TOOL BOX
for Data Journalists reporting on Wildlife Crimes in Southern Africa
Combating Wildlife Crime in Southern Africa

USAID’s VukaNow: Combating Wildlife Crime in Southern Africa Activity, implemented by Chemonics International supports activities designed to significantly reduce the level of poaching and illegal trade in wildlife through innovative approaches to: enhancing law enforcement capacity, enhancing judiciary systems, minimizing wildlife crimes and illegal trade, enforcing the law more effectively, and reducing the root causes and enablers of wildlife crime.

#WildEye: a wildlife crime tracking tool and training for investigative journalism in Southern Africa

One of VukaNow’s activities is the #WildEye: a wildlife crime tracking tool and training for investigative journalism in Southern Africa project. Its aim is to strengthen the capacity of journalists to investigate and report on wildlife crime through improved collection and sourcing of Combating Wildlife Crime data and strengthening information systems for sharing and analyzing such.
#WildEye: a wildlife crime tracking tool and training for investigative journalism in Southern Africa

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DISCLAIMER
Views expressed in this presentation do not necessarily reflect the views of the United States Agency for International Development or the United States Government or the Oxpeckers Investigative Environmental Journalism Board.
About this resource

• This resource was developed in collaboration with the Legal Resources Centre to support journalists in their accessing wildlife crime related information.

• The presentations were the basis for a webinar held in Aug 2021 and covered the topics of:
  a. Legal frameworks in Southern Africa
  b. Court data
  c. Evidence and collection of data (pics, samples, info)
  d. Privacy and data collection
  e. How to fill in and submit a FOIA form
The LRC aspires towards a fully democratic, equal society. Our goals are to promote justice using the Constitution, build respect for the rule of law, and contribute to socio-economic transformation within South Africa and beyond.
Legal Tools for accessing information in Southern Africa
INTRODUCTION

- Journalism is what maintains democracy, it is the forces that holds people of power accountable to its people.
- Access to information is crucial to allowing journalist to hold people of power accountable and to make sure they play their part in maintaining democracy. Access to information has grown in the past couple of decades and, there are international movements and organisations fighting against governments to allow ordinary people to access information and be informed. Currently almost every country in the world is either part of a treaties or has national laws that regulate access to information.
What does wildlife crime and access to information have to do with each other. Well, UNEP and other institutions advise our biodiversity crisis is one of the biggest challenges humanity will face in its lifetime. It has become such a crisis that the International Criminal Court is looking at making ecocide a fifth recognisable international crime against humanity. In order to understand and report on this crisis access to information will play a critical role.

Yet wildlife crimes are not getting the exposure it deserves and very few stories are being pursued.

This training session hopes to make it easier for people who want to investigate wildlife crimes in the Southern Africa to understand the legal issues.
● This session will look at the following:
  ○ Legal Framework in Southern Africa;
  ○ Court Data;
  ○ Evidence and collection of Data;
  ○ Privacy and data collection; and
  ○ How to fill a FOIA form or write a letter requesting access to information
• Defining wildlife crimes:
  • Wildlife crimes are typically referred to green crimes, they are crimes that are
directed against sentient beings that are not human;
  • Types of crimes can be direct crimes, i.e. the conduct is unlawful or it can be a
secondary crimes such as falsifying documentation to facilitate such a crime. –
examples Rhinos and Rosewood
• Defining access to information:
  • Access to information is the process of getting information that you may find
useful for the purpose that you are seeking
• Defining legal systems:
  • A legal system is referred to a set of laws that a countries operates under and
that binds the State and persons within that state
• UNEP:
  • United Nations Environmental Programs
• CITES:
  • Convention on International Trade in Endangered Species of Wild Fauna and
Flora

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PART A: LEGAL FRAMEWORKS IN SOUTHERN AFRICA

● International Law:
  ○ Universal Declaration of Human Rights: Article 19
    Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.
  ○ All countries that are member states to United Nations are bound.
Article 19:

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

   (a) For respect of the rights or reputations of others;
   (b) For the protection of national security or of public order (order public), or of public health or morals.
International Covenant on Civil and Political Rights

Source OHCHR
Regional law:

- African Charter on Human and Peoples’ Rights
  - Article 9 – (1): Every individual shall have the right to receive information
Convinced that respect for freedom of expression, as well as the right of access to information held by public bodies and companies, will lead to greater public transparency and accountability, as well as to good governance and the strengthening of democracy;

IV Freedom of Information

1. Public bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information, subject only to clearly defined rules established by law. 2. The right to information shall be guaranteed by law in accordance with the following principles: everyone has the right to access information held by public bodies; everyone has the right to access information held by private bodies, which is necessary for the exercise or protection of any right; any refusal to disclose information shall be subject to appeal to an independent body and/or the courts; public bodies shall be required, even in the absence of a request, actively to publish important information of significant public interest; no one shall be subject to any sanction for releasing in good faith information on wrongdoing, or that which would disclose a serious threat to health, safety or the environment save where the imposition of sanctions serves a legitimate interest and is necessary in a democratic society; and secrecy laws shall be amended as necessary to comply with freedom of information principles. 3. Everyone has the right to access and update or otherwise correct their personal information, whether it is held by public or by private bodies.
Preamble: Considering the key role of the media and other means of communication in ensuring full respect for the right to freedom of expression, promoting the free flow of information and ideas, assisting individuals in making informed decisions and facilitating and strengthening democracy.

Principle 1 - 2. States Parties to the African Charter (States) shall create an enabling environment for the exercise of freedom of expression and access to information, including by ensuring protection against acts or omissions of non-State actors that curtail the enjoyment of freedom of expression and access to information.

Principle 5. Protection of the rights to freedom of expression and access to information online: The exercise of the rights to freedom of expression and access to information shall be protected from interference both online and offline, and States shall interpret and implement the protection of these rights in this Declaration and other relevant international standards accordingly.

Principle 6. Protection of human rights defenders and others: The protections accorded to journalists and other media practitioners in this Declaration shall apply, as necessary, to every human rights defender and any other individual or group exercising their rights to freedom of expression and access to information through any medium.
Principle 9. **Justifiable limitations**

1. States may only limit the exercise of the rights to freedom of expression and access to information, if the limitation:
   a. is **prescribed by law**;
   b. serves a **legitimate aim**;
   and c. is a necessary and proportionate means to achieve the stated aim in a democratic society.

   3. A limitation shall serve a legitimate aim where the objective of the limitation is:
      a. to preserve respect for the **rights or reputations** of others; or
      b. to protect national security, public order or public health.

Principle 19. **Protection of journalists and other media practitioners**

1. The right to express oneself through the media by practising journalism shall not be subject to undue legal restrictions.

Principle 20. **Safety of journalists and other media practitioners**

Principle 25. **Protection of sources and other journalistic material**

1. Journalists and other media practitioners shall not be required to reveal confidential sources of information or to disclose other material held for journalistic purposes except where disclosure has been ordered by a court after a full and fair public hearing.

Principle 26. **The right of access to information**

1. The right of access to information shall be guaranteed by law in accordance with the following principles:
   a. **Every person has the right to access information** held by public bodies and relevant private bodies expeditiously and inexpensively.
   b. Every person has the right to access information of private bodies that may assist in the **exercise or protection of any right** expeditiously and inexpensively.

● Principle 31. Procedure for accessing information

1. Access to information shall be granted as expeditiously and inexpensively as possible, and in accessible formats and technologies.

2. No one shall be required to demonstrate a specific legal or personal interest in the information requested or to provide justification for a request.

3. Every person shall be assisted in making requests for information orally or in writing and in conformity with processing requirements.

● Part IV: Freedom of Expression and Access to Information on the Internet

● Part V: Implementation Principle

43. Implementation

○ 1. States shall adopt legislative, administrative, judicial and other

○ 2. guided by the African Commission’s Model Law on Access to Information for Africa.

○ 3. When States adopt measures related to elections, they shall be further guided by the African Commission’s Guidelines on Access to Information and Elections in Africa.

○ 4. Article 62 of the African Charter, States shall, in each Periodic Report submitted to the African Commission, provide detailed information on the measures taken to facilitate compliance with the provisions of this Declaration.
• Few African countries have passed national FOI laws, while draft FOI laws in other African states are at different stages in the process towards their adoption. The implementation of FOI legislation in Africa has faced important challenges.

Credit to Access Info Europe and the Centre for Law and Democracy

Source: https://www.rti-rating.org/
In Botswana, the constitution provides for free speech and a free press, but efforts to legally protect citizens' rights to privacy in communication (such as mobile phones) and to obtain information held by public authorities have not advanced.

**Freedom of Information Bill 2010** - object of the Bill is to extend the right of members of the public to access information in the possession of public authorities.
• **Section 37 of the Malawi Constitution** guarantees the right to information. ... Limited public access to information on Government actions perpetuates a culture of secrecy, which undermines public confidence in public institutions and its officials.

• **Access to Information Act, 2017**
  o **Section 18**: A request for information may be made orally or in writing and shall be addressed to an information officer
Mozambique

- Constitutional Right to freedom of expression, freedom of press and right to information
- Freedom of Information Act 2014
- Regulations passed in 2015
- Issues are: inadequate recourse mechanisms, poor proactive disclosures and strong authoritarian culture
- In 2018 brought out law that limit journalists rights. However revoked in May 2020 for not being constitutional
- Presently have Covid 19 Emergency Decree
Namibia currently has no legal freedom of information framework. Its Constitution provides the country's general legal framework for other fundamental freedoms.

The Namibian Constitution guarantees freedom of expression and the media in Article 21 (1)(a). Freedom of expression is by that time understood to implicitly include the right to information.

Certain restrictions to information are included like national security and public order.

17 June 2020 – tabled Access to Information Act in National Assembly
Section 32 of country's constitution "provides that everyone has the right of access to any information held by the State" and "provides for the horizontal application of the right of access to information held by another person to everyone when that information is required for the exercise or protection of any rights"

Promotion of Access to Information Act 2 of 2000
  - Section 11 right of access to records of public bodies
  - Section 18 form of request
  - Section 50 right of access to records of private bodies
  - Section 53 form of request
Form A PAIA

REPUBLIC OF SOUTH AFRICA

REQUEST FOR ACCESS TO RECORD OF PUBLIC BODY
(Section 18(1) of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000))
[Regulation 6]

FOR DEPARTMENTAL USE

Reference number: ..................................................

Request received by .......................................................... (state rank, name and surname of information officer/deputy information officer) on ........................................ (date) at ............................................................ (place).

Request fee (if any): R ........................................

Deposit (if any): R ........................................

Access fee: R ........................................

..........................................................

SIGNATURE OF INFORMATION OFFICER/DEPUTY INFORMATION OFFICER

A. Particulars of public body

The Information Officer/Deputy Information Officer:

Deputy Information Officer
Access to Information and Records Management
Department of Justice and Constitutional Development
Private Bag x81
PRETORIA
0001

Tel. no: 012 357 8892 or 315 1730
Fax no: 012 315 4837 or 357 8004
Email: paia@justice.gov.za
Form C PAIA

Sub-heading 3

A. Particulars of private body

The Head:

B. Particulars of person requesting access to the record

(a) The particulars of the person who requests access to the record must be given below.
(b) The address and/or fax number in the Republic to which the information is to be sent must be given.
(c) Proof of the capacity in which the request is made, if applicable, must be attached.

Full names and surname:

Identity number:

Postal address:

Telephone number: (……..) Fax number: (……..)

E-mail address:
The first clause, which quotes section 61 of Zimbabwe's Constitution, says: “Every person has the right to freedom of expression, which includes freedom to seek, receive and communicate ideas and other information; freedom of artistic expression and scientific research and creativity; and academic freedom.”
PART B: COURT DATA

● Court data- substantive
  ○ Court files
  ○ Pleadings and notices
  ○ Charge sheet, docket (until charged)
  ○ Judgements/court orders
  ○ Transcripts
  ○ Open hearings

● Public data
  ○ Lower courts (generally not available, need to request) – less accessible
  ○ High Courts (generally records available) – more accessible (reported)
  ○ Highest Court (Constitutional Court)
● Criminal courts
  ○ Seizures - police
  ○ Arrests – done by police services
  ○ Court cases – always the State will be a party
  ○ Convictions – in court order/judgment
● Use case numbers (information of the case) for files
● Stats be kept by Department of Justice, Department of Environment or Police Services - quantity
● Records of court are public and can be requested
<table>
<thead>
<tr>
<th>Botswana</th>
<th>Malawi</th>
<th>Mozambique</th>
<th>Namibia</th>
<th>South Africa</th>
<th>Zimbabwe</th>
</tr>
</thead>
<tbody>
<tr>
<td>Court of appeal</td>
<td>Supreme Court of appeal</td>
<td>Supreme Court</td>
<td>Supreme Court</td>
<td>Constitutional Court</td>
<td>Constitutional Court</td>
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<tr>
<td>High Court</td>
<td>High Court</td>
<td>Court of Appeals</td>
<td>High Court</td>
<td>Supreme Court of appeal</td>
<td>Supreme Court</td>
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<tr>
<td>Magistrates court</td>
<td>Magistrate Court</td>
<td>Provincial Courts</td>
<td>Lower courts – magistrate/community courts</td>
<td>Magistrate Court</td>
<td>High Court</td>
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<td></td>
<td></td>
<td>District Courts</td>
<td></td>
<td></td>
<td>Magistrate Court</td>
</tr>
<tr>
<td>Environment, Wildlife and</td>
<td>Wildlife Detection Dog Unit</td>
<td></td>
<td></td>
<td>Department of Forestry, Fisheries and Environment</td>
<td>Department of Environmental Management Agency</td>
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<tr>
<td>Tourism - Anti-Poaching Unit,</td>
<td>Department of National Parks and Wildlife</td>
<td></td>
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<td>SAPS</td>
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<tr>
<td>Tourism Intelligence Unit</td>
<td>of Malawi</td>
<td></td>
<td></td>
<td>National Integrated Strategy to Combat Wildlife</td>
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<tr>
<td>Financial Intelligence Agency</td>
<td>Malawi Police Service, Anti-Corruption Bureau,</td>
<td></td>
<td></td>
<td>Trafficking</td>
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<tr>
<td>National Anti-Poaching Task Team</td>
<td>INTERPOL, Financial Intelligence Unit, Malawi</td>
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<td>Revenue Authority, Department of Immigration and</td>
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<td>Malawi Defence Force</td>
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<td>Country</td>
<td>Botswana</td>
<td>Malawi</td>
<td>Mozambique</td>
<td>Namibia</td>
<td>South Africa</td>
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<td></td>
<td>Wildlife Conservation and National Parks Act 1992</td>
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<td>Acts:</td>
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<td>• CITES regulations (TOPS)</td>
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<td>• NEMBA</td>
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<tr>
<td>Botswana</td>
<td>has no centralised database recording prosecutions and court cases</td>
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<td></td>
<td>relating to wildlife crime.</td>
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<td>Malawi</td>
<td>However, in Malawi, Reviewers found there to be a lack of reliable</td>
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<td></td>
<td>available data, making it is almost impossible to identify detailed</td>
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<td></td>
<td>crime patterns or trends. The vast majority of wildlife prosecutions</td>
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<td></td>
<td>in Malawi have taken place in lower grade courts and prosecuted by</td>
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<td></td>
<td>lower ranked officers.</td>
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<tr>
<td>Mozambique</td>
<td>Crime statistics not readily available</td>
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</table>
CROSS BOUNDARY ASPECTS

- Interpol
- UN - UNEF
- WWF
- Export
EVIDENCE & COLLECTION OF DATA
PROOF OF FACT AND EVIDENCE?

- What is a fact? I am tall? Malawi has a lake?
- When a statement of fact is made, proof of such statement of fact is required. In other words you have to prove that crime X arose from person Y. See pictures am I really short? Does Malawi have a lake?
- How can one prove such statement of fact – by collecting evidence
- What is evidence:
  - Evidence is what proves a case – in terms of a criminal cases it is the information that was investigated by the police and handed over to the prosecutor;
  - In terms of investigative journalism evidence for example could be a video of police destroying hard evidence of a crime actually happenning;
- There are four types of evidence that exist – Real Evidence, Documentary evidence, electronic evidence and scientific evidence. We will now go through each of these – although these apply to legal evidence it also applies to investigate journalist who want to prove a facts in a story
### Interesting examples of Fact versus Evidence?

<table>
<thead>
<tr>
<th>Type of information</th>
<th>Numbers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Criminal dockets</td>
<td>12154</td>
</tr>
<tr>
<td>J534s issued</td>
<td>15852</td>
</tr>
<tr>
<td>Cases handed to NPA</td>
<td>2917</td>
</tr>
<tr>
<td>Arrests by EMI</td>
<td>11552</td>
</tr>
<tr>
<td>NPA declined to prosecute (‘nolle prosequi’)</td>
<td>296</td>
</tr>
<tr>
<td>Acquittals</td>
<td>87</td>
</tr>
<tr>
<td>Convictions</td>
<td>586</td>
</tr>
<tr>
<td>Section 105A agreements (plea bargains)</td>
<td>108</td>
</tr>
<tr>
<td>Amount of admission of guilt fines paid</td>
<td>14543</td>
</tr>
<tr>
<td>Amount of admission of guilt fines paid (total amount)</td>
<td>R 4 430 722,00</td>
</tr>
<tr>
<td>Warning letters were written</td>
<td>2497</td>
</tr>
<tr>
<td>Pre-directives issued</td>
<td>1449</td>
</tr>
<tr>
<td>Pre-compliances notices issued</td>
<td>3906</td>
</tr>
<tr>
<td>Final Directives issued</td>
<td>745</td>
</tr>
<tr>
<td>Final compliance notices issued</td>
<td>1121</td>
</tr>
<tr>
<td>Civil court applications launched</td>
<td>29</td>
</tr>
<tr>
<td>S24G administrative fines paid (total amount and number)</td>
<td>R 74 106 696,00</td>
</tr>
</tbody>
</table>

### Information displayed

<table>
<thead>
<tr>
<th>Total from 2010-2019</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Percentage of conviction from the docket to conviction during the period of 2010 - 2019</td>
<td>5.7%</td>
</tr>
<tr>
<td>Percentage of convictions from prosecutions to conviction during the period of 2010 - 2019</td>
<td>20%</td>
</tr>
<tr>
<td>Percentage of admission guilt fines paid from issuing a J534 during the period of 2010 - 2019</td>
<td>91%</td>
</tr>
</tbody>
</table>
| Percentage of the total value of the number of fines paid versus the total amount of a single payment per fine during the period of 2010 - 2019 | For every one admission of guilt, fine paid the average total amount for the fine was R 304,66.
C O L L E C T I O N  O F  R E A L  E V I D E N C E ?

● Real Evidence is an object that, when properly identified, becomes of itself evidence. For example:
  ○ The item itself such as a rhino horn, skin of an animal;
  ○ The tool used to commit the crime such as a firearm, a vehicle to transport the animal etc…;
  ○ A photo;
  ○ Video;
  ○ A sound clip;

● How can a journalist collect documentary data:
  ○ Is the information made available for the public in other words – the Botswana Government released a photo of the poacher?
  ○ Do you require to permission or need to apply for access to information - for example in South Africa you would undertake a PAIA application to access the records of how much rhino horn stockpile does South Africa hold in its possessions?
WITNESSES AND STATEMENTS

- Can be used as evidence
- Can be used as an information source
- Certain protections for journalists of sources of information
WHISTLEBLOWERS

- Botswana - Whistle Blowing Act No. 9 of 2016
  - Whilst the press is not an authorised reporting agency in terms section 8 of the Whistle Blowing Act, journalists should not attract criminal and civil sanctions as expressed in the Media Practitioners Act. Reporting of disclosures to unauthorised agencies can incur criminal sanctions of a fine not exceeding P100 000 or a term of imprisonment of up to five (5) years, or both. Essentially then the law is restrictive in terms of who disclosures may be referred to.

- Malawi - section 50 of the Access to Information Act states that a whistleblower who discloses or attempts to disclose information within the public interest upon reasonable suspicion to a law enforcement agency or appropriate public entity shall not be penalized in relation to his/her employment, profession, voluntary work, contract, organization membership, holding of office, or “any other way.”

- Mozambique - The Law on the Protection of Victims and Witnesses 15/2012 was enacted to safeguard the interests of whistleblowers and victims who report corrupt schemes.

- Namibia - Whistleblower Protection Act No. 10 of 2017
  - Protected limited circumstances: 1. where the disclosure is made in good faith in relation to the information disclosed. 2. if the whistleblower has reasonable cause to believe the information/disclosure is substantially true. Office of the Whistleblower

- South Africa - Protected Disclosures Act (PDA)

- Zimbabwe – no stand-alone law

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COLLECTION OF DOCUMENTARY EVIDENCE?

- Documentary evidence can be any written works capable of being used as evidence.

- Documentary Data can be found in the following manner:
  - Minutes of meeting – discussing wildlife crimes statistics,
  - Maps – location of wildlife crimes - wildeye;
  - Emails, letters;
  - Charge sheet;
  - Judgements / court orders – found guilty of unlawful possession of pangolin scales;
  - Reports generated;
  - SMSs or text messages.

- How can a journalist collect documentary data:
  - Is the document publicly accessible – this must be check – rule of thumb if it has been published or can be accessed through a government institution it is probably publicly available – South Africa has an environmental report that comes out every year detailing the various crimes that were prosecuted;
  - Do you need to use access to information laws – check with the laws in your country – example use the Access to Information Act 2017 in Malawai to get information about a how many poachers were prosecuted in the last month;
COLLECTION OF ELECTRONIC EVIDENCE?

- Electronic evidence comes from documentary, photo and video evidence. For example:
  - CDs, DVDS, MP3s, Emails, photos, videos, electronic documents saved on a company or on the cloud.

- How can journalist collect electronic evidence:
  - Is it in the public – If you want to find a court order or judgement start with WORLDLII which is usually link to your country like SAFLII;
  - If it is not check the various privacy and access to information laws that exist.
Collection of Scientific Evidence?

- Scientific evidence is another type of evidence that is crucial when you want to prove a crime has taken place. Most criminal including wildlife crimes requires experts and scientific evidence to prove a crime took place. Scientific evidence in terms of a journalist is critical in proving a claim of fact, for example if you want to prove company X polluted a water source you would get the water source tested to see if it is being polluted by a company:

- Type of scientific data is their:
  - Air quality, soil quality, plant or animal damage, water quality etc....

- How do I collect scientific data:
  - You must check the legal steps one must take in order to collect scientific evidence and how it must be transported to the expert who will undertake the analysis. See LRC's “A practical guide for mining-affected communities – Part 2 – Case management for mining-affected communities: preparing a case against a mine.”
PART D: PRIVACY & DATA COLLECTION
Principles of Data and Privacy and the Responsibility of the Media

• Intersection between the role of the media in reporting on a matter of public interest and the rights of data privacy.

• **Principles of data privacy**: Lawfulness, fairness, transparency, purpose limitation, data minimisation, storage and accuracy.

• Media practitioners must maintain the highest professional and ethical standards.

• Media must carry out their functions, which include informing, educating and entertaining the public professionally and responsibly.

• Media practitioners must take reasonable steps to ensure that they disseminate accurate and balanced information, and that their comments upon events are genuine and honest.

• Media practitioners must never publish information that they know to be false or maliciously make unfounded allegations about others that are intended to harm their reputation.
Personal data:

means data, in any form or medium, relating to an identified or identifiable individual who can be identified, directly or indirectly, by means reasonably likely to be used, including where an individual can be identified by linking the data to other information reasonably available. Personal data is defined by many regional and national instruments and can also be referenced as personal information or personally identifiable information. Personal data can be made private by its owner by restricting access to it or made public by its owner (e.g. shared publicly on social media). While sharing (and oversharing) personal details about oneself and others on social networks has become more common, such publicly available information remains personal and it can pose risks to those individuals represented in the data.

Privacy:

the presumption that individuals should have an area of autonomous development, interaction and liberty, a ‘private sphere’ with or without interaction with others, free from State intervention and from excessive unsolicited intervention by other individuals”. While the majority of literature and legislature concentrates on “the right to privacy”, it has been noted that there is currently no internationally accepted definition of privacy.

[See UN DATA PRIVACY, ETHICS AND PROTECTION: GUIDANCE NOTE ON BIG DATA FOR ACHIEVEMENT OF THE 2030 AGENDA]
Protection of Personal Information Act, 2013

- Allocates rights to Data Subjects and sets the responsibilities of Data Processes sets out eight conditions of lawful processing.

- The full informed consent of the data subject and a guarantee against the misuse of the data are two central themes.

- Personal Information is defined as information which identifies another person.

- **Section 7: Freedom of Expression Exclusion**- journalistic, literary or artistic purposes.

- **Press Ombudsman Code of Conduct and Ethics for South African Print and Online Media**
Personal Information

- means information relating to an identifiable, living, natural person, and where it is applicable, an identifiable, existing juristic person, including, but not limited to—
  - (a) information relating to the race, gender, sex, pregnancy, marital status, national, ethnic or social origin, colour, sexual orientation, age, physical or mental health, well-being, disability, religion, conscience, belief, culture, language and birth of the person;
  - (b) information relating to the education or the medical, financial, criminal or employment history of the person;
  - (c) any identifying number, symbol, e-mail address, physical address, telephone number, location information, online identifier or other particular assignment to the person;
  - (d) the biometric information of the person;
  - (e) the personal opinions, views or preferences of the person
  - (f) correspondence sent by the person that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence;
  - (g) the views or opinions of another individual about the person; and
  - (h) the name of the person if it appears with other personal information relating to the person or if the disclosure of the name itself would reveal information about the person
• **Code 3 Privacy, Dignity and Reputation** - the media shall
  1. exercise care and consideration in matters involving the private lives of individuals. The right to privacy may be overridden by public interest
  2. afford special weight to South African cultural customs concerning the protection of privacy and dignity of people who are bereaved and their respect for those who have passed away, as well as concerning children, the aged and the physically and mentally disabled;
  3. exercise care and consideration in matters involving dignity and reputation, which may be overridden only if it is in the public interest and if *true or substantially true, amounts to a protected comment, fair and accurate reporting of court proceedings, the information was prepared in accordance with the acceptable principles of journalistic conduct or the information was an accurate and impartial account of a dispute to which the complainant was a party.*
  4. HIV/AIDS victims restriction

• **Code 4 Protection of Personal Information** - the media shall
  1. take reasonable steps to ensure that the personal information under their control is protected from misuse, loss, and unauthorized access;
  2. ensure that the personal information they gather is accurate, reasonably complete and up to date;
  3. take steps to verify the accuracy of their information and, if necessary, amend it where a person requests a correction to be made to his or her personal information
  4. only disclose sufficient personal information to identify the person being reported on as some information, such as addresses, may enable others to intrude on their privacy and safety
  5. inform the affected person(s) and take reasonable steps to mitigate any prejudicial effects where it is reasonably suspected that an unauthorized person may have obtained access to personal information held by the media.
## PRIVACY & DATA COLLECTION: LEGAL OVERVIEW

<table>
<thead>
<tr>
<th>Item</th>
<th>Topic</th>
<th>RSA</th>
<th>Namibia</th>
<th>Botswana</th>
<th>Malawi</th>
<th>Zimbabwe</th>
<th>Mozambique</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Current Legislation</td>
<td>The Protection of Personal Information Act</td>
<td>No specific legislation</td>
<td>The Data Protection Act (not yet in force)</td>
<td>The Electronic Transactions and Cyber Security Act</td>
<td>The Access to Information and Protection of Privacy Act</td>
<td>No specific legislation</td>
</tr>
<tr>
<td>1.1</td>
<td>General Notes</td>
<td>Rights of data subjects</td>
<td>Data Protection Policy in draft stages</td>
<td>Defines personal data, outlines rights and obligations of persons processing personal data (data subject, data controller and data processor)</td>
<td>Restricts online communications on the grounds of protecting public order and national security. Provides data subjects with rights to obtain, oppose, amend, rectify, or erase personal data, requires consent from the data subject. Places obligations on data processors.</td>
<td>Regulates the collection, protection and retention of personal information held by public bodies only</td>
<td>Various legislation provide for privacy: Civil Code, Penal Code, Labour Law: (Employee Data), Electronic Transaction Law, Postal and Telecommunications Regulatory Authority of Zimbabwe</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Obligations on data processors</td>
<td>Draft Protection Bill is being formulated by the Ministry of Information and Communication Technology.</td>
<td>Data Protection Commission</td>
<td>Malawi Communications Regulatory Authority</td>
<td>Cyber Security and Data Protection Bill: provides minimum standards and general rules for a data controller for the processing of data. Regulates data transfers</td>
<td>May not process data in respect of a person’s beliefs or political views.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>The Information Regulator</td>
<td>Section 7: Exclusion for journalistic expression.</td>
<td>Data Protection Commission Section 16(e): Public Interest</td>
<td>Section 71: Processing of personal data Section 71(2) Public interest</td>
<td>Freedom of Information Act (pending): Access to information</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Section 72: Transborder information flows</td>
<td>Section 48: Data transfers are prohibited unless processing company has adequate security measures.</td>
<td>Data Protection Commission Section 72: Rights of a data subject</td>
<td>Section 73: Accuracy and completeness of information</td>
<td>Postal and Telecommunications Regulatory Authority of Zimbabwe</td>
<td></td>
</tr>
</tbody>
</table>
### PRIVACY & DATA COLLECTION: OVERVIEW

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<td>2</td>
<td>Bills / Other Legislation</td>
<td>PAIA</td>
<td>Data Protection Bill (yet to be finalised)</td>
<td>N/A</td>
<td>Draft Data Protection Bill</td>
<td>the Courts and Adjudicating Authorities (Publicity Restrictions) Act (Chapter 07:04), the Census and Statistics Act (Chapter 10:29), Banking Act (Chapter 24:20), National Registration Act (Chapter 10:17) and the Interception of Communications Act (Chapter 11:20)</td>
<td>N/A</td>
</tr>
<tr>
<td>3.1</td>
<td>Privacy</td>
<td>Code 3: Privacy, Dignity and Reputation</td>
<td>Code 4: Privacy, Dignity and Reputation</td>
<td>Gathering of information; National Security; Protection of Sources</td>
<td>Code 3.11: Right to Know</td>
<td>Code 19: Gathering of Information</td>
<td>N/A</td>
</tr>
<tr>
<td>3.2</td>
<td>Processing personal information</td>
<td>Code 4: Protection of Personal Information</td>
<td>Code 7: Protection of Personal Information</td>
<td>Privacy and public interest;</td>
<td>Code 4: protect private life without intrusion or harassment</td>
<td>Code 13: Privacy and consent</td>
<td>N/A</td>
</tr>
</tbody>
</table>
Privacy
It is normally wrong for a media practitioner to intrude into and to report upon a person's private life without his or her consent. Reporting on a person's private life can only be justified when in the public interest to do so. This would include: detecting or exposing criminal conduct; detecting or exposing seriously antisocial conduct; protecting public health and safety; and preventing the public from being misled by some statement or action of that individual where such a person is doing something in private which he or she is publicly condemning.

National Security
Media Institutions must not publish/broadcast material that will prejudice the legitimate national security interests of Botswana in regard to military and security tactics or strategy, or material held for the purpose of intelligence relating to defence.
Gathering of information

Media Practitioners should normally use open methods of gathering information in which they clearly identify themselves as media practitioners. Generally they should not obtain or seek to obtain information or pictures through misrepresentation, subterfuge or undercover techniques. Surreptitious methods of information gathering may only be used where open methods have failed to yield information in the public interest. These methods may thus be employed where, for example, they will help to detect or expose criminal activity, or will bring to light information that will protect the public.

Protection of Sources

When sources are promised confidentiality, that promise shall be honoured, unless released by the source.
Code 3.11: “Right to Know”

places the following restrictions on journalists-

- A journalist has an **obligation to protect confidential sources of information**.
- A journalist shall **not identify victims of** sexual assault or publish material likely to contribute to such identification unless, by law, he/she is at liberty to do so. Similarly, a journalist shall not, even where the law does not prohibit it, **identify children under the age of 13** who are involved in cases concerning sexual offences, whether as victims, witnesses or defendants.
- A journalist shall **avoid prejudicial or pejorative reference to a person’s race, colour, ethnic origin, religion, sex or sexual orientation or to any physical or mental illness or disability** unless such reference is relevant to the story.
- A journalist shall **generally not obtain or seek to obtain information or pictures through misrepresentation or subterfuge unless it can be justified that such materials cannot be obtained by any other means**.
- A journalist shall **generally avoid identifying relatives or friends of persons convicted or accused of crime, unless the reference to them is necessary for the full, fair and accurate reporting of the crime or legal proceedings**.

- **Code 4** provides that “a journalist shall respect the individual’s private life without intrusion or harassment”.
The Voluntary Media Council of Zimbabwe has published a Code of Conduct for Zimbabwean Media Practitioners which sets reporting standards to ensure professional and gender sensitive coverage of news and information.

**Code 13** is titled **Privacy** and reads-
- a) It is normally wrong for a media practitioner to intrude into and to report upon a person’s private life without his or her consent.
- b) Reporting on a person’s private life can only be justified when it is in the public interest to do so. This would include:
  - i) detecting or exposing criminal conduct;
  - ii) detecting or exposing seriously anti-social conduct
  - iii) protecting public health and safety
  - iv) preventing the public from being misled by some statement or action of that individual, such as where a person is doing something in private which he or she is publicly condemning.
- c) Media practitioners may probe and publish details about the private moral behaviour of a public official where such conduct has a bearing upon his or her suitability as a public official

**Code 19: Gathering of Information** restriction.
Zimbabwe (cont.)

• **Code 20: National Security**
  • a) Media institutions must not prejudice the legitimate national security interests of Zimbabwe and place at risk members of the Defence Forces who are on active military duty.
  • b) This provision does not prevent the media from exposing corruption in security or defence agencies or from commenting upon levels of expenditure on defence.

• **Code 22: Protection of Sources**
  • a) Where a person has agreed to supply information only on condition that his or her identity remains confidential and the media practitioner agrees to this condition, the media practitioner must respect this undertaking and refuse to reveal the identity of the source.
  • b) However, the media practitioner may tell the source that his or her identity might have to be revealed if it becomes clear in court that this information is needed to prevent or expose serious criminal conduct.

• **Official Secrets Act, OSA, (1970)**
HOW TO FILL IN AND SUBMIT FOIA FORM
What type of information are you looking to access?

- Check if you require to undertake a FOIA application;
- Can you access the information online, verbally or via a written letter;
- What process must you follow and what timelines are their;
- Can you partner with a NPO Legal Organisation to assist with getting such information.
- Be as detailed as possible vague request will not be processed speedily or without accuracy or may even be ignored.
- Check if you need to make payments and what form you want the information to be provided.
- Denial or a request is just a telling as giving the actual information.
LETTER TO THE DEPARTMENT:

● What happens if there is no form to fill out:
  ○ Write a letter - in the same manner as the information requested on a FOIA form. I.e. your letter should include the following:
    ■ Date;
    ■ Who you are or identify yourself and the company you work for;
    ■ Institution you are requesting such information;
    ■ Information officer or the correct designate;
    ■ What are you requesting;
    ■ A date by when you request the information;
  
  ○ Can you apply for access to information in another jurisdiction or institution i.e. Interpol or Canadian authorities
TIPS

- What are SLAPP suits and why are they brought
- What risks are there in gaining information and how to respond
  - Whistleblowers
  - NGOs
  - Information security
- Understanding wildlife law to determine court forum
- Partnering other organisations – local law clinic, contact Justice Department
- Civil matters and financial flows. Look at other sources like CITES (the Convention on International Trade in Endangered Species of Wild Fauna and Flora) is an international agreement between governments. Its aim is to ensure that international trade in specimens of wild animals and plants does not threaten the survival of the species.
- Knowing privacy laws and enforcing
- Making connections with organisations and bodies who monitor or deal with wildlife crime
Oxpeckers Background

Oxpeckers is Africa’s first journalistic investigation unit focusing on environmental issues. The unit combines traditional investigative reporting with data analysis and geo-mapping tools to expose eco-offences and track organised criminal syndicates in Southern Africa, and their links across the globe.

Oxpeckers is a non-profit company with a proven track record in managing multinational journalistic collaborations. Its aims include building capacity for and improving the impact of African environmental journalism, *inter alia* by providing a home for investigative journalists interested in environmental issues.

Journalists working with Oxpeckers have conducted indepth, award-winning, transnational investigations into wildlife trafficking, poaching and law enforcement in the following landscapes in which the UVN project is operating: Namibia, Zambia, Zimbabwe, and the GLTFCA (South Africa and Mozambique). The journalists have spent many years building up unrivalled networks, insights and reputations in these regions.
VukaNow Background

Wildlife crime is a multi-billion-dollar illicit business that is decimating Africa’s iconic animal populations and undermining the economic prosperity and sustainable development of countries and communities throughout Southern Africa. It threatens the region’s natural capital and undermines sustainable development from legal nature-based enterprises such as tourism. Wildlife crime also threatens social stability and cohesion as it robs and impoverishes citizens of their cultural and natural heritage, while its organized criminal networks threaten regional peace and security.

In response to these threats, USAID/Southern Africa has embarked on a multi-faceted regional program to address wildlife crime. In March 2018, USAID launched the “USAID’s VukaNow” (UVN) activity to complement six projects in four landscapes across Southern Africa that it is undertaken in partnership with regional bodies. The aim of this region-wide program is to significantly reduce the level of poaching and illegal trade in wildlife and to enhance law enforcement capacity and promote sustainable utilization of natural resources.

UVN supports the shared commitments of the U.S. Government (USG), Southern Africa Development Community (SADC), member states, private sector partners and civil society to dramatically decrease wildlife crime across Southern Africa. Its approach is rooted in a theory of change and a fundamental belief that a collective impact model is necessary to achieve USAID’s goal of dramatically decreasing wildlife crime across Southern Africa. Broader and more systematized than collaboration alone, collective impact recognizes that complex social problems like wildlife trafficking require intentional cross-sectoral coordination rather than isolated, individual efforts to achieve lasting change. UVN promotes four principles needed to achieve collective impact: clarity and alignment of purposes and activities, clear communication, co-creation and progress tracking, and partnership growth and fundraising.
#WildEye - a wildlife crime tracking tool and training for investigative journalism in Southern Africa
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