

Effectiveness of Malawian Law in Protecting Pangolins from Illegal Wildlife Trade

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Abstract

Illegal wildlife trade is one of the most common problems concerning wildlife conservation in Malawi. Pangolins are one of the most traded and trafficked animals despite laws being there to protect them from illegal wildlife trade. The study was conducted in February and March of 2023, to assess the effectiveness of the Malawian law in protecting pangolins from illegal wildlife trade, in the last three years (January 2020-January 2023, which is still on the rise. This study hypothesised that the present Malawian law does not effectively protect pangolins from illegal wildlife trade. A qualitative research with a social legal research approach was conducted, and data was collected through interviews and desk research. Primary data was collected through interviews using a questionnaire with judicial officers such as judges and magistrates and police officers in Mzuzu, Lilongwe, Zomba and Machinga, but also officers at the Department of National Parks and Wildlife including Lilongwe Wildlife Trust. Additional questionnaires were administered to twenty (20) University of Malawi Law Students to understand their perception on pangolins and illegal wildlife trade in line with their legal stand. Secondary data was gathered by assessing Malawian law (The Constitution, National wildlife policy, National parks and wildlife Act and the Penal code) on how it is enforced and implemented and the challenges involved. Data was then analysed using the narrative analysis method. The study showed that illegal pangolin trade cases are still on the rise. The Malawian law has some strengths and weaknesses in dealing with illegal pangolin trade. There are several barriers to practical implementation of the law in Malawi. For instance, people are ignorant of the law in question, lack sensitisation, awareness and civic education, geographical set up of areas such as Mangochi and Machinga promote illegal pangolin trade, poor investigative and prosecution skills result into acquittals of some culprits, and that there is knowledge gap on the side of judicial officers in applying the law. It was therefore concluded that the law is not effective in protecting pangolins from illegal wildlife trade. Most importantly the provisions in the present law have to be maintained, but the enforcement and implementation of the law needs to be improved. People need to be civic educated to know how the law works.

1. Introduction

Illegal wildlife trade is one of the most common problems concerning wildlife conservation in Malawi. Pangolins are one of the most traded and trafficked animals, despite law being there to protect pangolins from illegal wildlife

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trade and ensure they are effectively conserved and saved from extinction [1]. A pangolin is a shy, elusive and secretive scaly mammal which is endemic to Asia and Africa [2]. All eight species of pangolin are threatened with extinction and are listed on the International Union for Conservation of Nature (IUCN) Red List as either Vulnerable, Endangered or Critically Endangered. Loubser [2], states that since 2017, all eight species of pangolins are prohibited from international trade under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

According to Loubser [2], in just ten years (2012 to 2022), more than 1 million pangolins have been illegally traded, which makes them the most trafficked mammals in the world. This makes the illegal pangolin trade a global conservation concern. Pangolin trafficking occurs beyond African and Asian pangolin range states. A report published by wildlife trade monitoring network found that at least 120 tonnes of whole pangolins, parts and scales were confiscated by law enforcement officers between 2010 and 2015. This involved a total of 1270 seizure incidents in 67 countries or territories [2].

Waterland [3], reported that an exponential increase in the scale and nature of the Illegal Wildlife Trade (IWT) of pangolins globally has left governments, policy makers and conservationists lagging far behind the perpetrators of the crime. Criminals are shipping enormous quantities of high value products such as pangolin scales and are largely untouched by ineffective enforcement efforts. Given significant black market prices for wildlife products, it is not surprising that organized crime networks have turned their attention to IWT of pangolins. Pangolin related arrests have been reported in recent years, an indication of the illegal wildlife trade of pangolins taking place. It is important to conserve pangolins because they are important in that they have ecological, economic and scientific importance. They are unique, scaly, attract tourists and used in studying evolution among others. They control insect populations, and it has been reported that a single pangolin can eat seventy million insects a year, hence important in controlling forest termites and balancing delicate ecosystem processes [3].

The National Parks and Wildlife Act of 1994 was established with the purpose of conserving selected wildlife communities in Malawi. This include the protection of rare, endangered and endemic species of wild plants and animals, the control of import and export of wildlife species and specimens, the implementation of relevant international treaties, agreements or any other arrangement to which Malawi Government is a party and the promotion of local community participation and private sector involvement in conservation and management of wildlife as under Section 3 of the Act [4]. In line with this, Section 86, read together with Section 91, Section 98, Section 99, Section 110 and Section 111 criminalises the illegal Pangolin trade.

In Malawi, a 2021 report by Lilongwe Wildlife Trust (LWT) [5], explains that Malawi is a range state for the Temminck's ground pangolin, the only pangolin species found in Southern Africa, now threatened with extinction. In the report, the Director of Malawi's Department of National Parks and Wildlife stated that the increase in pangolin trafficking is not surprising, considering recent research estimates, that global pangolin populations have declined by 80% in the last 20 years. The Department of National Parks and Wildlife further explained that for Malawi, this shift from ivory trafficking to pangolin is because the size of a pangolin is so small, easy to conceal and it is fetching a reasonable amount of money on a black market. Additionally, the existence of foreign nationals who feed on pangolins as delicacy, but also use of scales in medicine, increases cases of pangolin trafficking.

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is a treaty that became effective in 1975 to protect endangered animals and plants from the threats of international trade, to which Malawi is a party. According to Chandler [6], an awareness of law enforcement capabilities in African Pangolin range states is something that needs to be established as a fundamental consideration when tackling pangolin trafficking and associated criminality. The numerous core policing and law enforcement capabilities of agencies tasked with combating wildlife crime lead to the derivation of essential law enforcement elements that are integral to ensuring sustainable and long-term effective enforcement against organised criminal networks, beyond low-level hunting and poaching. It is therefore essential for people to be sensitised on the contents and stipulations of the CITES.

Pangolins have had a complex history. Challender [6], reported how pangolins have been managed and whether CITES has been effective at deterring international pangolin trade, and future options for conserving pangolins. The introduction of zero export quotas for international commercial trade in wild-caught Asian pangolins in the year 2000, in combination with unilateral measures, appears to have contributed to the near cessation of trade in Asian pangolin skins in the early 2000s. Challender further stated that CITES has otherwise largely failed to deter international trade in pangolins. Borzee [7], reported that governments may need to consider criminalising the use of pangolin scales in medicines and their total ban from the trade. Otherwise, the demand for pangolins will continue to drive these species to extinction, despite national laws and legislation established to protect them. It was further suggested that there is a need to include all Asian pangolin species in the CITES regulations, and list all four species of Asian pangolins as endangered on the International Union for Conservation of Nature Red List.

The environment, wildlife-human interface is becoming increasingly intricate, resulting in ever greater contact between humans and wildlife. Borzee [7], further explains that the wildlife trade in Asia is supported by live markets in most population centres that include sales of both native and exotic species. These animals are

often housed in overcrowded and unsanitary conditions that place both sellers and buyers under high risk of pathogens and zoonotic diseases and create the perfect conditions for pathogens to jump the species barrier. Wildlife markets threaten the survival of a wide range of species, contributing to the extinction crisis looming over most of Asia's wild fauna. In addition, biodiversity-rich forests, wetlands, and aquatic resources throughout Asia are being cleared and converted to meet the growing demands of increasing human populations. There is therefore a call for the regulation of, and encouragement to consider bans on, the wildlife trade, specifically live animals and non-sustenance wildlife products. A crucial initial step towards reducing the wildlife trade and the harvesting of animals from the wild is the widespread development and enactment of regulations that control human use of wildlife. Governments must clearly articulate, implement, and enforce these regulations so that they do indeed deter the demand for wildlife and wildlife products. To be effective, regulations must also be sufficiently comprehensive and address potential loopholes. For example, in June 2020, the People's Republic of China banned the trade of pangolins (eight species from the family Manidae) under the Wildlife Protection Law [7].

According to Soewu & Ingram [8], African Pangolins have historically been exploited for bush meat both for sustenance and as a source of income. Their scales and other body parts have been used in traditional medicine as well as in a range of other applications, such as spiritual remedies and omens. This has involved all four species, the white-bellied (*Phataginus tricuspis*), black-bellied (*P. tetradactyla*), Temminck's (*Smutsia temminckii*) and giant pangolin (*S. gigantea*). Exploitation of Pangolins for these purposes continues to take place [8]. Available evidence indicates that local and national use of pangolins, particularly in West and Central Africa, is unsustainable and contributes to population declines. It is thought that international legislation is not sufficient to protect pangolins because the laws have not been enforced. This is, in part, due to lack of political will and lack of funding. Local populations are also not aware or engaged in the drive to conserve these unique animals [8].

Ingram et al. [9], in 2017, reported that overexploitation is one of the main pressures driving wildlife closer to extinction, yet broad-scale data to evaluate species' decline are limited. The number of African pangolins hunted has increased by 150% and the proportion of pangolins of all vertebrates hunted has increased from 0.04% to 1.83% over the past four decades. However, there has been no trends in pangolins observed at markets, suggesting the use of alternative supply chains. The price of giant (*Smutsia gigantea*) and arboreal (*Phataginus* sp.) pangolins in urban markets have increased 5.8 and 2.3 times, respectively, mirroring trends in Asian pangolins. Efforts and resources are needed to increase law enforcement and population monitoring, and investigate linkages between subsistence hunting and illegal wildlife trade [9].

Ingram et al. [9], in 2017 further explained that while CITES provides a mandate for sustainable international wildlife trade, recently banning trade of all pangolin species, it does not provide enforcement mechanisms on the ground. To implement the trade ban, governments, law enforcement officials, and conservationists need to better understand the supply chains of pangolins from Africa and Asia. This would help implement an appropriate monitoring program and increase the capacity to enforce the ban and intercept illegal shipments. Efforts should focus on determining local demand and when or where this leads to unsustainable hunting. For cases where pangolin hunting is unsustainable, efforts should be made to improve and increase domestic law enforcement. Increased public awareness would reduce indiscriminate hunting methods such as snaring and improve local community participation in finding effective solutions to illegal wildlife trade. Next steps should involve investigating harvests and enforcing legislation in support of countrywide conservation efforts. In addition, it is imperative that China considered as the largest market and primary destination for pangolins and pangolin products should heighten implementation of awareness campaigns as well as increase monitoring, law enforcement and penalties [6, 9].

In Malawi, a research by Lilongwe Wildlife Trust [5] revealed that lack of awareness, porous borders, poverty and corruption contribute to people's involvement in illegal pangolin trade. There was a twelve fold increase (from 3 to 38) in pangolin trafficking court cases from 2017 to 2020. The research further reported that granting bail leads to longer trials and there are discrepancies in sentencing and application of the law [5]. This study therefore aimed at assessing the effectiveness of the Malawian law in protecting pangolins from illegal wildlife trade which is on the rise.

2. Methodology

The qualitative research paradigm was adopted for this study. This was done because the study involved assessment of the Malawian law, how it is enforced and implemented and the challenges involved without having to focus on statistical or numerical data.

2.1 Data Collection Approach and Analysis

The research employed a social legal research approach to achieve its objectives. The study relied on both primary and secondary sources of data. Primary data was collected through interviews using a questionnaire with judicial officers such as judges and magistrates and police officers in Mzuzu, Lilongwe, Zomba Mangochi and Machinga, but also officers at the Department of National Parks and Wildlife including Lilongwe Wildlife Trust. One

individual in each category of the officers in the five areas of study (Mzuzu, Lilongwe, Zomba, Mangochi and Machinga) were interviewed using a structured questionnaire to have an in-depth information on the topic under study. Questionnaires were also administered to twenty (20) University of Malawi Law Students to understand their perception on pangolins and illegal wildlife trade. Secondary data was gathered by assessing Malawian law, (The Constitution, National wildlife policy, Environmental management Act, National parks and wildlife Act and the Penal code), and how it is enforced and implemented and the challenges involved. Data was then analysed using the narrative analysis method in which data was grouped into themes.

3. Results and Discussion

3.1 The Concept of Illegal Pangolin Trade

The concept of illegal pangolin trade involves not only or is not limited to only the actual buying or selling of pangolins illegally. It also covers taking, hunting, molesting, or reducing into possession any listed species, possession of, transferring or receiving in transfer or attempting to possess, sell, buy, transfer or receive in transfer any specimen of listed species, that is in the context or set up of Malawian law on illegal pangolin trade. Thus illegal pangolin trade according to Malawian law is encompassed under a provision that stipulates that any person who is convicted of an offence involving, taking, hunting, molesting, or reducing into possession any listed species, possession of, selling, buying, transferring or receiving in transfer or attempting to possess, sell, buy, transfer or receive in transfer any specimen of listed species commits a crime [4] This illegal practice can be deterred through a diversity of approaches and hence conserving pangolins (Figure 1).

3.2 The Concept of Practical Barriers

For a law to be effective, there is need to be no or fewer practical barriers. Practical barriers lead or make a law ineffective. This entails that the more practical barriers there are, the less effective the law becomes. Practical barriers such as low literacy levels, lack of awareness and civic education are a threat to the conservation of pangolins. Low access to law means, the majority of Malawians will have less knowledge of the law and less understanding of the law on illegal pangolin trade, hence more people will unknowingly continue involving themselves in illegal pangolin trade [4].

3.3 The Concept of Civic Education and Awareness

Civic education and awareness should be based on a progressive, activist, maximal conception which is a process aimed at empowering individuals, in general, to learn to struggle for societal transformation and social justice. In other words, learners must open up to different cultures in order to learn and appreciate that their empowerment as learners is not unidirectional but that they could learn as well from people with different life experiences [10]. This entails that civic education will bring awareness to the people on the law on illegal pangolin trade and conservation and this will therefore result in reduced practical barriers, which include low literacy levels, lack of awareness and civic education and less access to law, among others. This in the long run, results in effective law enforcement and implementation because people would be aware of the importance to conserve pangolins and the stiff punishment available by law for any person convicted for being involved in illegal pangolin trade.

3.4 The Concept Effective Law Enforcement and Implementation

Effective law enforcement and implementation leads into deterrence through stiff punishments or sentences to convicts of illegal pangolin trade. The present law on illegal wildlife trade, the National Parks and Wildlife amendment Act was passed in 2017, introducing a maximum penalty of 30 years in prison for offences against species such as pangolins [4]. Giving stiff sentences to convicts would deter the would-be offenders from committing the crime.

The idea that law enforcement which is the apprehension and punishment of law breakers-serves as a means of deterring future crimes by those apprehended and by others is basic to crime control legislation in both ancient and modern era. An extreme view is that law enforcement has no deterrent effect on offenders, at least those who commit serious crimes, essentially because offenders are very different from other human beings [11]. Indeed, both subjective and objective schools of criminology have generally linked criminal behavior to the offender's unique motivation which, in turn, has been attributed to unique inner structure. And impact of exceptional social and family circumstances, or to both [11]. This view is defended by reference to some psychological studies of punishment, and some empirical investigations of the effectiveness of punishment. Even if law enforcement does not have any deterrent effect, it must surely have some preventive effect since those who are apprehended and punished by some form of detention are prevented, at least temporarily, from committing further crimes. Thus, the extreme view discussed implicitly attributes to law enforcement a preventive and deterrent effect [11].

3.5 The Concept of Deterrence and Conservation

Deterrence leads to reduced crime rate [12], and therefore in illegal pangolin trade, deterrence will save pangolins leading to effective pangolin conservation and saving them from extinction, and therefore Malawi will continue to enjoy the ecological, scientific and economic importance and benefits of having this rare and endangered species of animal (Figure 1).

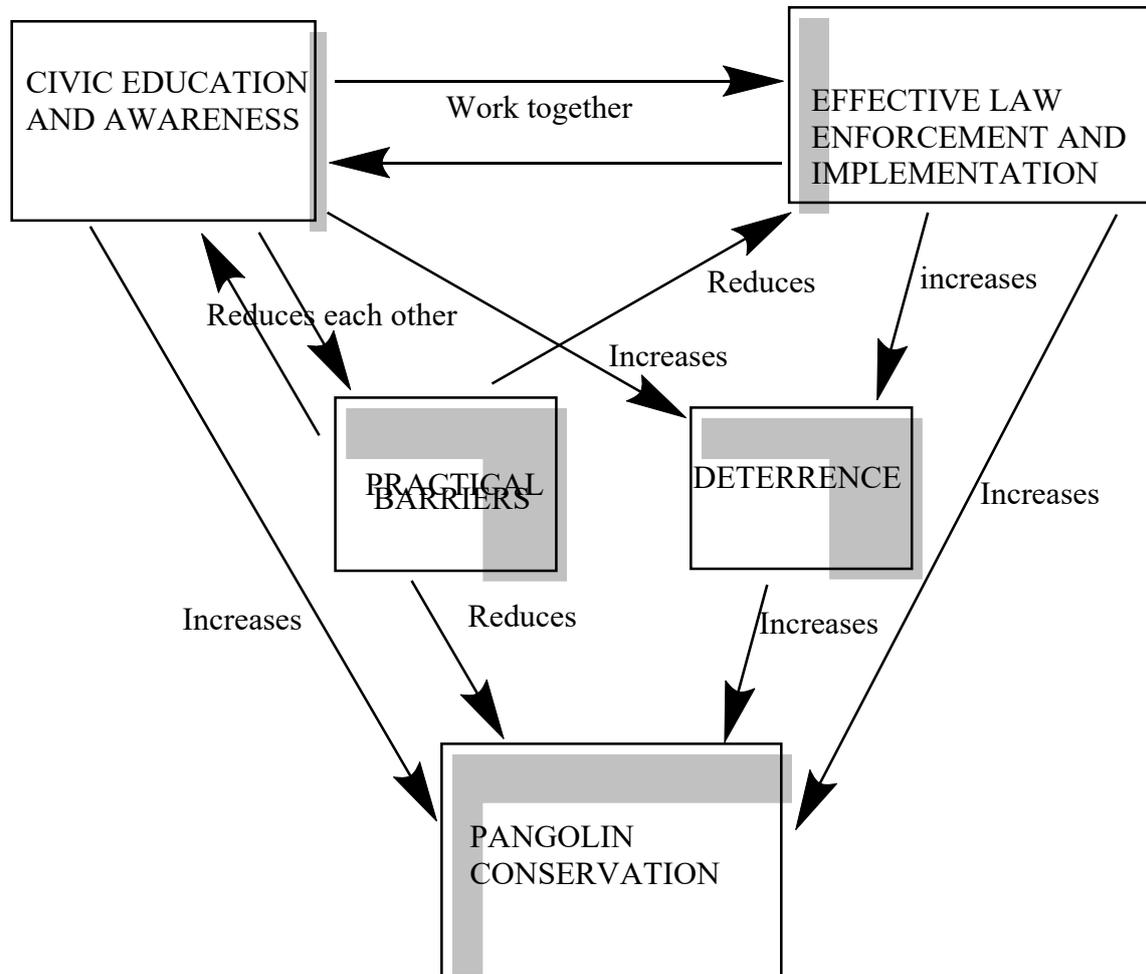


Fig. 1 Flow Map showing Pangolin Conservation

3.6 Leroy Yann's Theory of Legal Effectiveness

In assessing the effectiveness of Malawian law in protecting pangolins from illegal wildlife trade, it is important to understand theories of effectiveness of law. Yann's theory on legal effectiveness states that effective law simply means enforcing the law [13]. Some jurisprudential theories take effectiveness to be one of the essential elements of their concepts of law. This is evident in those legal positivistic theories that regard effectiveness as a condition of legal validity. Natural law theories do not pay much attention to the concept of effectiveness since they consider validity of legal norms to be entirely independent of their effectiveness [13]. Effectiveness has different meanings within legal discourse. It may refer to the capacity of legal norms to produce legal effects or to their capacity to realise the goals for which they were produced or to the fact that their addressees actually behave as they require of them [14].

3.7 Joseph Raz's Theory

In this theory, Joseph Raz claims "a legal system exists," if and only if it is in force." By this, he means to suggest that the effectiveness of law is its capacity to control the population to which it applies. Despite widespread recognition that effectiveness is a condition of the existence of law, little time has been spent analysing the notion [15].

There is evident failure of many legislative initiatives in many countries, developed and less developed, in the second and third worlds as well as in the first. The failure of a law to achieve its intended effect may seem a matter of small moment when taken in isolation, but there are reasons why in fact such failures, when multiplied or when they touch some vital aspect of social life, impact the whole fabric of law and order in a society by causing a general turning away from, a rejection of, or a contempt for law on the part of those subject to it. When looking at the laws in practice, the first task that must be performed is to define terms, and especially the meaning of "effectiveness" itself. A legal system is a purposive system existing in a society, whose component laws are made by those having positions of power or influence in the society. The purpose of the laws is to regulate or shape the behavior of the members of the society, both by prescribing what is permitted or forbidden, and enabling them, through the establishment of institutions and processes in the law, to carry out functions more effectively [16]. This in the Malawian context means institutions or bodies such as Malawi Police, Malawi Defence Force, Department of National Parks and Wildlife and Judiciary. A general test of the effectiveness of a law is therefore to see how far it realizes its objectives or how it fulfils its purposes. Effectiveness of a law is measured by the degree of compliance, in so far as a law is preventive, that is it is designed to discourage behavior which is disapproved of, one can see if that behavior is indeed diminished or absent [16].

Some of the main reasons for the ineffectiveness of laws are as follows. The first reason lies at the originating or transmitting end, in the equipment that formulates and emits a norm. All verbal formulations, legal as well as non-legal, are subject to the defects of every linguistic message. It is not only the inherent limitations of linguistic expression that get in the way of the efficient formulation of a legal message, it is also the fact that, in developed legal systems, the linguistic register and structure used for such messages is an artificial one. It corresponds only fragmentarily with the language habitually employed by ordinary persons in communicating. In ordinary communications systems we try to ensure greater effectiveness for our messages by various devices, notably through redundancy, through better design, and through feedback. Legal systems are generally deficient in each of these areas. The message has little chance of getting through to its intended recipients, and needs reinforcement by education and parallel communication. Legislators fail to realize that it is not enough to make a law, and even to communicate it effectively to its subjects, if there is no monitoring of its reception and implementation, no feedback, in other words. A second reason for ineffectiveness of laws lies in the possible conflict between the aims of the legislator and the nature of the society in which he intends his law to operate, and the contrast between the customary society and the modern society is most acute. Lastly, we note failures in implementation of laws. Very often there are no sufficient implementing norms, orders, institutions, or processes incorporated in the law, which is left to make its way, along with all the rest of the legislated and unlegislated law, as best as it can [16].

The legal framework under which pangolins are protected from illegal wildlife trade in Malawi constitute the following aspects: Firstly, it is important to understand that in Malawi, the constitution is the supreme law of the land [17]. The same constitution in section 211 states that any international agreement entered into after the commencement of the Constitution shall form part of the law of the Republic if so provided by an Act of Parliament, and binding international agreements entered into before the commencement of the Constitution shall continue to bind the Republic unless otherwise provided by an Act of Parliament. This means that any international law or agreements concerning protection of pangolins from illegal wildlife trade that Malawi is party to, are applicable in Malawi.

Section 3 of National Parks and Wildlife Act states that the Act was established with the purpose of conservation of selected examples of wildlife communities in Malawi, which include protection of rare, endangered and endemic species of wild plants and animals. The control of import and export of wildlife species and specimens, the implementation of relevant international treaties, agreements or any other arrangement to which Malawi Government is a party and the promotion of local community participation and private sector involvement in conservation and management of wildlife [4]. According to Loubser, all eight species of pangolin are threatened with extinction and are listed on the International Union for Conservation of Nature (IUCN) Red List as either Vulnerable, Endangered or Critically Endangered. Since 2017, all eight species of pangolins are prohibited from international trade under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) [2]. This therefore entails that pangolins in Malawi are listed or endangered species, and these international laws are applicable in Malawi since Malawi is party to these laws. In the National Parks and Wildlife Act, the following sections are the laws applicable in protecting Pangolins from illegal wildlife trade. Section 86 criminalises possession, selling and buying, of protected species, endangered species or listed species [4]. Section 91 states that any person who unlawfully possesses or who purports to buy, sell, or otherwise transfer or deal in any government trophy, commits an offence, except otherwise provided by section 90. And section 90 alludes to the fact that, possession by any person of a specimen of a protected species, endangered species or listed species without a certificate of ownership shall, for the purposes of this section, be prima facie evidence of the specimen being a government trophy and of unlawful possession thereof by such person.

Further section in the same National Parks and Wildlife Act, Section 98 states that any person who imports, exports or re-exports or attempts to import or export or re-export any specimen of a protected species, endangered species or listed species (a) except through a customs post or port; or (b) without producing to a

customs officer a valid permit to import, to export or to re-export the specimen, commits an offence. Section 99 states, (1) The Ministry may, after consulting the Minister responsible for Trade and Industry, make regulations imposing additional restrictions on imports, exports or re-exports of specimens of game species, protected species, endangered species or listed species and for the purposes of such regulations the Minister may incorporate the requirements under any international, regional or bilateral agreement relevant to such species to which Malawi or the Government is a party, and (2) any person who contravenes regulations made under subsection (1) commits an offence. Section 110 (b) of National Parks and Wildlife Act stipulates that any person who is convicted of an offence involving, taking, hunting, molesting, or reducing into possession any listed species, possession of, selling, buying, transferring or receiving in transfer or attempting to possess, sell, buy, transfer or receive in transfer any specimen of listed species shall be liable to imprisonment for a term of thirty years [4].

The same National Parks and Wildlife Act in the following sections, Section 110A states that any person who is convicted of an offence involving (a) taking, hunting, molesting, or reducing into possession any endangered species; (b) possession of, selling, buying, transferring or receiving in transfer or attempting to possess, sell, buy, transfer or receive in transfer any specimen of endangered species; (c) the contravention of provision of this Act which provides for the conduct of a licensee under a professional hunter's licence; or (d) the contravention of sections 33, 35 (c) and 38 of this Act, shall be liable to a fine of K15,000,000 and to imprisonment for a term of thirty years, and in any case the fine shall not be less than the value of the specimen involved in the commission of the offence. Section 110B stipulates that any person who is convicted of an offence involving (a) taking, hunting, molesting, or reducing into possession any listed species; (b) possession of, selling, buying, transferring or receiving in transfer or attempting to possess, sell, buy, transfer or receive in transfer any specimen of listed species; or (c) the contravention of provision of this Act which provides for the conduct of a licensee under a professional hunter's licence, shall be liable to imprisonment for a term of thirty years. And lastly Section 111 states that any person who is convicted of an offence under section 98 or under regulations made pursuant to section 99 shall be liable to imprisonment for a term of thirty years. It must be noted that monetary fines are currently replaced with imprisonment with hard labour as in the case of *Mkanda vs Republic* [18], where a fine was replaced with 8 years imprisonment with hard labour.

The protection of pangolins from illegal wildlife trade in Malawi falls under the laws discussed, which are in the constitution, which gives power enabling application of international law to which Malawi is party, that is, the IUCN and CITES, and it also gives powers enabling the legislature to make Acts of parliament which include the National Parks and Wildlife Act and also amend the laws. Most cases so far registered involve possession or offering to sell pangolins, and protection of the pangolin in Malawi most specifically uses Section 86, read together with Section 91, Section 98, Section 99, Section 110B and Section 111 of National Parks and Wildlife Act 1994 [4].

3.8 Trends of Pangolin Cases Reported between 2020 and 2023 in Malawi

Information gathered from judicial officers such as judges and magistrates and police officers in Mzuzu, Lilongwe, Zomba, Mangochi and Machinga, but also officers at the Department of National Parks and Wildlife including Lilongwe Wildlife Trust showed that the recent trends of Pangolin cases reported from January 2020 to January 2023, were criminal cases. These cases continue to rise, with central region recording the highest, followed by eastern region, then southern region and northern region recording the lowest. For instance, from 2020 to 2023, Lilongwe recorded one hundred and six cases, Mangochi registered sixteen cases and Mzuzu registered and prosecuted five cases. At least three cases were registered monthly at Liwonde Magistrate Court. These cases were from around Machinga District only. This indicated that Machinga has the highest ratio of illegal pangolin trade cases though small compared to Lilongwe in terms of size and population. Geographical set up and topography of Machinga is a contribution to its having the highest ratio of cases, because it has dense forests, mountains and hills which are a good habitat for pangolins and it also borders Mozambique which has a high population of pangolins. Pangolins therefore, can easily move on their own from Mozambique and easily be smuggled by people from Mozambique into Malawi. This also means that other districts that have similar topography and geographical set up like that of Machinga and bordering Mozambique are most likely to have a higher population of pangolins and increased illegal pangolins possession. A research by Heinrich reported that Mozambique is one of the five countries in Africa which holds a record of having 100% cases being those of smuggling or trafficking of pangolins out of Mozambique [19]. This is a sign that bordering countries and especially its districts are expected to have a higher number of illegal pangolin trade cases.

3.9 The Strengths and Weaknesses of Malawi's Present Law on Illegal Pangolin Trade

This study has established that the Malawi's existing law on illegal Pangolin trade, imposes harsh punishments which presumably have the capability to deter potential criminals. The new law amended in 2017, National parks and wildlife Act, has enhanced the punishment to do with possession and sale of pangolins and this has made it possible for courts to impose stiff punishments. Malawi has done away with the option of paying a fine on offences such as being found in possession of listed species and dealing in government trophy and once one is convicted of

offences of this nature, one is likely to get a custodial sentence and not a fine. For example in *Mkanda vs Republic* [18], a fine was replaced with 8 years imprisonment with hard labour. Similarly, in the case of *Kaunda and Kaunda vs Republic* [20], a fine was also replaced with 8 years imprisonment with hard labour and it was stated that this has worked as deterrent method.

Another established strength is that the law is clear, as it states that whoever possesses, offers for sale, deals in government trophy, imports, exports or re-exports pangolin specimen commits an offence (Sections 86 (1), 91(1) and 99(1) of National Parks and Wildlife Act Cap 66:07 of the Laws of Malawi). The penalty is stiff as provided in section 110B (b) of National Parks and Wildlife Act Cap 66:07 with a maximum sentence of thirty years custodial sentence and minimum being six years according to sentencing guidelines for wildlife cases [4]. The law includes international law in controlling illegal pangolin trade. Pangolin is, in Part III of National Parks and Wildlife regulations, a protected, endangered and listed species (Declaration Order of 2017). This is similar to Appendix I of Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The law is not difficult to read, understand and interpret, since it is written in simple and clear court language which is English.

Nevertheless, the weaknesses of the existing law on illegal Pangolin trade are the issues of entrapment. Entrapment in law is most easily defined as when one or more law enforcement agents like the police entice someone to commit a crime they wouldn't have done if they were not enticed by the police officer [21]. Entrapment is therefore, problematic because it sometimes induce an innocent person to be tempted to get involved in the illegal business. It was established in this study that in Machinga, Mangochi and Salima there has been cases of entrapment. Police officers and game rangers in trying to know or catch those involved in the illegal pangolin trade, would offer some money pretending that they would buy or they were looking for anyone who could sell them a pangolin. Judges and magistrates reported that some of the accused individuals were tempted and would go to look for Pangolins in the forest and would later be arrested for a crime they would have not committed if they were not enticed by the officers. It was also established that there was lack of sensitisation. Most people in the rural areas are not aware of the law and crimes involving pangolins. Cases take too long to conclude which leads to leaving space to those on bail to transfer or conceal the proceeds from the trade. There has been an overemphasis on sentencing while paying a blind eye to preventive measures but also failure to explicitly show a link to laws on asset recovery. Corruption and poverty are the other main factors weakening the laws against the illegal trade and trafficking of pangolins. Only the go-betweens are arrested whilst the master minders are left free.

3.10 Barriers to the Practical Implementation of Malawi's Present Law

The barriers that are there to the practical implementation of the present law existing in Malawi are ignorance of the law in question, lack of sensitisation, awareness and civic education, geographical set up of areas such as Mangochi and Machinga, poor investigative and prosecution skills resulting into acquittals of some culprits, knowledge gap on the side of judicial officers in that the law is procedurally complex hence judicial officers require training to effectively interpret and apply it.

Wealthy corrupt criminal justice players such as investigators, prosecutors, court officials and boarder officials where pangolins are trafficked from other countries such as Mozambique among others pose a barrier in illegal pangolin trade eradication. Lack of enough financial resources and shortage of human capital is also a barrier. Unfortunately only the middle men are arrested while the master minders are let free because they have enough money to buy their way out. In a related study by Heinrich [19], wealthy people from rich countries easily corrupt, bribe the police officers and border officials and easily make their way out. The study also revealed that China and the US are the two major destination countries of pangolins in the illegal trade. China appears to be an endpoint for much of the illegal trade, supporting the findings of the existing literature [19]. Not only was China the most commonly involved country, but it was also the main destination for large-quantity shipments of scales and whole animals. This can most likely be attributed to an ongoing demand for pangolin meat and scales, which is believed to be on the increase. It has been suggested that urban consumption of pangolin meat, might be tied to increasing affluence, while the use of pangolins for medicinal and tonic food purposes in China dates back to the 16th century and is deeply rooted culturally. There also remains a legal market in China for pangolin scales, for which scales must be certified, but uncertified scales are still sold illegally within that country [19].

Another barrier established from this study was that of poverty. Poverty has lured and or tempted so many people into such illegal trade of pangolins. Poverty makes people believe that pangolins fetch a lot of money on the illegal market. The police officers and officers at the Department of National Parks and Wildlife including Lilongwe Wildlife Trust, indicated that, the belief that pangolin scales and other parts are used for treating other ailments, used in money multiplication business, but also inadequate awareness on the ecological importance of pangolins, and that pangolins can easily be concealed and transported from one point to another without detection are all barriers. The accused persons who are found in illegal possession of pangolin most of the times are not the real owners of the pangolin as the real owners are not caught in most of the cases. Judges and Magistrates indicated

that, most of the accused persons when found guilty and asked for reasons for being found in illegal possession of pangolin, the response is that poverty had led them into such an act. And most of the times the accused persons are first time offenders. Therefore, such reasons make the courts to be lenient when passing the sentence. Trial length regularly falls short of the judicial standards, granting bail leads to longer trials, and discrepancies remain in the sentencing and application of the law.

In support of the discussion on poverty, Emordi [22], reported the complicated link between poverty and illegal wildlife trade. Pangolin scale trade and trafficking chain, revealed that five households located around Deng-Deng National Park (East Cameroon) and three near Mpem & Djim National Park (Central Cameroon) possessed white bellied pangolin scales [22]. Local residents reported that the scales of the black-bellied pangolin, which they referred to as pangolin sorcier (meaning witchcraft pangolin), were more expensive than those of other pangolin species. Presumably because of their scarcity and the mystical attributes in the study area. Some local people preserved pangolin scales that they removed after soaking the animal in boiling water so that the scales could be removed without damaging the flesh. Local residents also mentioned hearing about a final destination for pangolin products involving a Chinese national, suggesting that local communities did not contact international purchasers directly but possibly worked through middlemen. In one of the surveyed villages, it was discovered from a collector of pangolin scales who reported buying the scales from local residents. After having a sufficient quantity, the collector transports the pangolin scales to the cities by smuggling them in goods vehicles (carrying smoked fish from a reservoir and other goods from the railway station). Then paying bribes where necessary to evade the authorities at control checkpoints. Once in the city, the scales are sold to other middlemen. The middlemen prepare them for transport to the next stage of the trade chain. The scales removed from an individual adult white-bellied pangolin were estimated to be worth 0.76 United States Dollar (USD), and 1 Kilogram (Kg) of scales (approximately the weight of scales from five adult white-bellied pangolins) was estimated to be worth 3.84 USD. The scales of the giant pangolin were estimated by six people to be worth 61.53 USD per Kg, which is more than 15 times the value estimated for the scales of the white-bellied pangolin. Illegal wildlife trade, including the trade of pangolins is incentivised by the availability of markets, hence to address this problem, it require strategic disruption of the available illegal markets globally [23].

3.11 Impacts of the Barriers in the Implementation of Law on the Protection of Pangolins

The impacts of the barriers in the implementation of Malawi's law on illegal wildlife trade and more especially on Pangolins will continue if civic education and awareness is not provided to local communities. Law students at the University of Malawi reported that people need to be educated on the consequences of being found in illegal possession of pangolins and the importance of conserving them. If Pangolins are not protected, there would be shortage of foreign currency in Malawi because pangolins attract tourists. Tourists bring foreign currency such as United States Dollar and British Pound into the country. It is therefore saddening to see that some culprits are able to traffic pangolins and go free without being caught. Making matters worse, there is slow pace in investigation and prosecution of wildlife cases including pangolins. Police officers emphatically reported that the fight against trafficking of pangolins is unlikely to come to an end because the master minds who are the main culprits remain untouched because of corruption. Further, the main market of Pangolins is China and Vietnam and most traders from these countries are rich people who evade punishment [6, 9]. Unless the fight is made by all concerned nations and all concerned stakeholders at local level, the fight against illegal trade and trafficking of Pangolins will remain a myth.

3.12 Improving Malawi's Present Law

The present law on protection of Pangolins can be improved in order to effectively protect and conserve pangolins. This present study has shown that the current law, (The Constitution, National wildlife policy, Environmental management Act, National parks and wildlife act and the Penal code), has no problem in terms of its drafting. It is well placed and strong enough to protect and conserve the Pangolins. Nevertheless, there is need to conduct massive awareness through sensitisation programs and civic education in relation to protection of pangolins from illegal wildlife trade. Focus should shift to finding preventive ways such as sensitising the communities on the laws and effects of pangolin trafficking. The law should explicitly link itself to asset recovery laws, to enable law enforcers deprive culprits of the benefits of the offence. There is a need of doing away with factors or issues like corruption in the fight against the illegal trade and trafficking of Pangolins. Multi-sectoral approach in fighting illegal pangolin trade should take the centre stage. Issue of mind-set change need to be harnessed at all levels of governing systems and should be taught in school cycle to help curb corruption that perpetrates illegal pangolin and wildlife trade. All the law enforcement agencies should work together in curbing the illegal pangolin trade both nationally and internationally.

4. Conclusion and Recommendations

The study findings support Yann's, theory on legal effectiveness, which states that effective law simply means enforcing the law and Raz's theory on legal effectiveness, which argues that a legal system exists if and only if it is in force. This means that the Malawian law, thus the Constitution, National wildlife policy, Environmental management Act, National parks and wildlife act and the Penal code can only be effective if the law is enforced. The current study's findings have revealed the existence of several barriers such as ignorance of the law in question, lack of sensitisation, awareness and civic education, geographical set up of areas, poor investigative and prosecution skills and knowledge gap which have rendered Malawi's law less effective in protecting Pangolins from illegal wildlife trade. Specifically, the law itself is not problematic in the way it is drafted but the enforcement and implementation of the law is problematic and not effective. This is due to the fact that some of the officers and the culprits lack the knowledge of the law. Hence, this affects its implementation but also observation.

The Malawi Government, relevant agencies and the nation in general need to fight corruption and poverty to win the battle against illegal pangolin and wildlife trade. There is need to use multi-sectoral approach, massive awareness, sensitisation programs and civic education in relation to protection of pangolins from illegal wildlife trade. The focus should be on preventive ways. The law needs to be amended so that it should explicitly link itself to asset recovery laws to enable law enforcers deprive culprits of the benefits of the offence.

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Conflict of Interest

The authors declare that there are no conflicts of interest as the research was not conducted for commercial/financial purposes.

Author Contribution

*The authors confirm contribution to the paper as follows: **study conception and design:** Ndawazake Desire Zimba; **data collection:** Ndawazake Desire Zimba; **analysis and interpretation of results:** Ndawazake Desire Zimba; **draft manuscript preparation:** James Jamzy Majamanda. All authors reviewed the results and approved the final version of the manuscript.*

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