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## “The Living Are Getting Rarer”: The Causes and Consequences of the International Trade in White Rhinoceros Horns Under the Convention on International Trade in Endangered Species

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**“THE LIVING ARE GETTING RARER”:  
THE CAUSES AND CONSEQUENCES OF  
THE INTERNATIONAL TRADE IN  
WHITE RHINOCEROS HORNS UNDER  
THE CONVENTION ON  
INTERNATIONAL TRADE IN  
ENDANGERED SPECIES**

*Alisha Falberg\**

INTRODUCTION

It is early Saturday morning, August 20, 2011, on the Aquila Private Game Reserve in South Africa.<sup>1</sup> Three rhinoceros are grazing on the plain. Suddenly, a dart flashes. One of the rhinoceros is hit, then another, then the third. They all go down. The poachers approach with their chainsaws.

One of the rhinoceros is named Absa.<sup>2</sup> Absa is an eleven-year-old male white rhino who acquired his name from a donor to the reserve.<sup>3</sup> The poachers want Absa and the other rhinos for their

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\* J.D. candidate, 2013, Dickinson School of Law, Pennsylvania State University. I would like to thank all those who were involved in the editing process for their help and advice. I hope that this comment inspires readers to take action to help save not only the white rhinoceros, but all endangered species.

<sup>1</sup> Rebecca Meredith, *Absa the Injured Rhino May Not Survive in the Wild*, CAPE TIMES (S. Afr.), Aug. 25, 2011, at 6.

<sup>2</sup> *See id.*

<sup>3</sup> *See id.*

horns, and after they are through butchering the other male rhino, they move to Absa. The poachers use their chainsaw to saw off one horn and part of his second.<sup>4</sup> However, in the process reserve staff notice the scene and the poachers flee leaving the other male dead, Absa injured, and the third, a female, unharmed.<sup>5</sup>

Absa, whose leg may have been broken from being tranquilized, was given immediate veterinary care.<sup>6</sup> His potential leg fracture troubled the veterinarians,<sup>7</sup> and he struggled with hypothermia and dehydration.<sup>8</sup> Unfortunately, he died five days later—a result of injuries sustained during the poaching.<sup>9</sup>

Even though Absa was unable to recover, veterinarians questioned whether he would have survived in the wild had they been able to treat his wounds.<sup>10</sup> Without their horns, rhinoceros are more susceptible to attacks by predators, and other rhinoceros often ostracize hornless rhinos like Absa.<sup>11</sup> Thus, the poachers' inhumane

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<sup>4</sup> Murray Williams, *Rhino Dies of Injuries After Poaching Attack*, CAPE ARGUS (S. Afr.), Aug. 25, 2011, at 6, <http://www.iol.co.za/capeargus/rhino-dies-of-injuries-after-poaching-attack-1.1124896#.UUeHb4VpfSk>.

<sup>5</sup> *See id.*

<sup>6</sup> *See* Meredith, *supra* note 1.

<sup>7</sup> *See id.* (explaining that if Absa's leg was broken, the veterinarians would have had to put Absa down because a rhinoceros leg cannot be healed once it has been broken).

<sup>8</sup> *See* Williams, *supra* note 4.

<sup>9</sup> *See id.*

<sup>10</sup> *See* Meredith, *supra* note 1.

<sup>11</sup> *See id.*; *see also* *Southern White Rhinoceros*, PHILA. ZOO, <http://www.philadelphiazoo.org/zoo/Meet-Our-Animals/Mammals/Hoofed/Southern-white-rhinoceros.htm> (last visited Apr. 4, 2013); *Southern White Rhinoceros*, ZOOS S. AUSTL., <http://www.zoossa.com.au/monarto-zoo/animals-exhibts/animals?species=Southern%20White%20Rhinoceros> (last updated July 28, 2011) (explaining the significance and complexity of the social behavior and relationships of the white rhinoceros. The white rhino has a more complex social relationship than other rhinoceros. It lives in herds or "ranges," of up to 14. It depends on its herd to defend against threats. "Ranges" generally consist of maturing males and females. Once a male rhino ages it becomes more solitary, but the "ranges" often overlap. This overlap means that the rhinos often encounter one another and, when they do meet, they greet each other by touching nose to nose and sometimes by rubbing their horns together. Dominant adult males will guard their ranges from other males but allow overlap of ranges with subordinate males. Males only breed once they have achieved dominant status. In order to achieve this status, they must

treatment of Absa likely would have destroyed his well-being even if he survived the attack.

The tragic story of Absa the rhinoceros is regularly repeated in South African wildlife reserves.<sup>12</sup> The poachers who cut off Absa's horn made off with an estimated \$554,020.00 United States Dollars (USD)<sup>13</sup> worth of rhinoceros horn. This cruelty is motivated chiefly by money and leaves behind devastation for this beautiful and endangered species.<sup>14</sup>

Because the white rhino is endangered, trade of its horns is strictly regulated.<sup>15</sup> Unfortunately, the current regulations have been ineffective at limiting the activities of poachers, like those who attacked and ultimately killed Absa. Why is this butchery happening? The main reason is the large demand for rhinoceros horns on the Asian black market,<sup>16</sup> where the horns are used in traditional medicines and are believed to cure cancer.<sup>17</sup> The high demand for these horns drives up prices and fuels the illegal trade,<sup>18</sup> which in turn leads to rhinoceros poaching in South Africa, where white rhinoceros are predominately found and the largest supply is located.<sup>19</sup> The high

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claim a territory and defend it with their horns and other territorial markers and noises, like snorts and deep roars. Clashing of horns is also used in mating).

<sup>12</sup> See *infra* Part II.A.

<sup>13</sup> See Meredith, *supra* note 1 (stating that the horns the poachers took from Absa and the other male were worth R4 million—four million South African Rand). Using the conversion rate on Nov. 30, 2012, four million South African Rand is equivalent to 350,000 USD. *Currency Converter*, OANDA, <http://www.oanda.com/currency/converter/> (last visited Nov. 30, 2012).

<sup>14</sup> Convention on Int'l Trade in Endangered Species of Wild Fauna and Flora apps. I-II, Mar. 3, 1973, 27 U.S.T. 1087, 993 U.N.T.C. I-14537 (2011) [hereinafter CITES], <http://www.cites.org/> (listing rhinocerotidae ceratotherium simum simum, the white rhinoceros, as an endangered species).

<sup>15</sup> *Id.* arts. 3-4; see also *infra* Part III.A.

<sup>16</sup> E.g., Richard Slater-Jones, *The Economics of Rhino Poaching: Tipping Point*, FIN. MAIL (S. Afr.), Sept. 9, 2011; see also *infra* Part II.C.

<sup>17</sup> See Slater-Jones, *supra* note 16.

<sup>18</sup> See *id.*

<sup>19</sup> See Press Release, S. Afr. Dep't of Envtl. Affairs, Statement By Minister Edna Molewa on the Ongoing Scourge of Rhino Poaching (Aug. 29, 2011) [hereinafter Molewa Press Release on Poaching Scourge], <http://allafrica.com/stories/201108300180.html> (stating that South Africa has the highest number of white rhinoceros on the continent); see also *infra* Part II.C; Marianne Merten, *Proposed*

demand for and comparatively low supply of white rhinoceros horns creates a huge incentive for poachers. Some reports assert that rhinoceros horns are worth more per kilo than diamonds, gold, heroin, or cocaine.<sup>20</sup>

This comment will explain the legal causes and consequences of the poaching and trading of this majestic, endangered species and will convey the urgency of the need to put an end to this practice. Part II will discuss, through examples, what is happening to white rhinoceros like Absa.<sup>21</sup> Part II will also discuss the primary countries involved in the trade and identify the primary reasons for the traffic of white rhinoceros horns.<sup>22</sup> Parts III and IV will identify and examine the laws, treaties, and actions being taken in the nations that export and import rhinoceros horns<sup>23</sup> and will show that the poaching of rhinos like Absa continues despite the prohibitory and regulatory laws and treaties.<sup>24</sup> Additionally, Part IV will explore the reasons why black market trafficking continues, such as the lack of enforcement of existing laws and the bribery of park rangers and game preserve owners.<sup>25</sup> Part IV will also discuss current attempts by the importing and exporting countries to resolve current problems and to establish what needs to be done to prevent future poaching.<sup>26</sup> Finally, this Comment will conclude by demonstrating how individuals and other organizations are helping the white rhinoceros.<sup>27</sup>

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*Freeze on Rhino-Hunting Permits to Stop Abuse*, CAPE TIMES (S. Afr.), Aug. 30, 2011, at 6 (stating that ninety-three percent of Africa's white rhinoceros population reside in South Africa); *Traditional Medicine*, SUN. OBSERVER (Sri Lanka), Oct. 2, 2011, <http://www.sundayobserver.lk/2011/10/02/spe01.asp> (“South Africa is home to the majority of the world’s rhinos.”).

<sup>20</sup> E.g., *UK Secures International Agreement to Combat Illegal Rhino Trade*, EUR. UNION NEWS, Aug. 26, 2011, <http://www.defra.gov.uk/news/2011/08/20/rhinohorn/>.

<sup>21</sup> *See infra* Part II.A.

<sup>22</sup> *See infra* Part II.B-C.

<sup>23</sup> *See infra* Part III-IV.B.

<sup>24</sup> *See infra* Part IV.C-D.

<sup>25</sup> *See infra* Part IV.E.

<sup>26</sup> *See infra* Part IV.F.

<sup>27</sup> *See infra* CONCLUSION.

## II. BACKGROUND

Absa's story is not atypical. In 2011, on average, one rhino was butchered for its horn every 21-22 hours.<sup>28</sup> These numbers have only continued to escalate in 2012 and 2013.<sup>29</sup> This section will explain the problem of rhinoceros poaching and compare it to the lessons learned from the elephant poaching crisis. This section will also explain the primary locations of the illegal rhinoceros poaching and trade and the main reasons behind the activity.

### A. The Problem

The international community has proclaimed that rhinoceros poaching has reached a crisis point.<sup>30</sup> Rhinoceros have been classified as an endangered species for the purposes of regulated international trade since 1973.<sup>31</sup> Because of the rhino's endangered species status, there are very strict regulations on whether, how, and when rhinos can be traded internationally.<sup>32</sup> However, because of high demand for their horns, rhinoceros are being poached regularly. In 2011, almost 400 rhinoceros were killed.<sup>33</sup> In 2012, poachers killed 668 rhinos and

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<sup>28</sup> E.g., Slater-Jones, *supra* note 16; Barbara Maregele, *Protesters Seek More State Assistance to Save Rhinos*, CAPE TIMES (S. Afr.), Sept. 23, 2011, at 6.

<sup>29</sup> See *Update on Rhino Poaching Statistics*, S. AFR. DEPT OF ENV'T'L AFFAIRS (Dec. 19, 2012), [https://www.environment.gov.za/?q=content/stats\\_rhino\\_poaching\\_update](https://www.environment.gov.za/?q=content/stats_rhino_poaching_update).

<sup>30</sup> Jenna Bonella, *Progress Made to Stop Illegal Wildlife Trade*, WORLD WILDLIFE FUND, Aug. 24, 2011, <http://worldwildlife.org/press-releases/progress-made-to-stop-illegal-wildlife-trade> (stating that rhinoceros and elephant poaching was a major area of concern at the 61st meeting of the CITES Standing Committee, where conservation groups urged the international community to take further steps to prevent this illegal activity).

<sup>31</sup> See CITES, *supra* note 14, apps. I-II.

<sup>32</sup> See CITES, *supra* note 14, arts. 3-4.

<sup>33</sup> See, e.g., *WWF: Record Rhino Poaching in South Africa*, VOICE OF AM. NEWS, Nov. 2, 2011, <http://www.voanews.com/content/wwf-record-rhino-poaching-in-south-africa-133173778/159118.html> (claiming the number of rhino killed in South Africa as of early November 2011 was 341—already eight more than the total number in 2010—and predicting the number of rhinos poached in 2011 to reach 400); Slater-Jones, *supra* note 16 (stating that at least 279 rhino have been butchered in 2011 and the total estimated for the end of the year is likely to be around 400); *Hunting Laws Abused*, MERCURY (S. Afr.), Sept. 7, 2011, at 11 (stating

158 have already been poached this year.<sup>34</sup> With only about 20,000 white rhinoceros left in South Africa,<sup>35</sup> the white rhinoceros may soon become extinct if the poaching continues.

Like the white rhino, elephants are poached for their ivory tusks. A comparison can be drawn, and lessons can be learned from, the elephant poaching crisis.<sup>36</sup> Both rhinoceros poaching and elephant poaching come with common myths and misconceptions. While rhinoceros poaching myths tend to center on the use of the horn itself, elephant misconceptions stem from the belief that taking the tusks is not hurting the animals: “Another problem . . . is that the Chinese word for ivory is elephant’s teeth—*xiang ya* . . . . Seventy percent thought tusks can fall out and be collected by traders and grow back.”<sup>37</sup> Thus, the common belief lies in the misconception that elephants do not have to be killed for their tusks.<sup>38</sup>

While many people know about elephant poaching, white rhinoceros poaching has been overshadowed. Since white rhinoceros

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that at least 279 rhino have been killed as of early September 2011 and that the estimated total death toll for the year will likely be the highest ever).

<sup>34</sup> See *Update on Rhino Poaching Statistics*, *supra* note 29; see also Lynn Herrmann, *Eight Rhinos Killed in One Day in South Africa, First 2012 Deaths*, DIGITAL J. (Can.), Jan. 11, 2012 (noting that the first eight white rhino deaths of 2012 were believed to be poached in one day, making it an unprecedented one-day total).

<sup>35</sup> Lyse Comins, *Wildlife Staff: Rangers Bust for Poaching: Questions Raised about Senior Officials in Rhino Horn Syndicates*, INDEP. ON SAT. (S. Afr.), Oct. 1, 2011, at 2.

<sup>36</sup> Elephant poaching peaked “[d]uring the great elephanticide of the 1970s and 1980s, [when] Africa’s elephant population was cut from an estimated 1.3 million to some 600,000 . . . . At the height of the slaughter, it is believed, 70,000 elephants a year were being killed continent-wide.” Alex Shoumatoff, *Agony and Ivory*, VANITY FAIR (Aug. 2011), <http://www.vanityfair.com/culture/features/2011/08/elephants-201108>. While elephant poaching has decreased due to awareness, public outcry, and stricter enforcement of international laws and regulations, it remains a problem. See *id.* Poachers continue to hunt elephants for the ivory in their tusks. Like the rhino horn, obtaining an elephant’s ivory tusks is worth the risk for poachers, pricing at about \$700 USD per pound. See *id.* In 2010 alone, the ivory trade accounted for an estimated \$114 billion USD. See *id.* There is an estimated 450,000 pounds of ivory being traded per year, meaning more than 35,000 elephants are still being killed each year. See *id.*

<sup>37</sup> See Shoumatoff, *supra* note 36 (internal quotations omitted).

<sup>38</sup> See *id.*

poaching is reaching a critical level, it is time this problem shared the spotlight with elephant poaching. Otherwise, someday soon there may not be any white rhinoceros left to save.

Veterinarians see the destruction of the white rhinos firsthand. One veterinarian described a scene in Kariega Game Reserve in the Eastern Cape in South Africa:

The horror of that first encounter remains branded in my memory. In a small clearing . . . stood an animal hardly recognizable as a rhino. His profile completely changed by the absence of his horn. Skull and soft tissue injuries extended down into the remnants of his face, through the outer layer of bones, to expose the underlying nasal passages . . . revealing pieces of loose flesh which hung semi-detached from his deformed and bloodied face . . . his left front leg . . . could only be dragged behind him. To compensate, he used his mutilated muzzle and nose as a crutch . . . [h]is one eye was injured and clouded over, adding to his horrific appearance . . . [his] blood was bubbling inside his skull cavity and [I] wondered how every breath must add to the agony, the cold air flowing over inflamed tissues and exposed nerves . . . he had little chance of healing.<sup>39</sup>

This is the state in which these poor rhinoceros are left once the poachers are through getting the horn they came for. Most of the time, poachers tranquilizer darts to bring the rhino down before they take chainsaws and axes to the rhinoceros.<sup>40</sup> However, the drugs are generally not strong enough to kill the rhinos, so most are left to bleed to death, or park rangers are forced to euthanize them when found.<sup>41</sup> The injuries to the rhinoceros are usually too severe to heal, so they are forced to suffer, sometimes for days, before ultimately passing away—Absa suffered such a fate.<sup>42</sup>

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<sup>39</sup> William Fowlds, Op-Ed., *Revealing the Cruelty Inflicted on Rhinos*, MERCURY (S. Afr.), Aug. 29, 2011, at 6, <http://www.iol.co.za/mercury/revealing-the-cruelty-inflicted-on-rhinos-1.1127041#UUpH3IVpcy8>.

<sup>40</sup> *See id.*

<sup>41</sup> *See id.*

<sup>42</sup> *See id.*



Additionally, many of the victims are female rhinoceros, who may be leaving unweaned calves behind.<sup>43</sup> Conservation groups have tried to rescue and relocate orphaned calves,<sup>44</sup> but sometimes they are too late. The calves tend to remain by their dead mothers and are often killed simply because they are in the poachers' way.<sup>45</sup> Sometimes the poachers immobilize the calves by cutting the tendons in their back legs so that the calves do not bother the poachers while they work; other times the calves themselves are butchered for their small horns and toenails.<sup>46</sup>

The South African community recognizes three primary classes of people who kill rhinoceros.<sup>47</sup> The first is the owner of a rhinoceros.<sup>48</sup> Rhino owners may obtain a permit to kill rhinos;<sup>49</sup> in such cases, the killing is legal.<sup>50</sup> However, some owners kill their rhinos without a permit and sell the horns illegally, then claim they were victims of poachers.<sup>51</sup> Some reserve owners allow or even hire poachers to come and kill their rhinoceros for illegal trading

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<sup>43</sup> See Tanya Waterworth, *Stop Legal Rhino Hunting, It's Fueling Poaching, Says SanWild*, INDEP. ON SAT. (S. Afr.), Sept. 10, 2011, at 10, <http://www.iol.co.za/news/south-africa/kwazulu-natal/legal-rhino-hunting-could-be-abolished-1.1134863#.UUplgIVpcy8>.

<sup>44</sup> See *id.* (stating that many orphaned calves are taken to SanWild, a wildlife sanctuary, where they are treated and hand raised).

<sup>45</sup> See *id.*

<sup>46</sup> See *id.*

<sup>47</sup> *Legalizing Rhino Horn Trade will Stop the Slaughtering of Animals*, STAR (S. Afr.), Sept. 24, 2011, at 14.

<sup>48</sup> See *Hunting Laws Abused*, *supra* note 33 (stating that "more than a quarter of [South Africa's] rhinos are privately owned" on private game reserves).

<sup>49</sup> See *id.* (stating that 140 rhino hunting permits have been issued by national agencies); Marianne Merten, *Move Afoot to Stomp Out Rhino Poaching*, DAILY NEWS (S. Afr.), Aug. 31, 2011, at 6, <http://www.iol.co.za/scitech/science/environment/move-afoot-to-stomp-out-poaching-1.1127598#.UUspwYVpcy8> (reporting on South Africa's rhino hunting permit system).

<sup>50</sup> See *Legalizing Rhino Horn Trade will Stop the Slaughtering of Animals*, *supra* note 47.

<sup>51</sup> See Caryn Dolley, *Some Rhino Owners Selling Horns*, CAPE TIMES (S. Afr.), July 19, 2012, at 7, <http://www.iol.co.za/news/crime-courts/some-rhino-owners-selling-horns-1.1345156#.UUsp-IVpcy8> (reporting that some of the owners are at the center of major rhino horn syndicates).

purposes.<sup>52</sup> These poachers make up the second class. The reserve owner will generally take a portion of the proceeds generated from the sale of the poached rhino horn.<sup>53</sup> Finally, the true poachers make up the third class.<sup>54</sup> These poachers are generally indiscriminate about the rhinos that they kill. This group is the largest, and is rapidly growing.<sup>55</sup>

#### B. Where?

The overwhelming majority of the world's white rhinoceros population—ninety-three percent—is located in South Africa.<sup>56</sup> Because most rhinos live in South Africa, the majority of the poaching problem occurs there. However, poaching occurs in some Asian countries, like India, as well.<sup>57</sup>

The main destination for the poached horns is Asia; specifically, Southeast Asian countries like the Socialist Republic of Vietnam [hereinafter Vietnam], which, according to the World Wildlife Fund (WWF), is the biggest consumer of illegal rhinoceros horns.<sup>58</sup> Vietnam is not only a destination for the horns, but is also a transit country—it serves as the hub where the horns are imported and then sent to other Southeast Asian countries.<sup>59</sup> Because Vietnam is a critical country in the illegal trade of white rhinoceros horns, the South African government recently met with Vietnamese officials to

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<sup>52</sup> See *Legalizing Rhino Horn Trade will Stop the Slaughtering of Animals*, *supra* note 47.

<sup>53</sup> See *id.*

<sup>54</sup> See *id.*

<sup>55</sup> See *id.*

<sup>56</sup> See *Traditional Medicine*, *supra* note 19.

<sup>57</sup> E.g., *Kaziranga Takes Battle to Poachers' Court*, PIONEER (India), Sept. 23, 2011 (stating that poachers have been caught in Assam, India poaching the one horned rhino).

<sup>58</sup> See *WWF: Record Rhino Poaching in South Africa*, *supra* note 33; see also *WWF Calls for End to Rhino Poaching on World Rhino Day: At Least 287 Rhinos Have Been Killed in South Africa as Crisis Escalates*, PRWEB.COM (Sept. 21, 2011), [http://www.prweb.com/releases/World\\_Wildlife\\_Fund/World\\_Rhino\\_Day/prweb\\_b8816028.htm](http://www.prweb.com/releases/World_Wildlife_Fund/World_Rhino_Day/prweb_b8816028.htm).

<sup>59</sup> See Merten, *supra* note 19.

sign a memorandum of understanding.<sup>60</sup> This memorandum serves as a means of cooperation between the two countries, and the goal of the document is for the countries to work together to prevent the illegal trade and smuggling of rhino horns.<sup>61</sup>

### C. Why?

As previously stated, South Africa is the primary source for horns and the demand is primarily in Southeast Asia.<sup>62</sup> But why is the demand so high in this region?

Crushed rhinoceros horns are used as an ingredient in ancient Asian medicines.<sup>63</sup> The horn is purported to have detoxifying properties and is prepared by being ground up in a serrated bowl and consumed with water or alcohol.<sup>64</sup> Traditionally, the medicines have been used to treat fever, high blood pressure,<sup>65</sup> strokes,<sup>66</sup> and as an aphrodisiac.<sup>67</sup> More recently, the medicines have also been used as a cure for cancer.<sup>68</sup> In fact, a Vietnamese government minister stated that he was “cured of cancer through mixing a rhino horn

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<sup>60</sup> See *Vietnam, South Africa Sign MOU on Anti-Smuggling of Rhino Horns*, VIET. NEWS BRIEF, Sept. 29, 2011; see also *infra* Part IV.F.

<sup>61</sup> See *Vietnam, South Africa Sign MOU on Anti-Smuggling of Rhino Horns*, *supra* note 60.

<sup>62</sup> See *Traditional Medicine*, *supra* note 19; *WWF Calls for End to Rhino Poaching on World Rhino Day: At Least 287 Rhinos Have Been Killed in South Africa as Crisis Escalates*, *supra* note 58.

<sup>63</sup> See *Vietnam, South Africa Sign MOU on Anti-Smuggling of Rhino Horns*, *supra* note 60.

<sup>64</sup> See Paul Ash, *Rise in Vietnamese Use of Rhino*, SUN. TIMES (S. Afr.), Aug. 26, 2012, <http://www.bdlive.co.za/national/science/2012/08/26/rise-in-vietnamese-use-of-rhino>.

<sup>65</sup> See *id.*

<sup>66</sup> See *UK Secures International Agreement to Combat Illegal Rhino Trade*, *supra* note 20.

<sup>67</sup> See Masoka Dube, *South Africa: Poisoned Horn Won't Deter Poaching in the Kruger*, ALLAFRICA.COM (Sept. 15, 2011), <http://allafrica.com/stories/201109160364.html>; but see Ash, *supra* note 64 (“[D]espite the pervasive media myth, rhino horn has not previously been used as an aphrodisiac.”).

<sup>68</sup> See, e.g., *Smuggling of Rhino Parts Goes Online*, CHANNEL NEWSASIA (Sing.) (Sept. 5, 2011), <http://wildsingaporenews.blogspot.com/2011/09/smuggling-of-rhino-parts-goes-online.html>; Slater-Jones, *supra* note 16.

concoction.”<sup>69</sup> This belief has spurred rhino poaching to such a degree that the once critically endangered Javan rhinoceros, a Vietnam native, was declared extinct in October 2011.<sup>70</sup>

The belief in the healing power of rhino horns, however, is untrue—“rhino horn is made up of the same substance as our fingernails and has no medicinal value whatsoever, so what people say is a myth and not fact.”<sup>71</sup> This false belief triggers the demand of horns and is difficult to disprove for several reasons. First, the myth is embedded in the ancient culture of Southeast Asia.<sup>72</sup> To disprove it, thousands of people must be convinced that much of their ancient belief system is scientifically untrue. Such beliefs are difficult to overcome.<sup>73</sup> However, Vietnamese conservation groups are working to remedy this lack of understanding by distributing medical reports that definitively prove that rhino horns have no special medicinal value.<sup>74</sup> Second, people in countries like Vietnam often only know of the therapeutic uses of the horns and not of the countervailing injury to the animals and the environment.<sup>75</sup>

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<sup>69</sup> Anna Majavu, *Big-Money Rhino Crime*, TIMES (S. Afr.), Aug. 30, 2011 (internal quotation marks omitted).

<sup>70</sup> See Mike Ives, *Javan Rhino Now Extinct in Vietnam, WWF Says*, NBC NEWS, [http://www.msnbc.msn.com/id/45031207/ns/world\\_news-world\\_environment/t/javan-rhino-now-extinct-vietnam-wwf-says/](http://www.msnbc.msn.com/id/45031207/ns/world_news-world_environment/t/javan-rhino-now-extinct-vietnam-wwf-says/) (last updated Oct. 25, 2011, 10:24 AM).

<sup>71</sup> Asha Muktar, *High Price of Rhino Horn Fuels Poaching*, NAIROBI STAR (Kenya), Sept. 23, 2011 (internal quotation marks omitted).

<sup>72</sup> See Sheree Bega, *Vietnam Joins Anti-Poaching Rhino Campaign; Consumer Countries Get on Board to Stem Change*, STAR (S. Afr.), Oct. 3, 2011, at 4, <http://www.iol.co.za/saturday-star/vietnam-joins-anti-poaching-rhino-campaign-1.1149550#.UU52foVpcy8>.

<sup>73</sup> Such beliefs can be difficult to overcome especially because rhinoceros horns are not only believed to be cures for ailments, but were once seen as a status symbol. See *id.* For example, Asian royalty used to drink from cups made from rhinoceros horn. *Id.* The horns are also given as gifts to “curry favor with socio-economic and political elites.” See Ash, *supra* note 64. Arguments for how the ancient belief system can be overcome are beyond of the scope of this comment.

<sup>74</sup> See Bega, *supra* note 72.

<sup>75</sup> See *id.*

Due to the high demand, rhino horns reportedly sell for roughly \$5,813 USD to \$7,556 USD per horn in Southeast Asia.<sup>76</sup> Because trade in white rhino horns is illegal, the exact value of the horn is hard to determine, but it is estimated that a large rhino horn could potentially sell for \$1,000,000 USD if sold in the United States.<sup>77</sup> The high sale price makes poaching worth the risk for many poachers, which is a major factor contributing to the continuation of the poaching problem.<sup>78</sup>

### III. THE EXISTING LAW

Since illegal poaching and trade of the white rhinoceros transpires across international boundaries, prevailing international governance plays a large role. This section will discuss three international legal structures that affect white rhinoceros poaching and trade: the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the United Nations Environmental Programme (UNEP), and World Trade Organization (WTO) agreements.

#### A. The Convention on International Trade in Endangered Species of Wild Fauna and Flora

On March 3rd, 1973, countries from around the world gathered to create and implement CITES under the United Nations Environment Programme.<sup>79</sup> By 2009, 175 nations had signed this treaty, including South Africa and Vietnam.<sup>80</sup>

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<sup>76</sup> *Currency Converter*, OANDA, <http://www.oanda.com/currency/converter/> (last visited Dec. 18, 2012) (converting R50,000 and R65,000 South African Rand into U.S. Dollars using the date last visited as the conversion rate date). For South African Rand value of rhino horns, see *UK Secures International Agreement to Combat Illegal Rhino Trade*, *supra* note 20; Majavu, *supra* note 69; Slater-Jones, *supra* note 16.

<sup>77</sup> See Slater-Jones, *supra* note 16.

<sup>78</sup> See *id.*

<sup>79</sup> See generally CITES, *supra* note 14.

<sup>80</sup> See *Member Countries*, CITES.ORG, <http://www.cites.org/eng/disc/parties/chronolo.php> (last visited Mar. 21, 2013) (South Africa joined in 1975 and Vietnam joined in 1994).

The treaty's purpose is to recognize and protect the diverse and irreplaceable wildlife within each country.<sup>81</sup> The preamble states that each signing country should: (1) remain conscious of the aesthetic, scientific, and cultural value of its wildlife; (2) recognize that the country's citizens are the best protectors of this wildlife; (3) understand "that international co-operation is essential for the protection of certain species of wild fauna and flora against over-exploitation through international trade"; and (4) realize the urgent need for taking appropriate steps to ensure the protection of the endangered wildlife within each country.<sup>82</sup>

CITES defines "critically endangered species" as "any species threatened with extinction which may or may not be affected by trade."<sup>83</sup> The treaty divides the different species up into three groups: Appendix One includes critically endangered species whose trade must be strictly enforced and allowed only in exceptional circumstances to prevent further endangering their survival;<sup>84</sup> Appendix Two includes threatened<sup>85</sup> species whose trade must be strictly regulated so that such species will not become critically endangered, as well as any species whose trade would affect the trade of those threatened species;<sup>86</sup> and Appendix Three includes any species which the parties feel need to be regulated to prevent the species' exploitation.<sup>87</sup>

The white rhinoceros falls under Appendix Two, while all other rhinoceros species fall under Appendix One.<sup>88</sup> The white rhino was listed under Appendix One when the treaty originated, but its

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<sup>81</sup> See CITES, *supra* note 14, pmbl.

<sup>82</sup> See *id.*

<sup>83</sup> See *id.* art. 2.

<sup>84</sup> See *id.*

<sup>85</sup> See *id.* ("Threatened" means those species that may not be on the verge of extinction, but are still endangered).

<sup>86</sup> See CITES, *supra* note 14, art. 2.

<sup>87</sup> See *id.* art. 2.

<sup>88</sup> See *id.* apps. 1-2.

status was changed in 1995.<sup>89</sup> This transfer occurred to permit the international trade in hunting trophies.<sup>90</sup>

Article four of the treaty regulates the export and import of the species listed in Appendix Two.<sup>91</sup> To export an Appendix Two species, such as the white rhino, the trader must acquire a prior grant of permission and present an export permit.<sup>92</sup> Export permits are strictly regulated and are issued only if the following conditions are met: (1) a “Scientific Authority”<sup>93</sup> of the country issuing the export permit has stated that the export of the species will not be detrimental to its survival; (2) the specimen being exported cannot have been obtained in violation of the exporting country’s laws; and (3) if the trader is exporting a live animal, the means of export must minimize any risk of injury or cruelty to the animal.<sup>94</sup> The Scientific Authority in the exporting country will monitor the local population of the species and will limit export permits to avoid moving the species into Appendix One.<sup>95</sup> If the Scientific Authority finds that export permits need to be further limited, it will advise the appropriate managing authority of the exporting country.<sup>96</sup> In addition, to import any Appendix Two species one must present an export permit or a re-export certificate.<sup>97</sup>

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<sup>89</sup> *Listed Species Database*, CITES.ORG <http://www.cites.org/eng/resources/species.html> (last visited Nov. 7, 2011).

<sup>90</sup> *See id.*

<sup>91</sup> *See* CITES, *supra* note 14, art. 4.

<sup>92</sup> *See id.*

<sup>93</sup> “Scientific Authority” is defined as a scientific authority designated by the member country. *Id.* arts. 1, 9.

<sup>94</sup> *See id.* art. 4.

<sup>95</sup> *See id.*

<sup>96</sup> *See* CITES, *supra* note 14, art. 4.

<sup>97</sup> *See id.* Re-export refers to the exportation of an animal that was already exported and imported. A re-export certificate is needed to re-export any species listed under Appendix Two. *See id.* A re-export certificate will be granted only if the applicant meets the following conditions: (1) the government of the country of re-export is satisfied that the specimen was imported into that country in accordance with the provisions of CITES; and (2) if the trader is exporting a live animal, the means of export will be done in the best way possible to minimize risk or injury or cruelty to the animal. *Id.*

Article six further defines the criteria needed to obtain export, import, and re-export permits and certificates.<sup>98</sup> Article seven lists exceptions to the regulations—including trade within the country itself, household effects, and species bred in captivity—none of which apply to the international trade in white rhinoceros horns.<sup>99</sup> Article eight states that the participating countries “shall take appropriate measures to enforce the provisions of [CITES] and to prohibit trade in specimens in violation thereof.”<sup>100</sup> Such measures include penalizing trade in or possession of any species protected by CITES, as well as confiscating and returning species and specimens to the country of export.<sup>101</sup> Additionally, each country shall keep records of the export and import of any species listed in CITES, including the contact information of traders, the number of permits issued, and information concerning the species and specimens traded.<sup>102</sup> Every participating country must periodically update the CITES Secretary with information on the country’s implementation of the regulations of the treaty.<sup>103</sup> If a country fails to effectively implement the conditions of CITES, the next Conference of the Parties<sup>104</sup> will review the country’s laws and consider remedial actions.<sup>105</sup>

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<sup>98</sup> See CITES, *supra* note 14, art. 6. An export permit has been granted, it must be used within six months from the date on which it was granted. *Id.* Each export permit must contain the following information: the CITES title, the name and any identifying stamp of the granting country’s government, and a control number assigned by that government. *Id.* All export permits and certificates must be in the original form and separate permits are required every time a trader exports a species or specimen. *Id.* The importing country cancels and retains the export permit after the species or specimen arrives, as well as any corresponding import permit. *Id.* When appropriate, a government may put a mark on specimens to help in identification. *Id.* “For these purposes ‘mark’ means any indelible imprint, lead seal or other suitable means of identifying a specimen, designed in such a way as to render its imitation by unauthorized persons as difficult as possible.” *Id.*

<sup>99</sup> See CITES, *supra* note 14, art. 7.

<sup>100</sup> See *id.* art. 8.

<sup>101</sup> See *id.*

<sup>102</sup> See *id.*

<sup>103</sup> See *id.*

<sup>104</sup> See CITES, *supra* note 14, art. 11 (A Conference of the Parties is when delegations from all of the countries participating in CITES have a meeting to review the implementation of the treaty, to make any needed amendments, to hear reports from participating countries, to make recommendations for better



Since its inception, the parties to CITES have been specifically concerned with the trade of rhinoceros.<sup>106</sup> In November 1994, the Ninth Conference of Parties passed Resolution Conference 9.14, which effectively transferred the white rhinoceros from an Appendix One species to an Appendix Two species.<sup>107</sup> The reason for the change was to allow trade in white rhinoceros hunting trophies.<sup>108</sup> The Second Conference of the Parties established the general exception for trade in hunting trophies of species listed in Appendix One in March 1979.<sup>109</sup> The Resolution creating the exception permits trading only according to Article Three's regulations.<sup>110</sup> These regulations include the need for export and import permits, which the state's Scientific Authority may grant as

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implementation, etc. The Conference of the Parties is held every two to three years).

<sup>105</sup> See *id.* art. 13.

<sup>106</sup> See *id.* apps. I-II (Rhinoceros has always been listed as an Appendix One endangered species).

<sup>107</sup> CITES, *Conservation Of and Trade In African and Asian Rhinoceroses*, Res. Conf. 9.14 (Rev. CoP15) (Nov. 7-18, 1994) [hereinafter CITES Res. Conf. 9.14], <http://www.cites.org/eng/res/index.php>.

<sup>108</sup> See CITES, *supra* note 14, apps. I-II. While the reasons for the shift of the white rhino from Appendix One to Appendix Two are not explicitly stated, a reasonable comparison can be drawn to the movement of the black rhinoceros from Appendix One to Appendix Two for hunting trophy purposes. In October 2004, the Thirteenth Conference of the Parties moved the black rhinoceros from Appendix One to Appendix Two, ten years after the white rhino was similarly moved. CITES, *Establishment of Export Quotas for Black Rhinoceros Hunting Trophies*, Res. Conf. 13.5 (Rev. CoP14) (Oct. 2-14, 2004), <http://www.cites.org/eng/res/index.php>. The Conference defined a hunting trophy of a black rhinoceros as “the horns or any other durable part of the body, mounted or loose.” *Id.* The Conference recognized that the black rhino is threatened, but believed that its threatened status was recovering and that conservation was being effectively managed. *Id.* Therefore, the Conference decided that the financial benefits of permitting the trade in black rhinoceros hunting trophies outweigh the potential danger of extinction, but that trade must be limited, allowing only five black rhino hunting trophies to be exported from South Africa per year. *Id.*

<sup>109</sup> CITES, *Trade in Hunting Trophies of Species Listed In Appendix I*, Res. Conf. 2.11 (Rev.) (Mar. 19-30, 1979) [hereinafter CITES Res. Conf. 2.11], <http://www.cites.org/eng/res/index.php>.

<sup>110</sup> See *id.* at 1.

long as exportation of the trophies is not “detrimental to the survival of the species.”<sup>111</sup>

Since the white rhino’s reclassification by Ninth Conference of the Parties’, there has been concern that some countries are not effectively implementing the exportation regulations of Appendix Two species, such as the white rhino.<sup>112</sup> At the Fifteenth Conference of the Parties—held between March 13th and 25th, 2010—delegates expressed concern over the continued drastic decline of the rhinoceros despite measures taken to protect it by member countries, such as South Africa.<sup>113</sup> The Conference recognized that the primary reason for this continuing decline is the illegal trade in rhinoceros horns and that this trade is a “global law enforcement problem.”<sup>114</sup> The globalization of the threat to the species is increasing the cost of protecting the rhinoceros beyond some countries’ means;<sup>115</sup> the Conference therefore called upon other nations, international organizations, non-profit aid groups, and others to help fund the conservation and protection of rhinoceros.<sup>116</sup> The Fifteenth Conference further urged countries trading in rhinoceros horns to adopt “more comprehensive and effective legislation and enforcement controls, including international trade restrictions and penalties, aimed at reducing illegal trade,”<sup>117</sup> and to engage in more vigilant law enforcement, early detection, and international law enforcement cooperation.<sup>118</sup>

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<sup>111</sup> *See id.*

<sup>112</sup> CITES, *Review of Significant Trade in Specimens of Appendix-II Species*, Res. Conf. 12.8 (Rev. CoP13) (Nov. 3-15, 2002), <http://www.cites.org/eng/res/index.php>.

<sup>113</sup> *See* CITES Res. Conf. 9.14, *supra* note 107.

<sup>114</sup> *See id.*

<sup>115</sup> *See id.* (the trade in rhinoceros horns extends beyond the home countries’ borders and CITES recognizes that many of these home countries may be incapable of international law enforcement. Additionally, CITES recognizes that many of the home countries do not have adequate resources to do all that is necessary to end the trade).

<sup>116</sup> *See id.*

<sup>117</sup> *See id.* at 1.

<sup>118</sup> *See* CITES Res. Conf. 9.14, *supra* note 107. The Conference also recognizes the primary reason behind the continuing demand: traditional medicine use. CITES, *Traditional Medicines*, Res. Conf. 10.19 (Rev. CoP14) (June 9-20, 1997),

To address the growing concerns regarding the decline in rhinoceros, the Fifteenth Conference of the Parties directed the Secretariat<sup>119</sup> to further examine the rhino conservation and trade policies in countries where illegal killing of rhinoceros poses a significant threat to the survival of the species.<sup>120</sup> The Conference also directed the Secretariat to examine efforts to reduce the illegal trade in importing countries.<sup>121</sup> The Conference stressed the urgency of the problem and the great need for cooperation between countries engaged in rhinoceros horn trading.<sup>122</sup>

However, if the problem is so urgent, and the decline in white rhinoceros is so rapidly occurring, why hasn't CITES placed the white rhinoceros back on Appendix One where it cannot be hunted at all? The black rhino, also switched from Appendix One to Appendix Two for hunting trophy purposes, was declared extinct in November 2011, and the white rhinoceros may be next.<sup>123</sup> In fact, the

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<http://www.cites.org/eng/res/index.php>. The Conference acknowledges that East Asian traditional medicines often use endangered species and that this use can be a potential threat to such species. *Id.* While organizations, such as the World Health Organization, and treaties, such as CITES, acknowledge the importance of traditional medicine in Asian cultures, the Conference believes that measures need to be taken to increase understanding, improve research, and further conserve the wildlife used in these medicines, such as rhinoceros horn, so the threat to the rhinoceros will not increase. *Id.*

<sup>119</sup> The Secretariat shall be provided by the Executive Director of the United Nations Environment Programme and shall arrange and service meeting of the Parties, perform functions designated to him or her under CITES, request and study reports submitted by Parties, call to the attention of the Parties any matter pertaining to CITES, prepare annual reports for the Parties, publish amendments and changes to appendices, make recommendations for the implementation of regulations under CITES, and to perform any other function designated to him or her by the Parties. *See* CITES, *supra* note 14, art. 12.

<sup>120</sup> CITES, *Conservation Of and Trade In African and Asian Rhinoceroses*, 15.71 to 15.73 (Mar. 13-25, 2010), <http://www.cites.org/eng/res/index.php>.

<sup>121</sup> *See id.*

<sup>122</sup> *See id.*

<sup>123</sup> *See Black Rhino Extinct, White Rhinos Next*, INT'L BUS. TIMES, Nov. 11, 2011, <http://au.ibtimes.com/articles/247342/20111111/black-rhinos-extinct-white-javan-international-union.htm#> (stating that the IUCN declared the black rhinoceros extinct); *see also* Lewis Smith, *The Last Charge as Western Black Rhino is Declared Extinct*, INDEP. (U.K.), Nov. 10, 2011, at 10, <http://www.waterconserve.org/shared/reader/welcome.aspx?linkid=252993&keybold=extinction%20AN%20D%20%20species%20AND%20%20brink>.

International Union for Conservation of Nature (IUCN) declared that the white rhinoceros is “possibly extinct” in northern Africa and the white rhinoceros in southern Africa is endangered.<sup>124</sup>

Likely because the southern white rhino came back from near extinction,<sup>125</sup> it was moved to Appendix Two. Nevertheless, the white rhino population is now declining once again.<sup>126</sup> The extinction of the black rhino caused CITES Secretary-General John Scanlon “grave concern.”<sup>127</sup> He believes CITES can no longer rely on previously used methods to combat rhino poaching and trafficking.<sup>128</sup> Hopefully, concern about the survival of the white rhino will inspire CITES members to move the white rhino back to Appendix One.

However, some advocates contend that legalizing the trade in rhino horns is the only way to stop the abuse of the CITES permit system.<sup>129</sup> They argue that removing the illicit elements of the rhino horn trade would reduce the market price, thereby de-incentivizing poachers by lowering potential profits.<sup>130</sup> Two-thirds of CITES

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<sup>124</sup> See *Black Rhino Extinct, White Rhinos Next*, *supra* note 123; Smith, *supra* note 123; see also *Black Rhinos, Two Other Species Extinct: The Economics of Conservation*, INT’L BUS. TIMES, Nov. 10, 2011.

<sup>125</sup> See *Black Rhinos, Two Other Species Extinct: The Economics of Conservation*, *supra* note 124; Neo Maditla, *We’re Stepping Up to Rhino War—Conservationists: Prosecutors Getting Special Training*, CAPE ARGUS (S. Afr.), Dec. 15, 2011 (stating that in the 1930s there were fewer than 100 white rhino left in the world; today there are about 20,000).

<sup>126</sup> See Maditla, *supra* note 125; see also Slater-Jones, *supra* note 16.

<sup>127</sup> See *Head of UN-Backed Convention Urges Greater Effort to Combat Illegal Rhino Trade*, U.N. NEWS CENTRE (Nov. 10, 2011), <http://www.un.org/apps/news/story.asp?NewsID=40361&Cr=endangered&Cr1=#.UNICp4VpfSk>.

<sup>128</sup> See *id.*

<sup>129</sup> See Sheree Bega, *Vietnamese Issued with 69% of Rhino Hunting Licenses*, SAT. STAR (S. Afr.), Nov. 19, 2011, <http://www.security.co.za/fullStory.asp?NewsId=19600>; John Hume, Op-Ed., *Seven Good Reasons to Legalize Rhino Horn Trade*, TIMES (S. Afr.), Mar. 28, 2012, <http://www.timeslive.co.za/ilive/2012/03/28/seven-good-reasons-to-legalise-rhino-horn-trade-ilive> (Mr. Hume lists seven reasons he believes the trade should be legal. For example, he advocates giving consumers the option of buying from a legal source; he argues the horn can be harvested sustainably; and he claims the rhino numbers would increase).

<sup>130</sup> See Bega, *supra* note 129; see also *Parks Sitting on U.S. \$10 Million Ivory*, HERALD (Zim.), Oct. 12, 2011, <http://allafrica.com/stories/201110130194.html>; Michael Eustace, Op-Ed., *Legal Horn Trade Could Save Our Rhino 13 and Africa’s*

member nations in attendance at the meeting would have to agree for CITES to lift the ban on rhino horn trade.<sup>131</sup> Such a majority seems unlikely given the current state of rhinoceros populations around the world. South Africa considered lifting its ban on rhino horn trading and commissioned a national study on the viability of legalization and its potential impact on the global market.<sup>132</sup> However, South Africa has stated it is not ready to propose lifting the ban and has tabled any proposal until 2016.<sup>133</sup>

In July 2012, CITES held its 62nd meeting of the Standing Committee, in which over 350 participants—from parties, to

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*Parks*, BUS. DAY (S. Afr.), Jan. 20, 2012 (this opinion piece believes that the CITES ban on rhino horn trading simply pushed the trade underground, where it has flourished and created a black market. The trade has made criminals rich and has degenerated Africa's parks. If the rhino horn trade was legal, South Africa could supply the market with approximately 600 rhino horns from natural deaths, as well as from their private government stock, which would supply the market for several years and effectively curb poaching. This would be the most cost-effective approach for the countries involved. The article proposes a central selling organization, with owners of rhinos, buyers, and sellers sharing in the profits, meaning a lot of money will go to the South African government, as the largest number of rhinos is under national park control. The horns would be marked and have a DNA signature so there would be no room for fraud. The article acknowledges the opposing argument—that legalizing the trade will further stimulate the illegal trade and that the demand for the horns is insatiable. But the author believes that there will be no room for an illegal market if there is a legal one).

<sup>131</sup> See *Parks Sitting on U.S. \$10 Million Ivory*, *supra* note 130.

<sup>132</sup> See Tony Carnie, *Proposal to Lift Rhino Horn Trade Ban Revisited*, MERCURY (S. Afr.), Sept. 1, 2011; Masoka Dube, *Study into Legalizing Rhino Horn Trade*, STAR (S. Afr.), Oct. 3, 2011, <http://www.iol.co.za/the-star/study-into-legalising-rhino-horn-trade-1.1148961>; Statement by Edna Molewa, Minister of Water and Environmental Affairs on Rhino Poaching After Engaging Provinces (Oct. 12, 2011) [hereinafter Molewa Rhino Poaching Statement], <http://www.info.gov.za/speech/DynamicAction?pageid=461&sid=22317&tid=45856>; see also Eustace, *supra* note 130.

<sup>133</sup> See Tony Carnie, *SA 'Not Ready' to Lift Ban on Horn Trade*, MERCURY (S. Afr.), Apr. 5, 2012, <http://www.iol.co.za/mercury/sa-not-ready-to-lift-rhino-horn-trade-ban-1.1270655#.UUuxvIVpcy8> (reporting that South Africa is not ready to propose a lift on the 30 year old ban on the rhino horn trade. The article reports that South Africa still sees many hurdles in its way before it can consider this option, such as legalities and formal support from the trade partners in Asia); Sue Blaine, *SA Defers Making a Decision on Trade in Rhino Horn*, BUS. DAY (Oct. 4, 2012), <http://news.yahoo.com/sa-defers-making-decision-trade-rhino-horn-053317954--finance.html>

intergovernmental bodies, to non-governmental organizations—met to discuss the agenda for the Sixteenth Conference of the Parties.<sup>134</sup> The committee made decisions concerning countries involved in the ivory trade, trade in rhino horns, and trade in tigers.<sup>135</sup> Vietnam was instructed to prepare a report on its progress, on measures taken to supplant the illegal trade, and its current inventory of rhinoceros hunting trophies.<sup>136</sup> Failure to do so could result in a suspension of all trade in any species listed under CITES.<sup>137</sup> The Standing Committee also instructed CITES's Rhino Working Group<sup>138</sup> to develop a

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<sup>134</sup> See *CITES Meeting to Tackle Smuggling of Elephant Ivory and Rhino Horn*, UNEP NEWS CTR. (July 25, 2012), <http://www.unep.org/newscentre/default.aspx?DocumentID=2691&ArticleID=9234>.

<sup>135</sup> See *CITES Bares Teeth, But Can It Bite?*, WORLD WILDLIFE FUND GLOBAL (July 27, 2012), [http://wwf.panda.org/wwf\\_news/?205796](http://wwf.panda.org/wwf_news/?205796).

<sup>136</sup> See *id.*; *CITES Acts to Curb Smuggling of Elephant Ivory and Rhino Horn*, WEB NEWSWIRE (Aug. 10, 2012), <http://htsyndication.com/htsportal/article?arid=%2275460%22&pub=%22Web+Newswire%22>.

<sup>137</sup> See *id.*

<sup>138</sup> At its 61st meeting in August 2011, the Standing Committee established a Rhinoceros Working Group tasked with identifying measures that could be taken by CITES Parties to reduce the impact of illegal trade on the conservation of rhinoceroses and to enhance existing controls on trade in rhinoceros horn products. CITES Notification to the Parties No. 2012/014, Conservation Of and Trade In African and Asian Rhinoceroses (Feb. 20, 2012), [www.cites.org/eng/notif/2012/E014.pdf](http://www.cites.org/eng/notif/2012/E014.pdf). The Working Group acknowledged that Vietnam was a major county involved in the trafficking problem and requested Vietnam answer the following questions to present at the Sixteenth Conference of the Parties: (a) the legislation governing rhino horn trade and penalties for illegal trade; (b) measures implemented to prevent illegal import and trade in rhino horn; (c) current ongoing activities to combat illegal rhino horn trade; (d) specific enforcement actions over the past three years to prevent illegal trade in rhino horn and the results of such operations; (e) is a multi-disciplinary approach followed to prevent illegal rhino horn trade and if so which authorities are involved?; (f) measures implemented to prevent rhino horns from going into commercial trade. For example, are owners of such horns mandated to hold possession licenses? Are they allowed to give away or sell the horn in their possession? Are there specific legislation for this purpose?; (g) what measures are in place to monitor the retail market?; (h) efforts to curtail advertising of rhino horn, including via Internet; (i) are the use of rhino horn as a palliative medicine for cancer in any way allowed?; (j) what are being done to curtail the use of rhino horn as an additive to drinks, etc.?; (k) provision, in a table, detailing how many seizures of rhino horn they have made, how many people have been arrested, how many convictions and the sentences rendered, etc.; and (l) feedback with regard to progress made in the stock check of rhinoceros hunting trophies to verify the use of such trophies. CITES, *Interpretation*

“demand reduction strategy.”<sup>139</sup> More than 50 countries submitted proposals regarding species protection to the Standing Committee to be heard at the Sixteenth Conference of the Parties.<sup>140</sup>

In March 2013, CITES celebrated forty years at its Sixteenth Conference of the Parties held in Bangkok, Thailand.<sup>141</sup> The conference added to and toughened agreements on the trade of rhino horns, including “measures to boost forensic testing of seized or stockpiled contraband, a strategy that uses DNA and other scientific clues to pursue poachers and smugglers.”<sup>142</sup> Additionally, delegates approved the requirement that the eight countries where most illegal trade in rhino horns occurs—China, Kenya, Malaysia, Philippines, Tanzania, Thailand, Uganda and Vietnam—must increase enforcement efforts or risk sanctions.<sup>143</sup> Based on the answers Vietnam submitted to the Rhino Working Group, the delegates at the Sixteenth Conference of the Parties decided the following: the South African restriction against granting hunting permits to Vietnamese citizens will remain in place, Vietnam must continue to monitor and protect rhinos, Vietnam should increase surveillance at ports and airports, and Vietnam must continue to report to the Secretariat all measures it has taken to regulate the possession of rhino hunting trophies and provide “updated details of seizures and prosecutions, including details of penalties imposed.”<sup>144</sup> The Conference also recognized that Vietnam has made some strides, such as educating rangers, customs officials, and the public, and collaborating with

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*and Implementation of the Convention: Species Trade and Conservation: Rhinoceroses*, CoP16 Doc. 54.1 (Rev. 1) (Mar. 3-14, 2013), at 4 [hereinafter CITES CoP16 Doc. 54.1], <http://www.cites.org/eng/cop/16/doc/index.php>.

<sup>139</sup> See *CITES Bares Teeth, But Can It Bite?*, *supra* note 135.

<sup>140</sup> See *New Protections Sought for Polar Bear, Elephants, Manta Rays and Other Species Under UN-Backed Treaty*, UN NEWS CTR. (Oct. 5, 2012), <http://www.un.org/apps/news/story.asp?NewsID=43222>; *Drive for Legislation, Control of Rhino Horn Sales*, STAR (S. Afr.), May 22, 2012, at 6 (detailing one such proposal by the KwaZulu-Natal conservation boss to create a legal global trade organization for rhino horn).

<sup>141</sup> CITES, <http://www.cites.org/> (last visited Mar. 21, 2013).

<sup>142</sup> See Russell McLendon, *5 Big Breakthroughs at CITES 2013*, MOTHER NATURE NETWORK (Mar. 20, 2013, 3:55 PM), <http://www.mnn.com/earth-matters/animals/blogs/5-big-breakthroughs-at-cites-2013>.

<sup>143</sup> See *id.*

<sup>144</sup> See CITES CoP16 Doc. 54.1, *supra* note 138, at 5-8.



international organizations; however, more needs to be done to combat the poaching and trafficking problem.<sup>145</sup>

## B. The United Nations Environment Programme

In 2002, the United Nations General Assembly endorsed a strategic plan, proffered by the Conference of the Parties to the Convention on Biological Diversity (CPCBD), to achieve a “significant reduction in the current state of biodiversity loss at the global, regional, and national levels” by 2010.<sup>146</sup> In 2010, proclaimed the International Year of Biodiversity, UNEP released reports on the state of biodiversity<sup>147</sup> in areas around the world.<sup>148</sup> Since CITES falls under the UNEP, UNEP’s biodiversity initiatives require discussion.

### 1. The State of Biodiversity in Africa

The report on Africa focuses primarily on the key threats to African biodiversity.<sup>149</sup> Africa was unable to meet its 2010 biodiversity goal because of its failure to implement biodiversity

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<sup>145</sup> See *id.* at 6. For a more in depth report on the findings of the Secretariat, see CITES, *Interpretation and Implementation of the Convention: Species Trade and Conservation: Rhinoceroses*, CoP16 Doc. 54.2 (Rev. 1) (Mar. 3-14, 2013), <http://www.cites.org/eng/cop/16/doc/index.php>.

<sup>146</sup> See U. N. ENV’T PROGRAMME, STATE OF BIODIVERSITY IN AFRICA 1 (2010) [hereinafter UNEP BIODIVERSITY REPORT: AFRICA], <http://www.cbd.int/iyb/doc/celebrations/iyb-egypt-state-of-biodiversity-in-africa.pdf>; U. N. ENV’T PROGRAMME, STATE OF BIODIVERSITY IN ASIA AND THE PACIFIC 1 (2010) [hereinafter UNEP BIODIVERSITY REPORT: ASIA], <http://www.unep.org/delc/Portals/119/regional%20brief%20for%20Asia%20and%20Pacific.pdf>.

<sup>147</sup> The UNEP states “[t]he word ‘biodiversity’ is a contraction of biological diversity. Diversity is a concept which refers to the range of variation or differences among some set of entities; biological diversity thus refers to variety within the living world. The term ‘biodiversity’ is indeed commonly used to describe the number, variety and variability of living organisms. This very broad usage, embracing many different parameters, is essentially a synonym of ‘Life on Earth.’” *What is Biodiversity?*, U. N. ENV’T PROGRAMME, WORLD CONSERVATION MONITORING CTR., [http://www.unep-wcmc.org/what-is-biodiversity\\_50.html](http://www.unep-wcmc.org/what-is-biodiversity_50.html) (last visited Dec. 19, 2012).

<sup>148</sup> See *id.*

<sup>149</sup> UNEP BIODIVERSITY REPORT: AFRICA, *supra* note 146, at 1.



strategies into government programs.<sup>150</sup> Despite the failure to meet biodiversity goals, forty-nine countries in Africa have national biodiversity plans; many of these countries have reported on the effectiveness of those plans, and many have expanded their protected areas for biodiversity.<sup>151</sup>

The report encourages African nations to integrate biodiversity into developing plans and policies to help effectively manage the numerous threats to Africa's biodiversity.<sup>152</sup> While there have been improvements, UNEP additionally urges expanding awareness of biodiversity's importance for the country, the economy, and the welfare of society.<sup>153</sup>

## 2. The State of Biodiversity in Asia and the Pacific

Like Africa, the countries in Asia and the Pacific also failed to achieve the CPCBD's biodiversity goals.<sup>154</sup> Asia and the Pacific are home to the highest number of endangered species in the world as well as the world's highest concentration of people, creating unique threats to Asia's biodiversity.<sup>155</sup> These nations have, however, shown their awareness of biodiversity concerns by expanding protected areas and preserving ecosystems.<sup>156</sup>

The awareness of and concern about biodiversity in both Africa and Asia can serve only to strengthen protection for endangered species, such as the white rhinoceros. With the increase in protected areas for biodiversity on both continents, regulations, and international treaties, hopefully the poaching of white rhinoceros, as well as other endangered species, will decrease.

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<sup>150</sup> *See id.*

<sup>151</sup> *See id.* at 1-2.

<sup>152</sup> *See id.* at 9-10.

<sup>153</sup> *See id.*

<sup>154</sup> UNEP BIODIVERSITY REPORT: ASIA, *supra* note 146, at 2.

<sup>155</sup> *See id.*

<sup>156</sup> *See id.* at 4-5.

### C. The World Trade Organization Agreements

While there is no specific WTO agreement on the environment,<sup>157</sup> the goal of environmental protection has been fundamental to the WTO since its inception.<sup>158</sup> Because environmental protection is an important goal, WTO rules encourage member countries to create and implement trade-related measures aimed at addressing environmental concerns.<sup>159</sup> These measures must not conflict with the overall objective of the WTO by restricting trade or affecting the rights of other WTO members.<sup>160</sup> Member nations have the right to adopt regulations on trade to protect the environment as long as these regulations comply with the General Agreement on Tariffs and Trade (GATT).<sup>161</sup> If such regulations are exempt under GATT, the regulations may still be justified under Article XX.<sup>162</sup> During negotiations in the Doha Round,<sup>163</sup> WTO

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<sup>157</sup> International trade in endangered species would most likely be contained in a WTO agreement on environmental conservation, if such an agreement existed.

<sup>158</sup> See Marrakesh Agreement Establishing the World Trade Organization, Apr. 15, 1994, 1867 U.N.T.S. 154, 33 I.L.M. 1144 (1994) [hereinafter Marrakesh Agreement] (the goals of protecting and sustaining the environment are found in the preamble of the Marrakesh Agreement and they relate to the overall objectives of the WTO, which are to reduce international trade barriers and eliminate discriminatory treatment in international trade); see also *An Introduction to Trade and Environment in the WTO*, WORLD TRADE ORG., [http://www.wto.org/english/tratop\\_e/envir\\_e/envt\\_intro\\_e.htm](http://www.wto.org/english/tratop_e/envir_e/envt_intro_e.htm) (last visited Apr. 6, 2013).

<sup>159</sup> See *WTO Rules and Environmental Policies: Introduction*, WORLD TRADE ORG., [http://www.wto.org/english/tratop\\_e/envir\\_e/envt\\_rules\\_intro\\_e.htm](http://www.wto.org/english/tratop_e/envir_e/envt_rules_intro_e.htm) (last visited Apr. 6, 2013).

<sup>160</sup> See *id.* (many exceptions to environmental protection rules have been created to ensure a balance between member countries' rights to basic trade and their rights to create regulations concerning the environment and public health).

<sup>161</sup> General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. A-11, 55 U.N.T.S. 194 (1947) [hereinafter GATT] (GATT is one of the founding agreements of the WTO. Established in 1947, GATT sets forth many of the rules and agreements followed by the WTO).

<sup>162</sup> See *WTO Rules and Environmental Policies: Introduction*, *supra* note 159. (Article XX of GATT lays out exceptions in which member countries may create environmental regulations that are exempted from GATT rules, such as regulations necessary to protect the health of humans, animals or plants.)

<sup>163</sup> See *The Doha Round*, WORLD TRADE ORG., [http://www.wto.org/english/tratop\\_e/dda\\_e/dda\\_e.htm](http://www.wto.org/english/tratop_e/dda_e/dda_e.htm) (last visited Apr. 6, 2013)

member nations are currently addressing environmental issues relating explicitly to multilateral trade negotiation for the first time, with the overarching objective of enhancing the “mutual supportiveness of trade and environment.”<sup>164</sup>

WTO rules do not take precedence over national regulations respecting the conservation of endangered species.<sup>165</sup> However, if there is a conflict between WTO rules and a member nation’s environmental regulations, the WTO will encourage collaboration to solve the dispute.<sup>166</sup> For example, the United States, a member nation, enacted legislation to protect sea turtles, a species on the brink of extinction due largely to incidental capture from commercial fishing.<sup>167</sup> This created a conflict between the member nations who wished to protect the sea turtles, and other WTO members who engage in commercial fishing.<sup>168</sup> The dispute came before the WTO, which urged all member nations to work together to create a mutually acceptable solution.<sup>169</sup>

Could such an arrangement work with white rhinoceros? South Africa could enact greater environmental legislation to conserve white rhinoceros. Such legislation would most likely create conflict between South Africa and other countries whose economies rely, to some extent, on illegal rhino horn trading. Vietnam is likely one such country. Is this conflict significant enough for the WTO to

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(the Doha Round is the latest round of trade negotiations among WTO members, and it seeks to reform twenty areas of international trade by revising trade rules and barriers).

<sup>164</sup> See *An Introduction to Trade and Environment in the WTO*, *supra* note 158.

<sup>165</sup> See *id.*

<sup>166</sup> See *id.*

<sup>167</sup> See *An Introduction to Trade and Environment in the WTO*, *supra* note 158; *India etc. Versus US: ‘Shrimp-Turtle,’* WORLD TRADE ORG., [http://www.wto.org/english/tratop\\_e/envir\\_e/edis08\\_e.htm](http://www.wto.org/english/tratop_e/envir_e/edis08_e.htm) (last visited Apr. 6, 2013).

<sup>168</sup> See *An Introduction to Trade and Environment in the WTO*, *supra* note 158.

<sup>169</sup> See *id.*; *India etc. Versus US: ‘Shrimp-Turtle,’* *supra* note 167 (the WTO encouraged a cooperative environmental solution for the protection of sea turtles between the conflicting parties. It allowed the party member wishing to protect the sea turtles to create legislation that would not, in good faith, prohibit other countries from fishing. This “encouragement” worked and the parties ended up implementing the suggestions of the WTO).

get involved? Would the WTO encourage South Africa and Vietnam to collaborate and resolve the dispute? Since WTO agreements restrict Vietnam's right to trade, the WTO would probably not resolve such disputes between these countries, but a WTO resolution is still a useful consideration. Additionally, the Doha Round negotiations relating to trade and the environment may help eliminate the illegal rhino trade.

#### IV. THE CURRENT STATE OF THE RHINOCEROS TRADE IN SOUTH AFRICA AND VIETNAM

Member nations must enact domestic laws to enforce international agreements like CITES. This section explores how South Africa and Vietnam are domestically implementing CITES, examining the current state of each country's laws and enforcement and how poachers are eluding those laws. This section also examines each country's response to illegal rhino poaching and trade.

##### A. Current South African Law

In South Africa, much of the rhinoceros hunting occurs legally through the CITES permit system and most permitted hunters are Vietnamese.<sup>170</sup> Under this system, South African authorities are often obliged to issue hunting permits because the permit application meets the CITES criteria for trophy hunting.<sup>171</sup> However, rhinoceros poaching has increased drastically in recent years, largely a result of abuses of the permit system by "pseudo-hunters."<sup>172</sup> As a result,

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<sup>170</sup> See CITES Res. Conf. 2.11, *supra* note 109; see also *Saving the Rhino—Now*, STAR (S. Afr.), Aug. 31, 2011, at 14; Masood Boomgaard, *Reports Reveal that Most Hunters are Vietnamese*, SUN. TRIBUNE (S. Afr.), Jan. 15, 2012, at 11.

<sup>171</sup> See CITES Res. Conf. 2.11, *supra* note 109; *Saving the Rhino—Now*, *supra* note 170; Boomgaard, *supra* note 170; Press Release, S. Afr. Dep't of Env'tl. Affairs, Minister Edna Molewa Publishes Proposed Amendments to the Norms and Standards for Marking of Rhinoceros Horn and Hunting of White Rhinoceros for Trophy Hunting Purposes (Sept. 7, 2011) [hereinafter Molewa Amendments Press Release], [http://www.environment.gov.za/?q=content/molewa\\_normsand\\_standards\\_rhinohunting](http://www.environment.gov.za/?q=content/molewa_normsand_standards_rhinohunting).

<sup>172</sup> See Bega, *supra* note 129 (stating that over sixty-nine percent of hunting permits granted in South Africa have gone to Vietnamese "pseudo-hunters" who are fueling the rhino poaching crisis). Pseudo hunters, unlike classic

South Africa's Minister of Water and Environmental Affairs, Edna Molewa, has proposed several amendments to the current permit system.<sup>173</sup>

Among Minister Molewa's suggestions is the mandatory micro-chipping<sup>174</sup> of all rhinoceros horns, to be monitored and maintained by South Africa's Department of Environmental Affairs.<sup>175</sup> Currently, the Department is responsible for, *inter alia*, maintaining environmental quality and protection, managing ocean and coastal resources, and promoting conservation.<sup>176</sup> Thus, protecting the white rhino is clearly within the Department's purview. Minister Molewa has also suggested strengthening control over white rhino hunts, creating a more stringent hunting permit called a "TOPS" permit,<sup>177</sup> and having a conservation official supervise all hunts and provide full reports to the Department.<sup>178</sup> All applicants would be required to provide proof of membership to a hunting organization recognized by their home country to even be considered

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hunters truly engaged in trophy hunting, hunt the rhinos and take the horns back with them to Vietnam to sell on the black market, thus abusing the CITES permit system. *Id.*

<sup>173</sup> See Molewa Amendments Press Release, *supra* note 171.

<sup>174</sup> See *id.* Under the micro-chipping proposal, the permit issuing authority would implant one micro-chip into all rhinoceros, whether state owned or privately owned, as well as all the horns obtained from dehorning; the micro-chip numbers would be put into the Traffic Rhino Horn Stockpile Database, and would be kept on the Department of Environmental Affairs' national database so that the South African government can keep track of all rhino horns and their movements.

<sup>175</sup> See *id.*

<sup>176</sup> S. AFR. DEP'T OF ENVTL. AFFAIRS, STRATEGIC PLAN: 1 APRIL 2011 TO 31 MARCH 2016, at 22-43 (undated), <http://www.info.gov.za/view/DownloadFileAction?id=175474> (outlining the vision, mission, values, goals, strategic objectives, and policy initiatives for South Africa's Department of Environmental Affairs regarding the country's environment).

<sup>177</sup> See Molewa Amendments Press Release, *supra* note 171 ("TOPS" stands for "threatened or protected species"). This permit would enable the issuing authority to trace rhino horns back to the hunt's location. *Id.*

<sup>178</sup> See *id.*

for a TOPS permit, which would be restricted to one white rhino trophy per year.<sup>179</sup>

Minister Molewa has also stated that South Africa should refuse all rhino hunting permit applications from Vietnam.<sup>180</sup> Furthermore, Minister Molewa's proposed amendments would mandate that, before exporting the trophy, a hunter take his kill to a local taxidermist and have a micro-chip installed in the rhino's horn.<sup>181</sup> Finally, the amendments propose taking DNA samples from rhinos before and after death to assist law enforcement in prosecutions.<sup>182</sup> While these amendments are being considered, Minister Molewa has recommended a moratorium on rhinoceros hunting.<sup>183</sup> However, hunters fear a moratorium would only increase rhino poaching, causing even more harm.<sup>184</sup>

To implement Minister Molewa's proposed amendments, South African lawmakers must amend South Africa's Biodiversity Act of 2004, specifically Chapter Seven, where the CITES permit system is encoded.<sup>185</sup> The purpose of the Biodiversity Act is to manage and conserve biodiversity within South Africa by protecting threatened or protected species<sup>186</sup> and "[giving] effect to ratified international agreements relating to biodiversity which are binding on [South

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<sup>179</sup> See *Strict New Rules to Curb Rhino Poaching, Control Hunts*, PRETORIA NEWS (Apr. 17, 2012), <http://www.iol.co.za/pretoria-news/strict-new-rules-to-curb-rhino-poaching-control-hunts-1.1277833#.UWh0tqKG2So>.

<sup>180</sup> See Sue Blaine, *No Rhino Hunt Permits for Vietnam*, BUS. DAY (S. Afr.), Apr. 5, 2012, <http://www.bdlive.co.za/articles/2012/04/05/no-rhino-hunt-permits-for-vietnam>.

<sup>181</sup> See Molewa Amendments Press Release, *supra* note 171.

<sup>182</sup> See *id.*

<sup>183</sup> See Molewa Rhino Poaching Statement, *supra* note 132 (if the moratorium were to go into effect, no rhinoceros hunting would be permissible, even if it had been permissible under the permit system. Minister Molewa has considered recommending a moratorium as a last resort to end rhino poaching. The minister can impose a moratorium if there is clear abuse or a complete collapse in the permit system.); see also Merten, *supra* note 19 (stating that Minister Molewa hopes to begin the moratorium soon, but that it will be a challenge and will probably not begin any sooner than late 2012).

<sup>184</sup> See *Ban Worries Hunters*, MERCURY (S. Afr.), Sept. 2, 2011, at 3.

<sup>185</sup> Biodiversity Act 10 of 2004 ch. 7 (S. Afr.), <http://www.info.gov.za/acts/2004/a10-04/>.

<sup>186</sup> *Id.* § 51.

Africa].”<sup>187</sup> The Minister of Environmental Management is responsible for ensuring that the Act’s objectives are being achieved; currently, Minister Molewa holds this position.<sup>188</sup> The Act also establishes the South African Nation Biodiversity Institute—the scientific authority CITES suggests—to monitor and report on the state of biodiversity in South Africa.<sup>189</sup>

Chapter Seven of the Act implements the permit system.<sup>190</sup> This Chapter sets out the permit application standards,<sup>191</sup> requirements,<sup>192</sup> and provides a permit cancellation process.<sup>193</sup> Chapter Seven also creates an appeals procedure for those unhappy with the decision of the issuing authority.<sup>194</sup> Under this system, a rhinoceros hunter hoping to keep the horn as a trophy needs four separate permits: one to tranquilize the rhino, one to dehorn it, one to transport the horn, and one to keep it.<sup>195</sup>

One of the Minister’s proposed amendments will allow the issuing authority to postpone its decisions on a permit application if the applicant is under investigation for a violation of the Biodiversity Act relating specifically to rhinoceros hunting.<sup>196</sup> Another would create a new provision suspending an issued permit if the permit holder is under investigation.<sup>197</sup> These new amendments will hopefully reduce the abuse and fraud within the permit system by

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<sup>187</sup> *Id.* § 2.

<sup>188</sup> *Id.* §§ 1, 9, 35.

<sup>189</sup> *See id.* §§ 10-12, 59-61.

<sup>190</sup> Biodiversity Act 10 of 2004 § 87.

<sup>191</sup> *Id.* § 88 (stating that any person may apply, the issuing authority’s powers, and the conditions which must be met in order to grant an applicant a permit).

<sup>192</sup> *Id.* § 90 (stating that a permit must specify its purpose, the time it will be valid, any specified conditions, and any other matters prescribed).

<sup>193</sup> *See id.* § 93 (stating the issuing authority may cancel a permit at any time if the permit was issued under false pretenses or the permit holder failed to comply with the permits conditions and/or any provisions of the Act, South African law, or international law regarding the permitted activity).

<sup>194</sup> *See id.* §§ 94-96.

<sup>195</sup> *See Slater-Jones, supra* note 16.

<sup>196</sup> *See id.*

<sup>197</sup> *See id.*

warning the issuing authorities of possible fraud and giving them the authority to act.

Because white rhinos are considered “threatened or protected” species, the South African Biodiversity Act requires national protection for them.<sup>198</sup> Therefore, the majority of the white rhinos live in national parks. South Africa has nineteen national parks, including the world-renowned Kruger National Park.<sup>199</sup> Kruger is known for its impressive size, its diversity of species, its advanced environmental management and conservation, and its approximately 5,000 rhinoceros.<sup>200</sup> Due to Kruger’s size—which makes going undetected easier for poachers—and prevalence of rhinoceros, most of the world’s white rhino poaching occurs in Kruger National Park.<sup>201</sup> In fact, wildlife officials have started removing signs indicating where rhinos can be found around the park—which were in place to aid sight-seers and safari groups hoping to spot a rhino—to prevent poachers from using the signs to track down rhinos.<sup>202</sup> Authorities have also proposed reinstalling an electrified fence along the park’s border with neighboring Mozambique to physically deter poachers from entering.<sup>203</sup>

In addition to the national parks, South Africa has state game preserves that carry-out regional biodiversity conservation in their specific province and provide for eco-tourism.<sup>204</sup> These preserves are

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<sup>198</sup> See Biodiversity Act 10 of 2004 § 56.

<sup>199</sup> S. AFR. NAT’L PARKS, <http://sanparks.org.za/parks/> (last visited Apr. 6, 2013).

<sup>200</sup> *Kruger National Park*, S. AFR. NAT’L PARKS, <http://sanparks.org.za/parks/kruger/> (last visited Apr. 6, 2013).

<sup>201</sup> See Merten, *supra* note 19; *Update on Rhino Poaching Statistics*, *supra* note 29.

<sup>202</sup> Kraig Becker, *Signs Indicating Locations of Rhinos Being Removed from Kruger National Park*, GADLING TRAVEL BLOG (Dec. 15, 2011, 8:00 AM), <http://www.gadling.com/2011/12/15/signs-indicating-locations-of-rhinos-being-removed-from-kruger-n/>.

<sup>203</sup> See Sheree Bega, *Kruger Fence ‘Only Temporary Deterrent,’* CAPE ARGUS (S. Afr.), Jan. 21, 2012, at 10.

<sup>204</sup> See, e.g., EZEMVELO KZN WILDLIFE, <http://www.kznwildlife.com/index.php?/About-l-Biodiversity-Conservation-l-Ezemvelo-KZN-Wildlife.html> (last visited Apr. 6, 2013) (Ezemvelo KZN Wildlife is a game-preserve that manages the biodiversity conservation and eco-tourism of the provincial regions of



also areas subject to poaching, although to a lesser extent.<sup>205</sup> Additionally, poachers are increasingly targeting private game reserves since security and anti-poaching measures have expanded in the national parks.<sup>206</sup> On a more positive note, South Africa's wildlife sanctuaries help care for injured and orphaned animals, such as the rhino calves who are orphaned after their mothers have been poached.<sup>207</sup>

The amendments proposed by Minister Molewa and the actions of park and preserve officials are not the only recommendations offered to stop white rhinoceros poaching. One additional option to deter poaching may be preemptive government dehorning of the rhinos.<sup>208</sup> The South African government is currently undertaking a rhinoceros dehorning impact study to determine the feasibility of this option.<sup>209</sup> Another alternative might be to inject the horn with a parasiticide that is toxic to humans.<sup>210</sup> This plan was proposed by the Rhino Rescue Project<sup>211</sup> seeking a

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Khahlamba-Drakensberg, Zululand, and the coastal region. The organization's officers work in the communities bordering protected areas to ensure that the province's conservation legislation is being implemented).

<sup>205</sup> See Merten, *supra* note 19.

<sup>206</sup> See *id.*

<sup>207</sup> *About Us*, SANWILD.ORG, <http://www.sanwild.org/about.html> (last visited Apr. 6, 2013) (SanWild was funded by a wildlife conservation activist who began taking in orphaned and injured animals herself while working for a game preserve. Noticing the need for a rehabilitation center, as well as the unwillingness of national parks, game preserves, and private game farms to help rehabilitated animals back into the wild, the founder of SanWild purchased a large sector of land, which has since grown, and began her own rehabilitation center and sanctuary. SanWild rescues injured and orphaned wild animals and secures the animals' long-term welfare and safety).

<sup>208</sup> See, e.g., Merten, *supra* note 19; Slater-Jones, *supra* note 16; Molewa Rhino Poaching Statement, *supra* note 132.

<sup>209</sup> See, e.g., Merten, *supra* note 19; Slater-Jones, *supra* note 16; Molewa Rhino Poaching Statement, *supra* note 132.

<sup>210</sup> See Charl Du Plessis, *Poachers' Toxic Shock*, TIMES (S. Afr.), Sept. 8, 2011, <http://www.timeslive.co.za/local/2011/09/08/rhino-poachers-toxic-shock>.

<sup>211</sup> *Rhino Rescue Project, Swaziland*, ECOVOLUNTEER NETWORK, <http://greenvolunteers.com/rhino.htm> (last visited Apr. 6, 2013) (the rhino rescue project is a group of volunteers who aim to protect wildlife, particularly the white and black rhinoceros, from poaching).

more humane way to reduce poaching than dehorning.<sup>212</sup> The injected parasiticide would benefit the rhino by targeting ticks, but if it is ingested by humans, the poison can induce nausea, vomiting, and convulsions.<sup>213</sup> The parasiticide is also infused with a dye that is detectable by x-ray, enabling the injected horns to be easily identified in airports when being illegally transported.<sup>214</sup> This alternative, along with micro-chipping, has been implemented on at least ten rhinoceros so far this year; one rhinoceros died as a result of the operation.<sup>215</sup> Some skeptics believe these options will not deter poaching because it is unlikely that a sufficient number of rhinos will be caught to dehorn or inject with the dye.<sup>216</sup>

#### B. South African Law Enforcement

Law enforcement is the key to decreasing poaching and conserving the white rhinoceros. Multiple law enforcement agencies are involved, including: the police, park rangers, the justice system, and specialized committees.

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<sup>212</sup> See Du Plessis, *supra* note 210.

<sup>213</sup> See *id.*

<sup>214</sup> See *id.*; see also Dube, *supra* note 67.

<sup>215</sup> See, e.g., Geoffrey York, *Anti-rhino-poaching Treatment Ends in Heartbreak in Africa*, GLOBE & MAIL (Can.), Feb. 9, 2012, <http://www.theglobeandmail.com/news/world/worldview/anti-rhino-poaching-treatment-ends-in-heartbreak-in-africa/article545097/> (reporting that Spencer, a 20 year old male rhino, died during a procedure to inject his horn with the pesticide, a dye, a micro-chip, and a tracking device. Spencer's heart stopped while he was still under the anesthetic. The veterinarian performing the procedure believed the death may have been because of Spencer's old age and has stated that, while Spencer's death is tragic, he will not discontinue injecting horns with pesticide and dye); Shaun Smillie, *Horn-chipping Operation Kicks Off*, STAR (S. Afr.), Feb. 9, 2012, at 3; Sheree Bega, *Poisoned Rhino Horn Plan Goes Awry*, STAR (A. Afr.), Feb. 11, 2012, at 7 (reporting that Spencer's death will not "be in vain" as veterinarians will continue to try this practice to stop poaching. The procedure Spencer underwent went "smoothly." The main concern was Spencer's age).

<sup>216</sup> See Dube, *supra* note 67.

## 1. South Africa's Police Force

South Africa's main police force is the South African Police Service (SAPS).<sup>217</sup> Minister Molewa considers SAPS to be at the forefront of the fight against poaching, commenting that SAPS continues to strengthen its biodiversity enforcement and monitoring capacities.<sup>218</sup> SAPS works closely with other, more specialized crime units, such as Hawks,<sup>219</sup> and INTERPOL's Wildlife Crime Working Group.<sup>220</sup>

Although SAPS officers are prohibited from commenting on rhinoceros poaching,<sup>221</sup> it is still apparent that SAPS is doing its job. There are frequent press releases about police arrests of suspected poachers and traffickers.<sup>222</sup> Reports indicate 165 arrests of suspected poachers in 2010, 232 arrests in 2011, 267 arrests in 2012, and 61 arrests as of March 2013; the large majority occurred in Kruger National Park.<sup>223</sup> Arrests at international airports also occur as

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<sup>217</sup> *Vision and Mission*, S. AFR. POLICE SERV., [http://www.saps.gov.za/org\\_profiles/vision\\_mission.htm](http://www.saps.gov.za/org_profiles/vision_mission.htm) (last visited Apr. 6, 2013) (SAPS responsibilities include preventing, combating and investigating crimes, protecting inhabitants of South Africa, upholding and enforcing the law, ensuring criminals are brought to justice, and participating in efforts to address the causes of crime).

<sup>218</sup> See Molewa Press Release on Poaching Scourge, *supra* note 19.

<sup>219</sup> See *id.*; Slater-Jones, *supra* note 16 (the Hawks are a specialized organized crime unit considered to be the leading police agency in the fight against rhino poaching).

<sup>220</sup> See Molewa Press Release on Poaching Scourge, *supra* note 19. The Wildlife Crime Working Group is a part of INTERPOL focusing its expertise and experience on the poaching, trafficking, or possession of legally protected flora and fauna, like the white rhino. It is the international police authority for enforcing CITES and created a practical guide explaining the operations of both INTERPOL and CITES and making specific recommendations regarding the cooperation between them. *Environmental Crime Committee*, INTERPOL <http://www.interpol.int/Crime-areas/Environmental-crime/Environmental-Crime-Committee/Wildlife-Crime-Working-Group> (last visited Apr. 6, 2013).

<sup>221</sup> See Mandla Khoza & Masoka Dube, *Comment on Rhino Poaching Restricted*, STAR (S. Afr.), Sept. 12, 2011, at 6, <http://www.iol.co.za/the-star/comment-on-rhino-poaching-restricted-1.1135346#.UUxhQIVpfC4> (SAPS Commissioner banned all officers, provincial and regional, from commenting on rhino poaching incidents).

<sup>222</sup> See sources cited *infra* notes 224-25.

<sup>223</sup> See *Rhino Poaching Arrests Up in South Africa*, UPI.COM (Mar. 22, 2012, 9:42 PM), [http://www.upi.com/Science\\_News/2012/03/22/Rhino-poaching-](http://www.upi.com/Science_News/2012/03/22/Rhino-poaching-)

customs officers in South Africa work closely with SAPS and the Hawks to thwart international smuggling.<sup>224</sup> A manager at OR Tambo International Airport stated that airports “have a role to play in maximizing security to prevent criminal activities in and out of the country.”<sup>225</sup> SAPS has even licensed private game farmers to carry semi-automatic weapons in hopes that they will assist SAPS in catching the rhino poachers.<sup>226</sup> In addition, police often offer rewards for information leading to the arrest of poachers.<sup>227</sup> Finally, SAPS is also working closely with the National Joints Operation (NatJoints), which created a special committee and elevated rhino poaching to the highest level of security management.<sup>228</sup>

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[arrests-up-in-South-Africa/UPI-87401332466959/](http://arrests-up-in-South-Africa/UPI-87401332466959/); *South Africa: Over 200 Alleged Rhino Poachers Arrested*, BUANEWS (Nov. 3, 2011), <http://allafrica.com/stories/201111040112.html>; *Update on Rhino Poaching Statistics*, *supra* note 29; *Vietnamese Man Arrested for Illegally Possessing Rhino Horns*, XINHUA NEWS AGENCY (China) (Apr. 23, 2012), <http://english.cri.cn/6966/2012/04/24/3123s695120.htm> (in 2012 a Vietnamese man was found and arrested in OR International Airport with millions of rand worth of rhino horn).

<sup>224</sup> *E.g.*, Press Release, Joint Statement by the SARS and Crime Line, Another Blow for Rhino Syndicate (Nov. 4, 2011), <http://allafrica.com/stories/201111080070.html>; *see also Frankfurt's Wildlife Sniffer Dogs Draw Interest from European Airports*, DEUTSCHE WELLE (Ger.) (Sept. 8, 2011), <http://www.dw.de/frankfurts-wildlife-sniffer-dogs-draw-interest-from-european-airports/a-15359372> (explaining how dogs are used to protect endangered species from illegal international trade by sniffing out wildlife contraband in luggage at customs. The practice started in Frankfurt, Germany, and has since expanded to more European airports. This practice puts added pressure on smugglers engaged in illegal international trade of endangered species. Since its inception in Germany, the dogs have found over 250 illegally smuggled animals or animal products, including rhinoceros horns, causing seizures by officers to increase across Europe).

<sup>225</sup> *Airports Add Weight to Fight Against Poachers*, TIMES (Feb. 8, 2012, 12:23 AM), <http://www.timeslive.co.za/business/2012/02/08/airports-add-weight-to-fight-against-poachers>.

<sup>226</sup> *See* Wyndham Hartley, *Semi-automatic Arms to Fight Rhino Poachers*, BUS. DAY (Sept. 23, 2011, 12:00 AM), <http://www.bdlive.co.za/articles/2011/09/23/semi-automatic-arms-to-fight-rhino-poachers>.

<sup>227</sup> *See* *Rhino Poaching: A R500,000 Reward Offered for Information*, BIZCOMMUNITY.COM (Feb. 13, 2012), <http://m.bizcommunity.com/Article/196/507/70706.html>.

<sup>228</sup> *See* Molewa Press Release on Poaching Scourge, *supra* note 19.

## 2. South Africa's National Park Rangers

The national park rangers and officers are also integral players in law enforcement. To help combat poachers, South Africa has increased its number of park rangers. For example, within the last year approximately fifty-seven rangers have been added to Kruger National Park alone.<sup>229</sup> As recently as August 2012, South Africa National Parks (SANParks) inaugurated 150 new rangers<sup>230</sup> and implemented new “hi-tech” techniques to fight poachers.<sup>231</sup> Minister Molewa commended the rangers’ work and innovative methods in fighting poaching.<sup>232</sup> In addition, a volunteer ranger organization called “Honorary Rangers” donated millions of dollars of anti-poaching equipment, including compasses, camouflage equipment, and first-aid kits, to rangers in Kruger National Park.<sup>233</sup> The park rangers “risk their lives daily to protect wildlife from poachers and traders.”<sup>234</sup> In fact, while tracking poachers with a team of other rangers, one ranger was mistakenly shot and killed after the group

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<sup>229</sup> *See id.*

<sup>230</sup> *See SANParks Step Up the Fight Against Poaching in Kruger National Park*, BIZCOMMUNITY.COM (Aug 2, 2012), <http://www.bizcommunity.com/Article/196/507/79467.html>.

<sup>231</sup> *See Going to War For Rhinos*, INDEP. ON SAT. (S. Afr.), July 28, 2012, at 7 (outlining several new “hi-tech” techniques rangers are now using to track and catch poachers, including a rhino horn DNA database, unique dog tracking systems, and helicopters).

<sup>232</sup> *See* Molewa Press Release on Poaching Scourge, *supra* note 19.

<sup>233</sup> *See* Tony Carnie, *Kruger Rangers Kitted Out to Tackle Poachers*, MERCURY (S. Afr.), Nov. 15, 2011, at 5, <http://www.iol.co.za/mercury/kruger-rangers-kitted-out-to-tackle-poachers-1.1178315#.UUxkPIVpfC4>.

<sup>234</sup> *WWF Calls for End to Rhino Poaching on World Rhino Day At Least 287 Rhinos Have Been Killed in South Africa as Crisis Escalates*, WORLD WILDLIFE FUND (Sept. 21, 2011), <http://worldwildlife.org/press-releases/wwf-calls-for-end-to-rhino-poaching-on-world-rhino-day> (internal quotations omitted).

split up.<sup>235</sup> In some countries, rangers are trained to kill poachers outright if caught.<sup>236</sup>

South African park rangers also receive special training from the WWF on how to handle a rhinoceros if found hornless.<sup>237</sup> The rangers are taught to avoid touching the animal and cordon off the area.<sup>238</sup> Additionally, they are taught to take a DNA sample from the rhino to use as forensic evidence to help find the poacher.<sup>239</sup> Recently, however, rangers have begun to strike over pay and terms of employment, creating concern for the rhinos under their care.<sup>240</sup>

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<sup>235</sup> *Ranger Mistaken for Poacher*, CAPE ARGUS (S.Afr.), Sept. 13, 2011, at 4; see also Gianluca Mezzofiore, *Kruger Park Rhino Poaching Wars: Policeman and Ranger Shot Dead After Radio Breakdown*, INT'L BUS. TIMES NEWS, Apr. 30, 2012, <http://www.ibtimes.co.uk/articles/335022/20120430/south-africa-kruger-park-rhinos-poaching.htm> (both police and rangers fighting against poaching have been accidentally shot).

<sup>236</sup> See Sian Powell, *Hunters Now the Hunted*, AUSTRALIAN, Dec. 30, 2011, at 9, <http://www.theaustralian.com.au/news/features/hunters-now-the-hunted/story-e6frg6z6-1226232815327> (explaining how park guards in the Indian state of Assam “hunt” rhino poachers and shoot to kill, regardless of whether they initiate the shooting or flee. The officers are given immunity from prosecution if they kill a suspected poacher in protected forests, so the state’s forests have become a “bloody battleground.” The officers believe they are simply performing their duties and that killing poachers is entirely legal. Additionally, they feel that they are keeping the community and tourists safe.); see also *Local Rhino Poachers Shot Dead*, AGENCIA DE INFORMACAO DE MOCAMBIQUE (Mozam.), Jan. 12, 2012, <http://allafrica.com/stories/201201130328.html> (recently rangers in Kruger National Park killed two suspected poachers during a shoot-out, but this is not the general practice in South Africa and the general manager of Kruger has stated that he regrets the deaths).

<sup>237</sup> See Maditla, *supra* note 125.

<sup>238</sup> See *id.*

<sup>239</sup> See *id.*

<sup>240</sup> See *Rhinos Threatened By SAF Ranger Strike*, VOICE OF AM. (Feb. 6, 2012), <http://www.voanews.com/content/rhinos-threatened-by-saf-ranger-strike-138848174/151697.html>; Tony Carnie, *Kruger Rangers Go On Strike*, MERCURY (S. Afr.), Feb. 2, 2012, at 3, <http://www.iol.co.za/mercury/kruger-rangers-to-go-on-strike-1.1225684> (stating that while the rangers are on strike, honorary rangers, police and the South African National Defense Force will be filling their place in the parks).

### 3. South Africa's National Prosecuting Authority

Another pivotal player is the National Prosecuting Authority of South Africa (NPA), the single prosecuting authority in South Africa.<sup>241</sup> It is the NPA's sole responsibility to prosecute poachers in custody. Poachers can be charged with illegally hunting the white rhinoceros in a national park, violating the Biodiversity Act, possessing unlicensed fire-arms and ammunition, and illegal trade and trafficking.<sup>242</sup> Additionally, the NPA is receiving special training from the WWF to inform the prosecutors on conservation matters.<sup>243</sup> The NPA's understanding is important to ensure that poachers cannot evade prosecution and to aid the justice system in determining sentences.<sup>244</sup> Since this training has commenced, guilty verdicts have increased noticeably and prison sentences frequently reach up to eight years and, in one instance, even twenty-five years.<sup>245</sup> However, despite the hard work of the NPA, many people feel that the prosecution rates are too low and the cases are taking too long, thereby failing to convey a "tough on poaching" message.<sup>246</sup>

### 4. South Africa's National Anti-Poaching Committee

One final law enforcement player is the National Anti-poaching Committee, which was created to improve communications and coordination among poaching law enforcement.<sup>247</sup> The Committee agreed on four initial priorities to help combat rhino poaching.<sup>248</sup> First, the Committee wants to create a national hotline

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<sup>241</sup> S. AFR. CONST., 1996 § 179.

<sup>242</sup> See, e.g., *South Africa: Over 200 Alleged Rhino Poachers Arrested*, *supra* note 223.

<sup>243</sup> See Maditla, *supra* note 125.

<sup>244</sup> See *id.*

<sup>245</sup> See *id.*; see also Erin Conway-Smith, *South Africa: Rhino Poachers from Mozambique Jailed for 25 Years*, GLOBAL POST (Feb. 1, 2012), <http://www.globalpost.com/dispatch/news/regions/africa/south-africa/120201/south-africa-rhino-poaching-mozambique-poachers-sentenced-25-years>.

<sup>246</sup> See Molewa Press Release on Poaching Scourge, *supra* note 19.

<sup>247</sup> See *National Anti-poaching Committee Established*, MAIL & GUARDIAN (S. Afr.), Aug. 23, 2010, <http://mg.co.za/article/2010-08-23-national-antipoaching-committee-established>.

<sup>248</sup> See *id.*

for reporting rhino poaching.<sup>249</sup> Second, the Committee plans on coordinating intelligence from all groups involved in fighting rhino poaching.<sup>250</sup> Third, the Committee hopes to organize a national fundraising campaign.<sup>251</sup> Fourth, the Committee wants to raise poaching awareness among the people of South Africa.<sup>252</sup> The Committee's efforts are ongoing.

### C. Current Vietnamese Law

While South Africa is taking great strides to comply with CITES and to deter rhino poaching, Vietnam has a long way to go. Recently, poaching forced Vietnam's native rhinoceros, the Javan rhino, into extinction.<sup>253</sup> The WWF accuses the Vietnamese government of failing to control poaching due to insufficient political support for endangered species conservation.<sup>254</sup> The WWF stated that "significant improvements need to be made in law enforcement and protected area management in Vietnam."<sup>255</sup> The WWF also ranked Vietnam as the worst Asian or African country for wildlife crimes, giving it a "red score" for rhinoceros and tigers.<sup>256</sup>

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<sup>249</sup> See *id.*

<sup>250</sup> See *id.*

<sup>251</sup> See *id.*

<sup>252</sup> See *National Anti-poaching Committee Established*, *supra* note 247.

<sup>253</sup> See Ives, *supra* note 70.

<sup>254</sup> See *id.*

<sup>255</sup> See *id.* (internal quotations omitted).

<sup>256</sup> See *Vietnam at Bottom of WWF Species-Protection Report*, GUARDIAN, July 22, 2012, <http://www.guardian.co.uk/world/feedarticle/10348872>; *Vietnam Accused Over Rhino Poaching*, DAILY TELEGRAPH (U.K.), July 23, 2012, at 28 (describing the WWF's African and Asian country ranking system reflecting progress in each country's protection of endangered species. The WWF ranked 23 countries, giving them scores of green for good, yellow for moderate, and red for poor); *Countries Get Failing Grades on Illegal Wildlife Trade Enforcement*, WORLD WILDLIFE FUND, July 23, 2012, <http://worldwildlife.org/press-releases/countries-get-failing-grades-on-illegal-wildlife-trade-enforcement-wwf-analysis> (reporting that illegal wildlife trading persists in all 23 countries, but the ranking system was designed to differentiate between countries that are actively working to stop the trade and countries "where current efforts are entirely inadequate").



As a comparison, China, another area of high rhino horn trafficking,<sup>257</sup> has made considerable efforts to decrease the international trade in endangered species.<sup>258</sup> Through confiscation of weapons, tougher penalties, and awareness campaigns, China has reduced the number of criminal cases involving trafficking of endangered species.<sup>259</sup> In January 2012, China's State Forestry Administration began a crack-down on Chinese auction houses to ensure that they are following Chinese wildlife laws and regulations and to emphasize that they are subject to the trade ban on endangered species.<sup>260</sup> Although Vietnam could benefit from Chinese-like law enforcement efforts, Vietnam has taken steps to raise public awareness through a campaign providing scientific research showing the need to protect the rhino.<sup>261</sup>

In 2007, the CITES Scientific and Management Authorities of Vietnam conducted a voluntary assessment of Vietnam's wildlife trade policies, both domestic and international, to identify strengths and weaknesses.<sup>262</sup> Vietnam recognized that it is an important

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<sup>257</sup> See Jessica Hatcher, Op-Ed., *Deadly Trade: Rhino Horn Poaching Surges*, TELEGRAPH (U.K.), Dec. 10, 2011, <http://www.telegraph.co.uk/earth/wildlife/8935724/Deadly-trade-rhino-horn-poaching-surges.html> (commenting on China as a main destination for poached rhino horns, which are used in traditional Chinese medicines. The Kenya Wildlife Service has noted a correlation between the influx in Chinese labor and poaching; there are about a million Chinese workers now in Africa. The author went on safari with many wealthy and influential Chinese figures—a safari meant to educate. The article is optimistic about China's efforts to stop the illegal trade of both rhinoceros horns and elephant tusks and the author hopes the increase of Chinese laborers and tourists to Africa will help spread the word about the evils of poaching).

<sup>258</sup> See *Wildlife Smuggling Becomes Rarer But Has Not Gone Extinct*, CHINA DAILY, Oct. 20, 2011.

<sup>259</sup> See *id.*

<sup>260</sup> See *China Applies Trade Ban to Wildlife Auctions*, INT'L FUND FOR ANIMAL WELFARE (Jan. 11, 2012), <http://www.ifaw.org/africa/news/china-applies-trade-ban-wildlife-auctions>.

<sup>261</sup> See *VN, South Africa Act on Wildlife Protection*, VIET. NEWS AGENCY (Sept. 29, 2011, 8:51 PM), <http://en.vietnamplus.vn/Home/VN-South-Africa-act-on-wildlife-protection/20119/21283.vnplus>.

<sup>262</sup> See generally CITES SCIENTIFIC AUTH. OF VIET. & CITES MGMT. AUTH. OF VIET., REPORT ON THE REVIEW OF VIETNAM'S WILDLIFE TRADE POLICY (2008) [hereinafter VIETNAM WILDLIFE TRADE POLICY REPORT],

location for wildlife trade, both legal and illegal.<sup>263</sup> Vietnam also recognized the importance of biodiversity, which, due to degradation and deforestation, has become a critical issue.<sup>264</sup> Additionally, Vietnam acknowledged its peoples' traditional consumption of wildlife, much of which is legal through the CITES permit program, but which has also fueled the well documented and expanding illegal trade market.<sup>265</sup> As a result of this acknowledgement, after Vietnam became a CITES member in 1994, it created a National Action Plan aimed at promoting the sustainability of natural resources, improving the economy, strictly controlling trade in endangered species, and enhancing the efficiency of the agencies which control illegal wildlife trade.<sup>266</sup>

After Vietnam joined CITES in 1994, the government passed several decrees concerning illegal trade in endangered species; two of which focus on international trade.<sup>267</sup> The first, Decree No. 11/2002/ND-CP, was passed as the principal legal basis for implementing CITES and providing training for enforcement.<sup>268</sup> However, due to its hasty passage, the law overlapped with a Vietnamese Customs law, creating confusion regarding the proper procedure when species are listed under both laws and resulting in no fines being issued for violations of illegal trading under CITES.<sup>269</sup> Therefore, Decree No. 82/2006/ND-CP was passed to remedy the problems of Decree No. 11/2002/ND-CP, but it had problems of its own.<sup>270</sup> It failed to effectively manage punishments for violations or craft proper disposal techniques for confiscated specimens.<sup>271</sup>

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[http://www.cites.org/common/prog/policy/Vietnam\\_wildlife\\_trade\\_policy\\_review.pdf](http://www.cites.org/common/prog/policy/Vietnam_wildlife_trade_policy_review.pdf).

<sup>263</sup> See *id.* at 1.

<sup>264</sup> See *id.* at 8.

<sup>265</sup> See *id.* at 10-13 (commenting that the quantity of wildlife provided for the Vietnamese trading market is over 1 million individual animals per year).

<sup>266</sup> See *id.* at 19.

<sup>267</sup> See VIETNAM WILDLIFE TRADE POLICY REPORT, *supra* note 262, at 28.

<sup>268</sup> See *id.* at 29.

<sup>269</sup> See *id.*

<sup>270</sup> See *id.* at 30-31.

<sup>271</sup> See *id.*

Overall, these actions have failed to meet Vietnam's conservation goals and there are still many problem areas concerning Vietnam's wildlife trade policy. One explanation might be Vietnam's attempt to address too many issues at once, making implementation much more difficult.<sup>272</sup> While there were training programs and education about certain endangered species, they did not focus on the white rhinoceros, or any rhinoceros for that matter,<sup>273</sup> and local citizens were provided with little guidance on endangered species.<sup>274</sup> Furthermore, insufficient government funding has made implementation difficult and has limited law enforcement agencies, resulting in policies which have had very little impact on the illegal trade of endangered species.<sup>275</sup>

Despite the ineffective implementation, Vietnam's efforts have had a few positive effects. For example, conservation policies have created over 120 new special use forests, the decreased deforestation, and decreased damage to marine ecosystems.<sup>276</sup> However, Vietnam can do much more to effectively manage the illegal trade in wildlife. For example, confusion still exists because of overlapping policies among different agencies, and loopholes in endangered species legislation make it easy to bypass current laws.<sup>277</sup> So easy, in fact, that some restaurants continue selling prohibited rhinoceros horns.<sup>278</sup>

Moreover, the rhino horn trade has historically provided jobs and income for many of Vietnam's poor.<sup>279</sup> Even if the trade began legally and has since become illegal, most traders continue to work because it is so hard for them to find another means of income.<sup>280</sup> Without the support and cooperation of traders, policies attempting

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272 See VIETNAM WILDLIFE TRADE POLICY REPORT, *supra* note 262, at 32.

273 See *id.* at 26.

274 See *id.* at 32.

275 See *id.* at 26.

276 See *id.* at 34.

277 See VIETNAM WILDLIFE TRADE POLICY REPORT, *supra* note 262, at 35.

278 See *id.* at 43.

279 See *id.* at 45.

280 See *id.*

to control the illegal trade of wildlife tend to be ineffective. The Vietnamese wildlife trade law have not yet met the goals of CITES.<sup>281</sup>

#### D. Vietnamese Law Enforcement

Despite campaigns to raise awareness and the secretary of the Vietnamese embassy in South Africa's declaration that the rhino horn trade is the "shame of [the] nation,"<sup>282</sup> Vietnamese law enforcement continues to be insufficient—a key area where it cannot afford to be lax if it wishes to tackle the problem of rhino poaching. Vietnam's Ministry of Natural Resources and Environment has taken notice of the problem.<sup>283</sup> Le Xuan Canh, the director of the Institute of Ecology and Biological Resources, has informed the Vietnamese government that its poaching problem is due to illegal trade in endangered species, deforestation, and lack of wildlife protection.<sup>284</sup>

Yet, nothing seems to be happening to correct the problem. Vietnam has reported that its law enforcement controls only five to ten percent of the total illegal wildlife trade.<sup>285</sup> Decree No. 139/2004/ND-CP contains provisions for punishing those involved in the illegal trade of endangered species, making the crime a high level offense.<sup>286</sup> However, effective law enforcement has been difficult because the Decree was developed primarily to combat illegal trade in wild flora, which differs substantially from trade in fauna because of the size and mobility of some animals.<sup>287</sup> Additionally, law enforcement personnel have received insufficient

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<sup>281</sup> *See id.*

<sup>282</sup> *See Vietnam, South Africa Sign MOU on Anti-Smuggling of Rhino Horn, supra* note 60.

<sup>283</sup> *See Fewer Than 50 Tigers Still Left in the Wild*, VIET. MINISTRY OF NATURAL RES. & ENV'T (Dec. 30, 2011), <http://www.monre.gov.vn/v35/default.aspx?tabid=675&CateID=58&ID=112249&Code=K5LF112249>.

<sup>284</sup> *See id.*

<sup>285</sup> *See VIETNAM WILDLIFE TRADE POLICY REPORT, supra* note 262, at 14.

<sup>286</sup> *See id.* at 58 (noting that wildlife crime is generally punishable by fine, but that punishment varies because it is hard to calculate the fine according to species. Some species weigh more or are more endangered than others. This creates loopholes in the criminal law).

<sup>287</sup> *See id.*

information concerning the illegal trade and the CITES requirements, harming implementation efforts.<sup>288</sup>

In 2010, Vietnam hosted South African representatives involved with monitoring the rhinos and enforcing poaching laws to discuss Vietnam's efforts to control the illegal rhino trade.<sup>289</sup> The goal of the meeting was to improve collaboration between the two nations.<sup>290</sup> Not only is there a lack of enforcement in Vietnam, but there is a lack of a system to enforce; there is no legal system in place to register and track already owned horns, which allows legally obtained horns to more easily enter the illegal trade market.<sup>291</sup> Hopefully, the collaboration between South Africa and Vietnam will lead to a substantial reduction of rhino poaching.

#### E. How Poachers Are Getting Around the Laws

Despite poaching laws and law enforcement efforts, poachers continue to victimize rhinoceros, and the number of poachers is not declining.<sup>292</sup> Like other organized crime, rhino poaching and horn trafficking has become syndicated.<sup>293</sup> There are several known gangs and syndicates; the more sophisticated ones use helicopters, high-powered firearms, and new technology to avoid detection while hunting.<sup>294</sup> The syndicates are largely foreign, but some are suspected of working with South African citizens, even law enforcement officers and government employees.<sup>295</sup> Many of the syndicates shoot

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<sup>288</sup> See *id.* at 32.

<sup>289</sup> See *South African Delegates Visit Vietnam to Address Illegal Rhino Horn Trade*, TRAFFIC (Oct. 20, 2010) [hereinafter *South African Delegates Visit Vietnam*], <http://www.traffic.org/home/2010/10/20/south-african-delegates-visit-viet-nam-to-address-illegal-rh.html>.

<sup>290</sup> See *id.*

<sup>291</sup> See *id.*

<sup>292</sup> See *supra* Part II.A.

<sup>293</sup> See sources cited *infra* notes 295-98.

<sup>294</sup> See Slater-Jones, *supra* note 16.

<sup>295</sup> See Zanu-PF, *Aliens Colluding in Poaching Syndicates*, ZIM. STANDARD, Oct. 23, 2011, <http://allafrica.com/stories/201110240648.html>; see also Tendai Rupapa, *Rhino Horn Case Takes New Twist*, HERALD (Zim.), Jan. 11, 2012, [http://www.herald.co.zw/index.php?option=com\\_content&view=article&id=31187#UUxujoVpfC4](http://www.herald.co.zw/index.php?option=com_content&view=article&id=31187#UUxujoVpfC4) (explaining how three rhino poachers suspected of murdering a game ranger were caught with illegal rhino horns in the car of Zimbabwe's Local

the rhinos “legally” by abusing the permit system.<sup>296</sup> For example, a recent Thai syndicate was suspected of using strippers and prostitutes posing as hunters to obtain permits to hunt white rhinos.<sup>297</sup>

Once a horn is obtained,<sup>298</sup> the syndicates have a number of methods they use to smuggle it to its final destination. There are established smuggling routes, which are shared with smugglers of other animals and changed often to avoid detection.<sup>299</sup> The smugglers hide the rhino horns in containers, such as large “statues” or luggage, or ship them in bulk consignments by boat.<sup>300</sup> More recently, smugglers have been using the internet, selling the horns online and mailing them disguised as art or antiques.<sup>301</sup> In addition, smugglers

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Government, Rural and Urban Development Deputy Minister. The Deputy Minister denies involvement, saying that he sold the vehicle and has had nothing to do with the car since).

<sup>296</sup> See Omphitlhsetse Mooki, *Suspected Thai Rhino Poaching Kingpin Fights for Bail*, PRETORIA NEWS (S. Afr.), Oct. 27, 2011, at 4.

<sup>297</sup> See *id.*

<sup>298</sup> See *Rhino Horn Thieves Gas Paris Museum Guards*, TELEGRAPH (U.K.), Dec. 7, 2011, <http://www.telegraph.co.uk/news/worldnews/europe/france/8939250/Rhino-horn-thieves-gas-Paris-museum-guards.html> (rhino horns are most frequently obtained by hunting the rhino, as described throughout this comment. However, recently, a pair of thieves stole a white rhino horn from a hunting and nature museum in Paris, France. Zoos and museums across Europe have been alert to possible thefts of rhino horns for some time, as this most recent robbery is not the only one. Rhino horns were stolen from at least three other French museums in 2011, as well as from a taxidermist in Vienna); *50 Overseas Museums Holding Rhino Heads Have Been Burgled*, CAPE TIMES (S. Afr.), Jan. 31, 2012, at 3; *Rhinos Given Fake Horns*, N. Z. HERALD, Dec. 22, 2011, [http://www.nzherald.co.nz/world/news/article.cfm?c\\_id=2&objectid=10774696](http://www.nzherald.co.nz/world/news/article.cfm?c_id=2&objectid=10774696) (in response to the rhino horn thefts from museums, curators in a Swiss museum have replaced the horns of its rhinos on display with fake horns); Michael McCarthy, *British Zoos Put on Alert Over Rising Threat of Rhino Rustlers*, INDEP. (U.K.), Jan. 30, 2012, <http://www.independent.co.uk/environment/nature/british-zoos-put-on-alert-over-rising-threat-of-rhino-rustlers-6296572.html> (noting that zoos have also been warned to prepare for potential targeting by rhino poachers and other criminals looking to steal and sell their rhino horns on the black market).

<sup>299</sup> See Candice Bailey & Shaun Smillie, *Record Rhino Horn Haul: 33 of Them Seized in ‘Scrap Plastic’ Shipment in Hong Kong*, STAR (S. Afr.), Nov. 16, 2011, at 1, <http://www.iol.co.za/news/crime-courts/record-rhino-horn-haul-1.1179722#.UUxvzIVpfC4>.

<sup>300</sup> See *id.*; *Wildlife in Their CITES*, METRO (U.K.), Oct. 5, 2011, at 20.

<sup>301</sup> See *Smuggling of Rhino Parts Goes Online*, CHANNEL NEWSASIA (China), Sept. 5, 2011, <http://wildsingaporenews.blogspot.com/2011/09/smuggling-of->

have started making fake horns in order to mark-up the prices on real horns.<sup>302</sup> However, due to the increasing efforts of law enforcement personnel, many syndicate rings have been busted sending several high-profile smugglers to trial.<sup>303</sup> For example, the Groenewald Gang, started by a couple that operates a safari touring company, recently appeared in court facing hundreds of charges under several laws.<sup>304</sup>

For the most part, law enforcement personnel are fighting on behalf of the white rhinoceros to end poaching. Unfortunately, some officers and park rangers are also involved in poaching, largely because of the great monetary benefits.<sup>305</sup> South African police, politicians, and government officials have taken bribes from the poaching syndicates or aided them in some other way.<sup>306</sup> One Vietnamese diplomat was even caught on tape making an illegal rhino horn purchase.<sup>307</sup> Permit issuing authorities have also been suspected of aiding poaching by issuing questionable permits.<sup>308</sup> Additionally, the South African government has kept stockpiles of rhino horns, which have been audited and are reported to be secretly held in safe keeping.<sup>309</sup> However, the Minister Molewa's Department's booklet entitled "National Strategy for the Safety and Security of Rhinoceros

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[rhino-parts-goes-online.html](#); Tony Carnie, *Rhino Horn 'For Sale' Online as Prices Soar: Website Advertises Illegally Amid Spike in Poaching*, PRETORIA NEWS (S. Afr.), Feb. 21, 2012, at 3.

<sup>302</sup> See Tony Carnie, *Fake Rhino Horn Pushes Up Price of the Real Thing*, CAPE TIMES (S. Afr.), July 27, 2012, at 10.

<sup>303</sup> See Sheree Bega, *Trial Delay is a Danger to Wildlife Say Activists*, STAR (S. Afr.), Oct. 1, 2011, at 4 (commenting on the trial of suspected rhino horn poaching syndicate Dawie Groenewald and the rest of his gang, called the "Mafia of Musina"); Mooki, *supra* note 296 (commenting on the denial of bail by a South African judge for a Thai kingpin, who used strippers and prostitutes posing as hunters to gain hunting permits so he could shoot rhinoceros legally. He was denied bail because he was deemed a flight risk).

<sup>304</sup> See *Crucial Rhino Poaching Case Delayed Again*, WORLD WILDLIFE FUND (Apr. 25, 2012), [http://www.wwf.org.uk/what\\_we\\_do/press\\_centre/?unewsid=5924](http://www.wwf.org.uk/what_we_do/press_centre/?unewsid=5924).

<sup>305</sup> See Slater-Jones, *supra* note 16.

<sup>306</sup> See *id.*

<sup>307</sup> See *South African Delegates Visit Vietnam*, *supra* note 289.

<sup>308</sup> See Yolandi Groenewald, *Wildlife Officials' Link to Hunting*, MAIL & GUARDIAN (S. Afr.), Oct. 21, 2011, <http://mg.co.za/article/2011-10-21-wildlife-officials-link-to-hunting>.

<sup>309</sup> See Merten, *supra* note 19.

Populations in South Africa” says these stockpiles may be depleting as well, implying that some officials are stealing and selling the horns.<sup>310</sup>

So many park rangers and game preserve employees have been involved in poaching that South Africans have coined the involvement “khaki-colored crime.”<sup>311</sup> All levels of rangers have been implicated, many have been arrested,<sup>312</sup> and some have been criminally charged.<sup>313</sup> Additionally, veterinarians have been implicated in aiding the poaching syndicates by providing them with immobilizing drugs only available to vets.<sup>314</sup> In one notable instance, a South African court convicted a veterinarian of aiding rhino poaching.<sup>315</sup> However, instead of a court sentence, the South African Veterinary Council sentenced the vet to six months suspension and a fine.<sup>316</sup> This “puny” sentence caused an outcry in the environmental conservation community.<sup>317</sup> Those responsible for protecting the

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<sup>310</sup> See *id.*

<sup>311</sup> See Melanie Gosling, *Rhino Poaching's Inside Job*, MERCURY (S. Afr.), Dec. 14, 2011, at 5.

<sup>312</sup> See, e.g., *South African Game Park Officials Arrested for Rhino Poaching*, BNO NEWS (S. Afr.), Feb. 29, 2012 (reporting that four parks officials, including one ranger and two traffic cops, were arrested under suspicion of involvement in poaching activities); Colleen Dardagan, *Ranger Awaits Trial Behind Bars*, MERCURY (S. Afr.), July 24, 2012, at 3, <http://www.iol.co.za/mercury/ranger-awaits-trial-behind-bars-1.1348162> (reporting that three rangers suspected of being involved in rhino poaching activities were caught in a trap laid by other park rangers).

<sup>313</sup> See Comins, *supra* note 35 (reporting on park staff, rangers, and senior officials' involvement in rhino poaching and the current investigations concerning that involvement, as well as recent criminal charges brought against two rangers); Sydney Masinga, *Top Park Official Accused of Poaching*, MAIL & GUARDIAN (S. Afr.), Sept. 10, 2010, <http://mg.co.za/article/2010-09-10-top-parks-official-accused-of-poaching> (reporting on the accusation of two senior national park officials' involvement in rhino poaching).

<sup>314</sup> See Gosling, *supra* note 311; Fiona Macleod, *Vets Charged for Illegal Use of Tranquilizers*, MAIL & GUARDIAN (S. Afr.), Mar. 2, 2012, <http://mg.co.za/article/2012-03-02-vets-charged-for-illegal-use-of-tranquillisers> (reporting that three veterinarians appeared in court relating to charges of illegal use of M99, a drug commonly used by poachers).

<sup>315</sup> Shaun Smillie, *Outrage Over Vet's 'Puny' Sentence*, STAR (S. Afr.), Feb. 9, 2012, at 6, <http://www.iol.co.za/news/south-africa/gauteng/outrage-over-vet-s-puny-sentence-1.1230448>.

<sup>316</sup> See *id.*

<sup>317</sup> See *id.*



white rhino often help the poachers instead, making the fight against poaching even more difficult.

#### F. The Response

Clearly rhinoceros poaching is a problem. Unfortunately, the problem only seems to be growing. While South Africa is taking great strides to fight the poachers and curb the supply, the demand in countries is soaring; and Vietnam, for one, is doing little to control it.<sup>318</sup> If the demand is great and prices for rhinoceros horns are high, the poaching problem will only persist. Additionally, a major roadblock in the fight to stop poaching is the involvement of people “on the inside.”<sup>319</sup> Fortunately, South Africa and Vietnam have begun to take steps to work together to address the problem, as has the larger international community.

To put an end to poaching, South Africa must first tackle its “khaki-colored crime” problem and suppress insider assistance to poaching syndicates. The specialized South African police force, known as the Hawks, has commented that they will continue to hunt those insiders despite the challenges of being repeatedly “stymied” by them.<sup>320</sup> Additionally, retired park rangers, who are viewed as independent from their former parks and therefore less corruptible, are helping law enforcement officials generate new and effective ways to defeat poachers.<sup>321</sup> Park officials have also encouraged bordering communities to help arrest poachers.<sup>322</sup> Minister Molewa has also discussed cross-border law enforcement between SAPS and their counter-part in Mozambique.<sup>323</sup>

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<sup>318</sup> See *supra* Part IV.B & D.

<sup>319</sup> See *supra* Part IV.E.

<sup>320</sup> See Slater-Jones, *supra* note 16.

<sup>321</sup> See Lyse Comins, *Conservation Veterans Enter the Fray: Former Rangers to Tackle Poaching, Advise Officials*, INDEP. ON SAT. (S. Afr.), Nov. 19, 2011 at 5.

<sup>322</sup> See *Locals Help Kruger Park Catch Poachers*, STAR (S. Afr.), Apr. 25, 2012, at 13, <http://www.iol.co.za/the-star/locals-help-kruger-park-catch-poachers-1.1283200#.UUx3YIVpfC4> (explaining how members of Matsulu, a community that borders the south-west area of Kruger Park, helped officials arrest a suspected rhinoceros poacher).

<sup>323</sup> See John Yeld, *Global Boost in Rhino-Poaching Battle SMS the Argus: China, Vietnam Set to Sign Agreements*, CAPE ARGUS (S. Afr.), Jan. 17, 2012, at 6.

In response to the alarming number of rhinoceros poached in 2012, Minister Molewa called all of South Africa to action.<sup>324</sup> The Minister stated: “It is clear that this is an organized crime of the highest degree . . . [and] we need inputs and actions from all South Africans.”<sup>325</sup> The minister called on rhino anti-poaching organizations for input, plans to add 150 more park rangers to the existing 500 in Kruger National Park, aims to deploy conservation specialists at key places of entry for poachers, especially sea ports and airports, and intends to continue working closely with Vietnam.<sup>326</sup>

South Africa is also taking steps to curb the demand for rhinoceros horn in Vietnam. In September 2011, South Africa hosted Vietnamese delegates to address the growing demand for rhino horns, and the parties drafted a memorandum of understanding (MoU) to work together to prevent rhino poaching and preserve this endangered species.<sup>327</sup> The MoU seeks to disrupt the rhino horn trade through cooperation between Asian and African governments and cooperation among law enforcement during investigations, among prosecutors during trials, and among supervisors during legal hunting.<sup>328</sup> The delegates are CITES members, including Vietnam’s Deputy Director of the General Department of Forestry, Ha Cong Tuan, and South Africa’s Deputy Director of biodiversity and natural conservation, Fundisile Mketeni.<sup>329</sup> The delegates praised Vietnam’s participation, acknowledging the importance of Vietnam’s cooperation and effective implementation of CITES in order to win this fight.<sup>330</sup> This 2010 meeting, arranged by IUCN<sup>331</sup> and

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<sup>324</sup> See Shaun Smillie, *YOU Are Needed to Join Fight Against Rhino Poachers: Minister Calls on All South Africans to Help in Stopping the Slaughter of Endangered Species*, STAR (S. Afr.), Jan. 16, 2012, <http://www.iol.co.za/the-star/you-are-needed-to-join-fight-against-rhino-poachers-1.1213120>.

<sup>325</sup> See *id.*

<sup>326</sup> See *id.*

<sup>327</sup> See *WWF Calls for End to Rhino Poaching*, *supra* note 58; see also *Vietnam, South Africa Sign MOU on Anti-Smuggling of Rhino Horn*, *supra* note 60; Yeld, *supra* note 323.

<sup>328</sup> See *WWF Calls for End to Rhino Poaching*, *supra* note 58; see also *Vietnam, South Africa Sign MOU on Anti-Smuggling of Rhino Horn*, *supra* note 60; Yeld, *supra* note 323.

<sup>329</sup> See *VN, South Africa Act on Wildlife Protection*, *supra* note 261.

<sup>330</sup> See *id.*

TRAFFIC,<sup>332</sup> inspired South Africa and Vietnam to meet once again in 2012.<sup>333</sup>

On August 17, 2012, Deputy International Relations and Cooperation Minister Ebrahim Ebrahim and Vietnam's Deputy Foreign Affairs Minister Le Luong Minh held a second meeting in South Africa concerning the MoU.<sup>334</sup> The delegates expressed great

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<sup>331</sup> IUCN, <http://www.iucn.org/> (last visited Jan. 3, 2012) (IUCN is a global network which provides frameworks for planning, implementing, monitoring, and evaluating conservation work done by its members. Every four years, IUCN drafts new programs that provide members with an analysis report on the current state of biodiversity. IUCN's key priorities are conserving biodiversity, climate change, sustainable energy, human well-being, and a green economy).

<sup>332</sup> *Wildlife Trade News*, TRAFFIC.ORG, <http://www.traffic.org/> (last visited Apr. 6, 2013) (TRAFFIC's mission is to "ensure that trade in wild plants and animals is not a threat to the conservation of nature." The organization partners with the WWF and the IUCN, was established in 1976, and works in over 100 countries worldwide. TRAFFIC also works closely with the Secretariat of CITES. TRAFFIC has a five part program for ensuring conservation of species: (1) The Setting—the program looks at wildlife trade and how it fits in with wider environmental concerns, people, and the economy; (2) The Strategy—the program is built around changing attitudes and behaviors by working with governments and providing incentives to implement and enforce more effective policies and legislation; (3) The Results—TRAFFIC tracks results in five key areas: early warnings, flagship species in trade (like the white rhino), resource security and wildlife trade, wildlife trade routes, and rapid response and innovation; (4) The Core Competencies—TRAFFIC uses its expertise, in research, analysis, proposing solutions, advocacy and awareness, and supporting remedial action to carry out its mission; and (5) The Partnerships—drawing upon the expertise of its partnerships with WWF and IUCN, helps TRAFFIC to deliver more effective conservation action plans.); *see also* Sheree Bega, *Rhino Report Gives Some Hope*, STAR S. Afr., Aug. 25, 2012, at 8 (reporting on TRAFFIC's rhino and elephant program leader Tom Milliken's new report "The South Africa-Vietnam Rhino Horn Trade Nexus: A Deadly Combination of Institutional Lapses, Corrupt Wildlife Industry Professionals and Asian Crime Syndicates." Milliken worked on compiling the report over a three year period. The report documents corrupt South African wildlife and government officials. Milliken's own eye-witness reports on Vietnamese usage of rhino horns, Vietnam's denial over their role in the trade, growing arrest rates, increased awareness, and trafficking).

<sup>333</sup> *See WWF Calls for End to Rhino Poaching*, *supra* note 58.

<sup>334</sup> *See SA, Vietnam Discussing Poaching*, S. AFR. PRESS ASS'N, Aug. 17, 2012; Sue Blaine, *SA Set to Sign Deal with Vietnam on Rhino*, BUS. DAY (S. Afr.), Aug. 20, 2012, <http://www.bdlive.co.za/national/science/2012/08/20/sa-set-to-sign-deal-with-vietnam-on-rhino>.

concern over the poaching problem and sought to strengthen their cooperation in the field of bio-diversity conservation and protection through further bilateral agreements.<sup>335</sup> They also discussed finalizing the MoU, the scope of which will include provisions on bio-diversity management, law enforcement, CITES compliance.<sup>336</sup> The MoU would also require Vietnamese efforts to increase public awareness of the problem by providing education about legal rhino hunting in Vietnam.<sup>337</sup>

On December 10, 2012, the MoU was officially signed by Minister Molewa and H.E. Cao Duc Phat, Vietnam's Minister of Agriculture and Rural Development.<sup>338</sup> At the signing ceremony, Minister Molewa stated that "South Africa is looking forward to receiving the close cooperation from Vietnamese partners to stop the illegal trade of rhino horns."<sup>339</sup> Agreeing, Minister Cao Duc Phat stated that the fight "against crime on wildlife regulations especially on the rare, precious and endangered species including rhinos . . . are always of concern to the Vietnam government . . . . The Ministry of Agriculture and Rural Development . . . are [sic] submitting the Prime Minister to issue a Decision on banning the import of all rhino specimens to Vietnam."<sup>340</sup> Although the MoU is written in general terms, it indicates that rhino horn trafficking will be at the top of the policy agenda for the two nations.<sup>341</sup>

The epidemic of rhino poaching is a global concern not only limited to South Africa and Vietnam. An international effort will be required to address the problem; and many countries will have to become involved. Kenyan citizens have created an on-line petition to

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<sup>335</sup> See *SA, Vietnam Discussing Poaching*, *supra* note 334; *SA-Vietnam Relations Bolstered at Forum*, S. AFR. GOV'T NEWS AGENCY (Aug. 17, 2012), <http://oldsanews.gcis.gov.za/rss/12/12081715051001>.

<sup>336</sup> See *SA-Vietnam Relations Bolstered at Forum*, *supra* note 335; Blaine, *supra* note 334.

<sup>337</sup> See *SA-Vietnam Relations Bolstered at Forum*, *supra* note 335; Blaine, *supra* note 334.

<sup>338</sup> See *Signing of MoU Between SA and Vietnam to Help Tackle Conservation Efforts*, WORLD WILDLIFE FUND (Dec. 10, 2012), <http://www.wwf.org.za/?7360/MoU-between-SA-and-Vietnam>.

<sup>339</sup> *Id.*

<sup>340</sup> *Id.*

<sup>341</sup> See *id.*

compel the Chinese government to act against the poaching and trafficking of rhino horns.<sup>342</sup> Five other African Countries—Zimbabwe, Botswana, Zambia, Angola, and Namibia—have legalized the sale of rhinoceros horn powder in pharmacies, hoping to reduce the profitability of the illegal trade.<sup>343</sup> The Australian government has suggested using microdots, originally used to track stolen vehicles, to track rhino horns and poachers.<sup>344</sup> Activists in India have tried to enlist the help of reformed poachers to inform on their former gangs.<sup>345</sup>

The United Kingdom, a leading member of CITES, has been working to unite the international community and debunk the myth of rhino horns' medicinal effects, to create public awareness of the poaching crisis, and to encourage the sharing of intelligence and policing tactics.<sup>346</sup> In January 2012, the U.K.'s Department for Environment, Food, and Rural Affairs invested over one million pounds in a wide range of projects to protect endangered species, including the white rhinoceros.<sup>347</sup> The U.K. government is committed to being a pioneer in, and an example of, international conservation.<sup>348</sup>

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<sup>342</sup> See *Kenya: New Campaign to Stop Rhino Poaching in Country*, NAIROBI STAR (Kenya), Oct. 21, 2011, <http://www.the-star.co.ke/news/article-44702/new-campaign-stop-rhino-poaching-kenya>.

<sup>343</sup> See Bill Corcoran, *Decision of Five African States to Sell Rhino Horn Criticized*, IRISH TIMES, Mar. 31, 2012, at 11, <http://irishtimes.newspaperdirect.com/screenprint/viewer.aspx>.

<sup>344</sup> See *Microdots Could Help Combat Poaching*, INDO-ASIAN NEWS SERV. (India), Oct. 14, 2011, [http://newshopper.sulekha.com/microdots-could-help-combat-poaching\\_news\\_1357565.htm](http://newshopper.sulekha.com/microdots-could-help-combat-poaching_news_1357565.htm).

<sup>345</sup> See Powell, *supra* note 236.

<sup>346</sup> See *UK Secures International Agreement to Combat Illegal Rhino Trade*, *supra* note 20.

<sup>347</sup> See *PS1.3 Million Government Pledge to Protect Our Most Endangered Species*, EUR. UNION NEWS, Jan. 11, 2012.

<sup>348</sup> See *id.* The U.K. has the support of Prince Charles, president of the WWF in the U.K. and an avid activist for wildlife conservation, as well as his son William, Duke of Cambridge. See James Edgar, *Charles Spots Endangered Rhino*, PRESS ASS'N (S. Afr.), Nov. 4, 2011; Ross Lydall, *William: We Must End Killing or Our Children Will Not See These Animals*, EVENING STANDARD (U.K.), June 19, 2012, at 13. The Prince recently spotted a rhino in his travels to South Africa and saw

Finally, the United States, in conjunction with several other countries, has started a partnership called the Trans-Pacific Partnership to address environmental challenges, such as illegal trade in wildlife like the white rhino.<sup>349</sup> In May 2012, the U.S. Senate Foreign Relations Committee held a hearing on the poaching problem in Africa, hearing from wildlife experts and organizations including the WWF and TRAFFIC.<sup>350</sup> Senator John Kerry, Chairman of the Committee, stated that “[p]oaching is not just a security threat . . . [i]t’s also a menace . . . thriv[ing] where government is weakest. Poachers . . . are a danger to . . . rangers and civilians as well as the animals they target.”<sup>351</sup> U.S. Federal Agents have also actively reduced the rhino horn trade in the U.S.<sup>352</sup> in cooperation with South African wildlife authorities.<sup>353</sup> In an unprecedented event on illegal wildlife trafficking held on November 8, 2012, U.S. Secretary of State

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exactly how rhinoceros are being protected from poachers by the South African government. See Edgar, *supra*.

<sup>349</sup> See *US Trade Representative Green Paper on Conservation and the Trans-Pacific Partnership*, US FED NEWS, Dec. 5, 2011 (the U.S. is currently in negotiations with Australia, Brunei, Chile, Malaysia, New Zealand, Peru, Singapore, and Vietnam, who are all members of CITES. The Trans-Pacific Partnership (TPP) aims to advance the countries’ common interests in enhancing trade and economic growth by coordinating responses to illegal trade in wild flora and fauna. The U.S. specifically chose countries to participate in TPP that are integral to such illegal trade and whose economies depend on such trade. The TPP’s aims are conservation and protection of biodiversity. The U.S., through TPP, has made several proposals, such as prompt reporting and information sharing, mechanisms for cooperation among law enforcement, more partnerships with other similarly oriented organizations, greater restrictions of trade in wildlife, and stricter following of implementations under CITES).

<sup>350</sup> See *WWF Statement on Senate Hearing on African Poaching Crisis*, STATE NEWS SERV., May 24, 2012, <http://www.prweb.com/releases/2012/5/prweb9543974.htm> (“[W]ildlife crimes need[] to be treated with the same seriousness and level of attention that we give other transnational organized crimes”).

<sup>351</sup> See *id.*

<sup>352</sup> See Lee Rondganger, *Operation Crash Crushes Rhino Horn Ring: US Agents Arrest Seven, Including an Antiques Expert*, STAR (S. Afr.), Feb. 24, 2012, at 11, <http://www.iol.co.za/dailynews/news/rhino-horn-breakthrough-1.1242087#.UUyCWIVpe0c> (reporting that Operation Crash, an 18 month investigation, led to the arrest of at least seven people involved in the illegal trade of rhinoceros horns); U.S. Dep’t of Justice Env’t & Natural Res. Div., *Federal Officials Announce Nationwide Crackdown on Black Market Rhino Trade*, US FED NEWS, Feb. 23, 2012.

<sup>353</sup> See Rondganger, *supra* note 352.

Hillary Clinton also recognized the problem, stating that “wildlife trafficking has serious implications for the security and prosperity of people around the world.”<sup>354</sup>

The United Nations has also taken an interest, calling for its member nations to “step-up” and combat the illegal rhino trade.<sup>355</sup> Working together on an international level will be the best way, and maybe the only way, to end the illegal trade of white rhinoceros horns.

### CONCLUSION

There is still more to be done to combat rhinoceros poaching and the illegal trade in rhino horns. People around the world are campaigning,<sup>356</sup> protesting,<sup>357</sup> and petitioning<sup>358</sup> their governments to pay more attention to poaching and to work to stop it. Conservation

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<sup>354</sup> See *Secretary of State Clinton Calls for End to Illegal Wildlife Trafficking*, WORLD WILDLIFE FUND (Nov. 8, 2012), <http://worldwildlife.org/stories/secretary-of-state-clinton-calls-for-end-to-illegal-wildlife-trafficking>.

<sup>355</sup> See *Head of UN-Backed Convention Urges Greater Effort to Combat Illegal Rhino Trade*, *supra* note 127.

<sup>356</sup> See *Kenya: New Campaign to Stop Rhino Poaching in Country*, *supra* note 342.

<sup>357</sup> See Maregele, *supra* note 28 (describing the scene outside South Africa’s Parliament on National Rhino Day: protestors drew a chalk outline of a rhino horn and splattered the pavement with red paint. In protest of the South African government’s lax on anti-poaching enforcement. Signs were seen saying “will your children get to see a rhino?” and protestors were chanting “no bail, straight to jail.” The protestors hope the government will take harsher actions against poachers and greater strides to protect the endangered species).

<sup>358</sup> See Edward West, *Zuma to Get Ultimatum to End Rhino Poaching*, BUS. DAY (S. Afr.), Dec. 29, 2011, <http://www.bdlive.co.za/articles/2011/12/29/zuma-to-get-ultimatum-to-end-rhino-poaching;jsessionid=A13531D3681882AB56345432A5D5FF96.present2.bdfm> (animal conservationists have put together a “Rhino Ultimatum” to present to South African President Zuma and several other South African government officials to urge greater government action against poachers. The ultimatum will call for new laws on sales of state-owned rhinoceros, a census of the rhinoceros population, a moratorium on rhino-hunting trophy permits, a lift of the media “gag” so officers can comment on the situation to the media, to engage more actively with demand countries like Vietnam, and to exhibit greater compliance with CITES. The petition already has over 7,000 signatures and hopes to get upwards of 250,000).



groups have created plans to stop poaching.<sup>359</sup> However, poaching will continue despite South African efforts to curb supply as long as the demand in Asian countries like Vietnam remains. Therefore, it is of the utmost importance to educate people that rhinoceros horns do not cure cancer and other ailments. Unfortunately, convincing the Vietnamese citizens may be easier said than done. If they abandon this myth, the demand for rhino horns will fall off drastically, thereby eliminating the poachers' financial incentives.

Additionally, a continued international effort against poaching will be important. Cooperation and shared intelligence will make breaking trade routes and law enforcement efforts easier, placing more pressure on poachers and traffickers themselves. Eventually, poaching risks will begin to outweigh the benefits. This will be especially true if nations increase statutory penalties for illegal poaching and trading of rhinoceros horn.

Finally, it is important for each country, individually, to continue efforts to stop rhino poaching and trading. While South Africa has taken great strides, there is still more that it can do, including cracking down on so called "khaki-colored" crimes. More importantly, Vietnam, which has slowly begun to take action, must implement and enforce a stricter regulatory system. With these recommendations, as well as continued education and support from activists around the world, the white rhinos can grow and flourish for future generations instead of ending up like the Javan and Black rhino—extinct. One can only hope.

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<sup>359</sup> See, e.g., Tony Carnie, *Legal Rhino Horn Sales Plan Mooted*, STAR (S. Afr.), July 13, 2012, at 5, <http://www.iol.co.za/the-star/legal-rhino-horn-sales-plan-mooted-1.1340555#.UUyFR4VpfC4> (one conservation group proposed a plan to sell horns legally directly to Asian pharmaceutical companies and to use the money to fund rhinoceros protection); *Rhino Summit in Nairobi Develops Action Plan*, ETURBO NEWS (Uganda), Apr. 7, 2012, <http://www.eturbonews.com/28680/rhino-summit-nairobi-develops-action-plan> (conservation group African Wildlife Foundation met with wildlife authorities, private rhino reserve owners, and other conservation groups to outline an action plan. The plan consisted mainly of expanding support for surveillance to officials and lobbying for amendments to change financial penalties and prison terms).