ³ Snijman, P.J. Review of Hermanus Environmental Court, pers. comm. with Markus Burgener
- ⁴ Anon. "South Africa sets up new environmental court." Afrol News, February 24, 2004. <http://www.afrol.com/articles/11360>
- ⁵ Rogers, Guy. "Prosecutors Appeal for Environmental Circuit Court." The Herald, March 24, 2005. <http://www.theherald.co.za> (accessed May 20, 2010)
- ⁶ Snijman op. cit.
- ⁷ Ministry of Environmental Affairs "National Environmental Compliance and Enforcement Report 2009" April 21, 2010 www.info.gov.za/view/DownloadFileAction?id=112932 (accessed August 31, 2010)



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