WILDLIFE AND FOREST CRIME

ANALYTIC TOOLKIT

SECOND EDITION 2022

ICCWC

CITES

UNODC
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International Consortium
on Combating Wildlife Crime

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CONTENT

Acknowledgements 3
List of abbreviations and acronyms 8
Glossary 9
About the Toolkit 10
Executive summary 12

INTRODUCTION **14**
1. Background 14
2. Purpose, concept, and objectives 17
   2.1 Purpose 17
   2.2 Concept 18
   2.3 Specific objectives 19
   2.4 Audience 20
3. Structure and contents 21
4. Methodology 22
5. Using the Toolkit 23
6. Indicator framework and other tools 25

PART I **26**
LEGAL FRAMEWORKS **27**
1. Convention on International Trade in Endangered Species of Wild Fauna and Flora 28
   1.1 Cites accession and implementation 29
   1.2 Cites reservations 30
   1.3 Domestic implementation of cites 30
   1.4 Scope and schedules 31
   1.5 Cites authorities 32
2. Other international law 34
   2.1 United Nations Convention against Organized Crime 35
   2.2 United Nations Convention against Corruption 36
   2.3 Convention on Biological Diversity 37
   2.4 Convention Concerning the Protection of the World Cultural and Natural Heritage 38
   2.5 Convention on the Conservation of Migratory Species of Wild Animals 39
   2.6 Bilateral agreements 40
   2.7 Domestic implementation of international law 41
3. National wildlife and forest laws 42
   3.1 Wildlife-related laws 44
   3.2 Forest-related laws 45
   3.3 Captive breeding and possession of animals 47
   3.4 Animal welfare laws and regulations 48
   3.5 General environmental laws 49
4. Specialized wildlife and forest offences 50
   4.1 Illegal hunting and related offences 52
   4.2 Illegal logging and related offences 54
   4.3 Illegal harvesting of non-timber flora 56
   4.4 Illegal processing of animal and plant material 57
   4.5 Trafficking and other offences relating to trade and transportation 58

4.6 Import and export offences 59
4.7 Illegal acquisition, possession and consumption 60
4.8 Further offences 61
4.9 Statutory penalties 62
4.10 Crime statistics and other data 63
5. Facilitating and enabling offences 66
5.1 Document fraud and related matters 66
5.2 Money laundering 68
5.3 Corruption-related offences 71
5.4 Tax evasion and non-payment of fees 74
5.5 Wildlife and forest crime linked to the internet 74
5.6 Offences relating to organized criminal groups 76
5.7 Obstruction of justice 78
6. Criminal law – general matters 70
6.1 Sources of criminal law 79
6.2 Principles of criminal liability 80
6.3 Extensions of criminal liability 81
6.4 Liability of legal persons 82

PART II 84
ENFORCEMENT 85
1. Enforcement agencies 86
1.1 Enforcement structures 86
1.2 Enforcement mandates and management 87
1.3 Cites management 89
1.4 National coordination and collaboration 90
1.5 Involvement of the military 92
1.6 Community involvement in policing 93
1.7 Public-private partnerships 94
1.8 Policing and enforcement by private security firms 96
2. Enforcement agency resources 98
2.1 Staffing 98
2.2 Recruitment, tenure and promotion 100
2.3 Training 101
2.4 Facilities and equipment 104
3. Enforcement powers 106
3.1 Sources of enforcement powers 106
3.2 Types of investigative powers 108
3.3 Exercise of power, checks and balances 108
4. Intelligence 110
4.1 Types of intelligence 110
4.2 Intelligence development 111
4.3 Intelligence analysis 114
4.4 Dissemination 116
4.5 Proactive investigations 117
4.6 Risk and threat assessments 117
5. Investigative techniques 119
5.1 Special investigative techniques 119
5.2 Use of informants 127
5.3 Patrols, monitoring and checkpoints 128
5.4 Wildlife and forest crime scene work 129
5.5 Forensics 130
5.6 Corruption investigation methods 132
6. Investigation procedures 134
6.1 Reporting offences 134
6.2 Instigation and management of investigations 136

6.3 Evidence gathering and handling 136
6.4 Identification of suspects 137
6.5 Interviewing 137
6.6 Witness and victim protection 139
6.7 Confiscation and seizure 140
6.8 Investigation outcomes and performance indicators 142
7. Financial aspects of wildlife and forest crime investigations 144
7.1 Financial investigations: contexts and conditions 144
7.2 Financial Inteligence Unit (FIU) 146
7.3 Financial investigation methods 147
7.4 Record keeping and reporting 148
8. Border control and customs 150
8.1 Border and customs inspections 150
8.2 Customs data 152
8.3 Customs performance indicators 153
9. Corruption, integrity and accountability 154
9.1 Corruption 154
9.2 Accountability and integrity of enforcement officers 157

PART III 158
CRIMINAL PROCEDURE AND THE COURTS 159
1. Criminal procedure 160
1.1 From investigation to trial 160
1.2 Jurisdiction 161
1.3 Evidence 162
1.4 Trial without delay 165
1.5 Access to justice 166
2. Source, organization and delegation of the prosecution authority 168
2.1 Resources of the prosecution authority 169
2.2 Prosecution data and outcomes 171
2.3 Prosecution data and outcomes 173
3. Judiciary 176
3.1 Structure and organization of the judiciary 176
3.2 Resources of the judiciary 179
3.3 Information management 182
3.4 Court data and outcomes 182
4. Sentencing and sanctions 184
4.1 Penalties and sentencing 184
4.2 Sanctions 186
5. Restitution, compensation and restoration 188
5.1 Restitution and compensation 188
5.2 Restoration and remedial measures 189
6. Other disruption measures 190
7. Corruption, integrity and accountability of prosecutors and the judiciary 192
7.1 Corruption of prosecutors and the judiciary 192
7.2 Accountability and integrity of prosecutors and the judiciary 194

PART IV 196
INTERNATIONAL COOPERATION 197
1. Legal and administrative frameworks for international cooperation 198
1.1 Legal frameworks for international cooperation 198
1.2 Procedure and administration 199
1.3 Informal international cooperation 200
1.4 Patterns and practice of international cooperation 201
2. International law enforcement cooperation 202
2.1 Law enforcement cooperation and information sharing 202

2.2 Joint investigations 203
2.3 International cooperation for purposes of confiscation 204
2.4 The role of INTERPOL 205
3. Customs cooperation 207
3.1 Cooperation between customs and cites authorities 207
3.2 Environet 208
3.3 Customs Enforcement Network and databases 209
4. Judicial cooperation 210
4.1 Mutual legal assistance 210
4.2 Extradition 212
4.3 Transfer of criminal proceedings 214
4.4 Transfer of sentenced persons 214
5. Regional and specialized initiatives 216
5.1 Forest law enforcement and governance 216
5.2 Wildlife enforcement networks 217
5.3 Twix – Trade in Wildlife Information Exchange 218
5.4 Certification and verification schemes; private and voluntary standards 219
5.5 Financial investigation cooperation 221
5.6 Asset recovery cooperation 221
5.7 International forensics cooperation 222
6. International, regional and bilateral assistance 224
6.1 International, regional and bilateral assistance 224
6.1 Donor coordination 225

PART V 226
DRIVERS AND PREVENTION 227
1. Actors 228
1.1 Perpetrators 228
1.2 Public officials 232
1.3 Local communities and indigenous peoples 233
1.4 Consumers 235
2. Context analysis 236
2.1 Trade and legal markets 236
2.2 Supply chain integrity 238
2.3 Uses of wildlife and forest resources 241
2.4 Resource analysis and monitoring 247
2.5 Consequences of wildlife and forest crime 248
2.6 Emerging trends and threats 251
3. Wildlife and forest management 253
3.1 Management systems 253
3.2 Institutions and mandates 255
3.3 Management plans 256
3.4 Databases, online tools and information management 260
3.5 Compliance 263
4. Social capacity-building 265
4.1 Poverty reduction 265
4.2 Sustainable livelihoods 266
4.3 Participatory approaches 267
5. Deterrence 269
6. Awareness-raising and behaviour change 271
6.1 Awareness campaigns 272
6.2 Education programmes 273
6.3 Community initiatives 274
7. Research and analysis 275
7.1 Scholarly and independent research 275
7.2 Diagnostic surveys 276
7.3 Dissemination 277

List of abbreviations and acronyms

AML	Anti-Money Laundering
APG	Asia/Pacific Group on Money Laundering
ASEAN	Association of Southeast Asian Nations
CEN	Customs Enforcement Network
CENcomm	Customs Enforcement Network Communication
CFT	Counter Financing of Terrorism
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CMS	Convention on the Conservation of Migratory Species of Wild Animals
DNFBP	Designated Non-Financial Businesses and Professions
EU	European Union
FATF	Financial Action Task Force
FAO	Food and Agriculture Organization
FIU	Financial Intelligence Unit
FLEG	Forest Law Enforcement and Governance
IATA	International Air Transport Association
ICCWC	International Consortium on Combating Wildlife Crime
ICCPR	International Covenant on Civil and Political Rights
IF	Indicator Framework
INTERPOL	International Criminal Police Organization
ITTO	International Tropical Timber Organization
IUCN	International Union for the Conservation of Nature
MLA	Mutual Legal Assistance
MOU	Memorandum of Understanding
NGO	Non-Governmental Organization
SFM	Sustainable Forest Management
SWFS	Society for Wildlife Forensic Science
TRACE	Tools and Resources for Applied Conservation and Enforcement
TWIX	Trade in Wildlife Information Exchange
UN	United Nations
UNCAC	United Nations Convention against Corruption
UNODC	United Nations Office on Drugs and Crime
UNTOC	United Nations Convention against Transnational Organized Crime
USFWS	United States Fish and Wildlife Service
VPA	Voluntary Partnership Agreement
VLC	Verification of Legal Compliance
VLO	Verification of Legal Origin
WCO	World Customs Organisation
WEN	Wildlife Enforcement Network
WorldWISE	World Wildlife Seizures database
WWF	World Wide Fund for Nature

Glossary

Wildlife and forest crime refers to any criminal activity connected with the taking, trading (supplying, selling, or trafficking), importing, exporting, processing, possessing, obtaining and consumption of wild fauna and flora, including timber and other forest products, in contravention of national or international law.

Wildlife and forest offences refers specifically to statutory or other legal provisions that criminalize specific aspects of or conduct associated with wildlife and forest crime. For the purposes of this Toolkit, the term 'offence' includes all activities that may be subject to criminal or administrative penalties.

Wildlife and forest contraband refers to wildlife and forest goods, products, and derivatives whether living, dead, raw, or processed that are illegally sourced, traded, transported, imported, exported, obtained, possessed et cetera.

Illegal logging describes a range of unlawful activities associated with the felling of trees. It generally refers to one or more of the following activities: logging of protected or endangered species; logging in protected or prohibited areas; excessive logging; logging without permits or with fraudulent permits; obtaining logging permits illegally; non-payment of taxes and other forest fees; damaging forest ecosystems.

Organized criminal group is defined in Article 2(a) of the United Nations Convention against Transnational Organized Crime to mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit.

Serious crime is defined in Article 2(b) of the United Nations Convention against Transnational Organized Crime to mean conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty.

Corruption is not universally defined; rather, the United Nations Convention against Corruption, which is the only legally binding universal anti-corruption instrument, recognizes that corruption is a continuously evolving phenomenon that is affected by various factors. Legal frameworks thus differ in their descriptions of the concept. The Convention does, however, provide a list of universally agreed acts of corruption (bribery, embezzlement, trading in influence, abuse of functions, illicit enrichment, money laundering, concealment, and obstruction of justice), leaving each State to go beyond the minimum standards set forth in the Convention.

For the purposes of this document the word **transit** *applies to illegal goods.*

ABOUT THE TOOLKIT

This *ICCWC Wildlife and Forest Crime Analytic Toolkit*, now in its fully revised second edition, provides a comprehensive overview of the main issues related to addressing wildlife and forest crime in a given location. It serves as a guide to explore and document this crime type in the wider context of crimes affecting the environment and examine the legal, administrative, and practical measures adopted to prevent and address it.

The ICCWC Toolkit is designed to assist government officials in wildlife and forestry administrations, policymakers, customs officials and officials of other relevant enforcement agencies, and may also be useful for independent experts and research entities. It will allow users to conduct a comprehensive analysis of the legal frameworks, enforcement measures, prosecutorial and judicial mechanisms, international cooperation, and other measures used to prevent and address wildlife and forest crime in a given national context. In addition, other stakeholders at the international and national levels, as well as civil society, may find the Toolkit useful to carry out their mandate and responsibilities.

While the focus is on the criminal justice response to wildlife and forest crime, the Toolkit also looks more broadly at the means and measures related to the protection and monitoring of wild fauna and flora and at the illegal exploitation of wildlife and forest resources by criminals, including organized criminal groups. The Toolkit further serves to identify technical assistance needs and may be used as training material for law enforcement.

This *ICCWC Wildlife and Forest Crime Analytic Toolkit* is organized into five parts:

PART I

LEGAL FRAMEWORKS

Part I analyses legislation relevant to wildlife and forest crime and related activities. It includes an overview of relevant international treaties and their domestic implementation, as well as national wildlife and forest offences and associated crimes, such as corruption and money-laundering.

PART II

ENFORCEMENT

Part II analyses law enforcement measures pertaining to wildlife and forest crime. It includes analytic tools related to enforcement agencies, human resources, intelligence, investigative techniques and procedures, border control and customs, and the accountability and integrity of law enforcement authorities.

PART III

CRIMINAL PROCEDURE AND THE COURTS

Part III analyses prosecutorial and judicial capacities to respond to wildlife and forest crime. It includes an analysis of relevant procedural aspects and the mandate, structure and processes of prosecution services and judicial organs. It also covers sentencing issues, restitution and compensation and non-criminal justice measures.

PART IV

INTERNATIONAL COOPERATION

Part IV analyses mechanisms for international cooperation. It includes an analysis of international law enforcement, judicial cooperation, regional and specialized platforms and initiatives, and technical assistance and aid.

PART V

DRIVERS AND PREVENTION

Part V provides tools to assist in identifying the factors that drive wildlife and forest crime. It includes analysis of relevant actors, context analysis and a consideration of the consequences of wildlife and forest crime and wildlife and forest management. It also provides an overview of issues linked to social capacity-building, deterrence, awareness-raising and behaviour change, and research and analysis. .

Each Part of the ICCWC Toolkit provides a practical and detailed guide on the key issues to be examined, with reference to the relevant international Conventions, standards and norms, and the relevant guidelines and documents. Every effort has been made to make each Section comprehensive to provide Toolkit users with a checklist to analyse the root causes of crime, preventive mechanisms, and potential responses of the criminal justice system. The Toolkit does not replace the need for a tailor-made approach to the assessment of the situation in specific locations, and it does not purport to cover all aspects of the legal systems of every jurisdiction.

The ICCWC Toolkit should be considered a living document and one that is intended to present a collection of tools and resources which help its users strengthen their understanding of the importance of a holistic approach to addressing these crimes.

EXECUTIVE SUMMARY

Wildlife and forest crime is a complex phenomenon with many layers and dimensions. It often results from the interplay of a multitude of factors – political, cultural, economic, social, and environmental – and can involve a wide variety of actors. This complexity makes it challenging for governments and international organizations to identify the strengths and weaknesses of existing legislative, administrative, enforcement, judicial and preventive systems, as well as areas where gaps exist. In order to achieve an effective response, wildlife and forest crime needs to be addressed through a coordinated and multisectoral approach.

Moreover, the fundamental difference between wildlife and forest crime and other forms of crimes should be acknowledged. Most property crimes, such as robbery, theft, arson, and vandalism, are criminalized because they inflict harm on people or property by creating uncertainty, diminishing confidence, and harming commerce and economic growth. All these reasons apply for criminalizing the same acts against natural resources. There is, however, an additional dimension to the fight against wildlife and forest crime: legislation to protect wildlife and forests also aims to ensure the sustainability of natural resource systems and to ensure a healthy environment, upon which human development and human rights depend.[1] This sets a different dynamic for wildlife and forest law enforcement, which should lead to an analysis of the uses and users of wildlife resources that takes into consideration the sustainability and promotion of compliance with good resource management policies.

The *ICCWC Wildlife and Forest Crime Analytic Toolkit* (hereinafter ICCWC Toolkit) provides an inventory of measures that can assist in the analysis of the nature and extent of wildlife and forest crime and in deterring and combating these offences. It is also intended to contribute to an understanding of the various factors that drive wildlife and forest offences in order to integrate the information and experience gained from such an understanding into national, regional, and international strategies.

The ICCWC Toolkit is intended to serve as the cornerstone for analysing national responses to wildlife and forest crime. Its primary users are therefore government officials and expert assessors. Not all parts of the Toolkit will be equally relevant in every national setting. Users are expected to select the tools most relevant and useful for their analysis. ICCWC (the International Consortium on Combating Wildlife Crime) will support requesting countries during the entire analytic process, including through mobilizing funds, hiring experts, analysing the results, and designing and delivering technical assistance stemming from recommendations and findings from the analysis.

Additionally, the ICCWC Toolkit serves as an initial entry point for national governments, international actors, practitioners and scholars to better understand the complexity of wildlife and forest crime and serves as a framework around which a prevention and response strategy can be developed. The Toolkit has been developed and updated based on (a) lessons learned from national and international efforts to curtail illegal trade in wildlife, plants, animal derivatives and plant material, (b) scholarly analyses and the examination of cases, and (c) consultations with key stakeholders and relevant experts.

The causes, components and consequences of wildlife and forest offences vary among countries, regions and societies around the world. There is no 'one size fits all' solution to this issue. In formulating effective countermeasures, it is important that local patterns of wildlife and forest offences and the concerns of local communities be recognized and integrated into policy and legislation. The ICCWC Toolkit provides a range of options that, in various combinations, may provide a State with the opportunity to put together an effective strategy that will meet its own needs in fighting wildlife and forest crime.

The Toolkit's complementary *Indicator Framework for Combating Wildlife and Forest Crime* offers a leaner tool for a first self-assessment by officials at the national level, providing a standardized approach to develop a baseline and measure and monitor the effectiveness of national law enforcement approaches to these crimes over time. The Indicator Framework and the Toolkit should be used in tandem.[2]

1 See https://undocs.org/A/HRC/RES/48/13

2 See The ICCWC Indicator Framework: https://cites.org/sites/default/files/EN_ICCWC%20Indicator%20framework%20step-by-step%20guide.pdf

1 INTRODUCTION

Background

Wildlife and forest crime can considerably accelerate the destruction of wildlife and forest resources, destroy vital carbon sinks such as forests and oceans, and contribute to deforestation, desertification, and other forms of environmental degradation.

It can also have an impact on biodiversity as these crimes reduce or even eliminate species, damage ecosystems, destroy many unique natural habitats, and deprive many countries and their populations of scarce renewable resources.

Wildlife and forest crime threatens the existence of many plant and animal species. The more endangered a species becomes, the greater the commercial value of the remaining specimens, thereby increasing the incentive for further illegal activities. The fact that some trade in fauna and flora is permitted while some trade in specimens of the same species is prohibited provides opportunities for circumventing the relevant laws and regulations through fraud, money laundering and corruption. In particular, officers that have not received adequate training are likely to experience difficulties in differentiating specimens that can be legitimately traded from those that cannot.

Further, the illegal trade in wildlife and forest resources has a negative impact on national economies. It erodes government revenues that could be derived from the legal trade in plants, plant material, wildlife and animal derivatives. This undermines their ability to implement development programmes, strengthen the rule of law, and meet their obligations to progressively realize social and economic rights. Where they are linked to organized crime, violence, corruption or armed conflict, wildlife and forest offences may destabilize governments and threaten regional security.

Despite many indications that wildlife and forest crime is an increasingly profitable form of organized crime, it remains difficult, if not impossible, to estimate the true scale of the problem. Fauna and flora are heterogeneous specimens that are sourced, traded and consumed for a wide variety of purposes, including food, fuel, construction, furniture, medicine, as collectable goods, and in the manufacture of other goods. Secondary wildlife and forest products are not produced to a uniform standard and considerable price variation can therefore occur. This heterogeneity makes valuing the illegal trade in fauna and flora very challenging. Moreover, the loss of fauna and flora, and the damage wildlife and forest crime cause to the environment and climate, extends well beyond monetary value.

In many countries, combating wildlife and forest crime is not a priority and often remains overlooked and poorly understood, despite the actual and potential scale and consequences. Where wildlife and forestry policies and laws and their enforcement are in place, they do not always keep up with the ever-changing levels and patterns of trafficking in fauna and flora. Underdeveloped legal frameworks, weak law enforcement, poor prosecutorial and judicial practices, and a lack of understanding of the different factors that drive wildlife and forest offences have resulted in valuable wildlife and plant resources becoming threatened. Key threats include illegal logging, illegal trade in timber products, poaching, and trafficking in animal parts, derivatives, and plant material. Illegal trade in protected fauna and flora offers opportunities for organized criminals to make significant profits because they can supply goods that are either considerably cheaper than legally sourced material or that cannot be procured legally. This illegal trade is also an impediment to developing long-term legal industries, which can thus undermine sustainable economic development. Gaps in domestic and international controls related to wildlife and forest sectors, difficulties in identification between legal and illegal commodities and secondary products, and the intricacy of trafficking routes, have resulted in considerable challenges in effectively curtailing the illegal trade.

In many countries, the existing systems governing the wildlife and forestry sectors have also enabled corruption to flourish among wildlife and forestry officials, as well as for politicians and businesspeople, in the form of bribes and commissions. This, in turn, has given some logging and hunting companies the freedom to engage in illegal practices without fear of capture or prosecution. Wildlife and forest crime also enriches transnational organized criminal groups and other criminal networks that engage in cross-border sourcing and supplying contraband. The various interconnections between corruption and wildlife and forest crime are addressed throughout the different parts of the Toolkit.

Although some producer and consumer country governments, international organizations, and non-governmental organizations have launched initiatives aimed at bringing international attention to the problem of wildlife and forest offences, the resulting levels of political commitment and operational capacity to tackle this problem are still not commensurate with the scale of the problem itself.

Where wildlife and forest law enforcement measures are implemented or strengthened, the direct impact of these measures on the rights and livelihoods of rural communities is often not a central aspect of consideration. In addition, laws related to wildlife and forests often tend to limit the rights and livelihoods of persons dependent on natural resources. By not taking these critical elements into consideration and focusing only on law enforcement, communities could be harmed and opportunities lost. Such harm could be exacerbated further if the human rights dimensions of enforcement are not appropriately implemented. The links between wildlife and forest crime and issues beyond the wildlife and forestry sectors, such as community involvement, rural development, human rights, security, public health, and the rule of law, are often neglected or ignored.

Further aspects that assessors, government officials and anyone else involved in combating wildlife and forest crime should keep in mind include:

» **Sustainable Development Goals:** an important feature of all aspects of international environmental law is the concept of sustainable development, which is recognized in many international treaties and regional agreements. Sustainable development recognizes the need for environmental protection and for economic development and seeks to reconcile these often opposing and conflicting objectives; it seeks to strike a balance between conservation and protection needs on the one hand, and economic and developmental demands on the other.[3]

» **Human Rights:** wildlife and forest crime can arise in a context of, or further contribute to, human rights abuses ranging from overt violence, threats, and coercion, to exploitation, especially in the form of forced labour and forced displacement. A range of other human rights violations, including economic, social, and cultural rights, may also occur in the context of wildlife and forest crime. While wildlife and forest crime often causes human rights abuses, it is important to note that responses to these crimes can themselves violate human rights. It is therefore essential that, when working to prevent and tackle these crimes, those involved are fully cognizant of their roles and responsibilities towards protecting these rights. Respecting and protecting the rights of local communities helps to safeguard the environment and vice versa. Tackling wildlife crime can therefore contribute to the protection of human rights, and efforts must be made to adequately integrate human rights considerations into actions aimed at preventing and addressing these crimes.

  In addition, the rights of persons working in the wildlife and forestry sectors also need to be considered, as all too frequently they work under dangerous conditions with inadequate pay. Poverty can be both a cause and consequence of wildlife and forest crime. Undermining local communities by reducing or depleting the natural resources they depend on can further deepen poverty. In some countries, wildlife and forest crime are directly linked to armed conflict.

» **Gender:** Gender inequalities, differences, and dynamics play an important role in the use, management and conservation of wildlife and forests at the local level. Women and men may interact differently with biodiversity and natural resources and therefore acquire different knowledge and relationships with these resources. The costs and benefits of wildlife and forest crime are also different for men and women, and they can be impacted differently by efforts to tackle and prevent these crimes. Understanding the role of men and women, as well as that of youth, in wildlife and forest crime and in responses to it, is critical to effectively addressing the challenges. Gender-blindness can result in the reinforcement of rigid – and harmful - gender roles and stereotypes. In addition, understanding the cultural and gendered nuances influencing consumption can help create culturally appropriate and effective campaigns against obtaining and using illegal wildlife and forest products.

3 See further Part V, Section 4.2 of this Toolkit.

2

Purpose, concept, and objectives

Launched in November 2010, the International Consortium on Combating Wildlife Crime (ICCWC) is the collaborative effort of five intergovernmental organizations working to bring coordinated support to the national wildlife law enforcement agencies and to the sub-regional and regional networks that act in defence of natural resources.

Together, representatives from ICCWC support authorities by building capacity and providing them with the tools, services, and technical support they need to effectively combat wildlife and forest crime.

2.1 Purpose

The aim of the ICCWC Toolkit is to provide comprehensive guidance for evidence-based analysis of administrative, preventive, and criminal justice responses to wildlife and forest crime and related offences in a given location. An additional purpose of the Toolkit is to help identify the different actors involved in wildlife and forest crime and to provide an understanding of the factors that drive their activities, to support an understanding of what may be required to prevent an increase in these types of offences as a global phenomenon. To that end, the Toolkit contains key components that are crucial to curtailing wildlife and forest crime both nationally and internationally.

While assessors making use of this Toolkit and government officials seeking to improve their response to wildlife and forest crime within a given jurisdiction are the primary target audience, the Toolkit also facilitates the sharing of knowledge and information among the policymakers, law enforcement agents, judges, prosecutors, researchers, administrators, and members of civil society who are working at different levels towards the same objectives.

The Toolkit presents a collection of tools and resources from which its users can pick and choose, as some aspects may be more relevant to a certain national or regional setting than others. Users are invited to use the Toolkit as a foundation for their work, while diving deeper where they deem appropriate. The resources referenced in the Toolkit represent a selection of material developed by ICCWC partners or jointly prepared with entities with a recognized professional expertise in the field, and publications from governmental or other official processes. Users are also encouraged to consult the great wealth of academic and other civil society literature on relevant subjects where in-depth analysis is required.

2.2 Concept

Combating crime, such as wildlife and forest crime and facilitation crimes such as money laundering and corruption, in sectors that form the backbone of many countries' economies,is crucial for the political, social, and economic future of a country. This is a complex process that requires the commitment of all levels and sectors of government and civil society. Preventing, deterring, detecting, investigating, and prosecuting wildlife and forest crime require determination, time, and consistency, as well as a comprehensive understanding of the underlying causes and drivers of such criminal behaviour. Building integrity, establishing credibility and rooting out corruption in sectors that may have a long history of illegal activities is a slow and ongoing process. Success cannot be expected overnight; however, change is possible.

This Toolkit seeks to provide a detailed set of assessment guidelines, which – individually and collectively – may assist countries in understanding their strengths and identifying their weaknesses in preventing and addressing wildlife and forest crime.

The Toolkit includes four key elements, which assist users in the following ways:

1. Identifying current patterns of wildlife and forest crime, including their drivers and actors;
2. Analysing the criminal justice response, including the legislative, enforcement, prosecutorial and judicial systems in use;
3. Understanding the different links and actors in the wildlife and forest crime chain; and
4. Implementing measures to address and prevent wildlife and forest crime from being committed.

Building on other UNODC assessment toolkits, particularly the Criminal Justice Assessment Toolkit (an analytic tool with a broader scope),[4] the Wildlife and Forest Crime Analytic Toolkit has been developed to serve as a compendium that can be requested by and provided to countries as initial assistance in approaching issues related to wildlife and forest crime. While encompassing various international aspects of wildlife and forest offences (and thus not being limited to regional experiences), the Toolkit is set up to be adaptable to specific situations in individual countries.

4 UNODC, Criminal Justice Assessment Toolkit (New York, United Nations, 2006).

2.3 Specific objectives

The Toolkit is designed to help users to:

- ¬ Analyse the capacity of national wildlife and forest law enforcement agencies and of the judiciary in investigating, prosecuting, and adjudicating cases of wildlife and forest crime;
- ¬ Examine the capacity of national wildlife and forestry management institutes and mechanisms to address offences related to wildlife and forest crime;
- ¬ Analyse the procedures, capacity and level of transparency in wildlife and forest law enforcement regarding detection, deterrence, and data collection and analysis;
- ¬ Analyse the effectiveness of existing mechanisms and proposals for enhancing the overall capacity of a government – or a group of governments in a region – in countering wildlife and forest crimes;
- ¬ Identify different actors involved in wildlife and forest crime, as well as factors that drive wildlife and forest crime;
- ¬ Identify any gaps in the existing response to wildlife and forest crime; and
- ¬ Facilitate the formulation and development of measures that effectively respond to the needs and deficiencies identified.

The Toolkit is not designed to act as a substitute for expertise, experience, or judgement in the assessment of wildlife and forest crime and the response to it. Instead, the Toolkit can be useful to expert practitioners as a checklist and effective guide to understanding the main issues. The measures proposed in the Toolkit are intended to help to analyse criminal justice systems and other mechanisms to prevent and address wildlife and forest crime. The detailed sets of tools should provide insight into the relevant causes and consequences of wildlife and forest crime and how governments can address them.

The basis of this Toolkit is a specific analysis of aspects of the wildlife and forestry system in a country, such as policing or the judiciary. However, a comprehensive analysis will always include an understanding of a country's legal and administrative framework so that decision-makers may understand the context in which a system exists and operates, as well as the opportunities, challenges, and limitations that the current framework may present. Critical in this regard is a sufficient understanding of different legal traditions, as well as basic legal concepts and national policy directives. Thus, the Toolkit can serve as a basis against which to develop the frame of reference of the initial analysis and can function as a checklist against which the findings and proposed methodology can be verified.

2.4 Audience

The Toolkit is designed to enable government officials in relevant agencies, as well as civil society, industry and individuals, to (a) conduct a comprehensive analysis of domestic systems, (b) identify areas of technical assistance, (c) assist in the design of interventions that integrate international standards and norms on the prevention, deterrence and detection of offences related to wildlife and forest crime, and (d) assist in training on these issues.

The Toolkit is sufficiently flexible to facilitate analyses both in places where there exists a solid infrastructure for combating wildlife and forest offences, and in places with less complex institutions. Specifically, the Toolkit seeks to serve the following audiences and target groups:

- Governments, including policymakers, legislators, and specialized authorities, by providing them with a sound understanding of their responses to wildlife and forest crime, and the strengths, weaknesses and needs of these responses;
- International, non-governmental, and other civil society organizations, by assisting them in analysing the degree to which the responses provided by countries meet existing international obligations and best practice standards;
- Specialized law enforcement agencies, prosecutorial authorities and members of the judiciary, by assisting them in reviewing their own activities;
- Governmental and international entities, by enabling cross-border law enforcement and judicial cooperation;
- National and international research entities, and academic institutions, by assisting them in developing in-depth and comparable analyses of countries' responses; and
- Donor countries and agencies, by enabling and improving the purposeful funding of activities against wildlife and forest crime.

3 Structure and contents

The ICCWC Wildlife and Forest Crime Analytic Toolkit is organized into five parts:

I. Legislative Frameworks
II. Enforcement
III. Criminal Procedure and the Courts
IV. International Cooperation
V. Drivers and Prevention

Each Part represents one of the sectors involved in the preventive and criminal justice response to wildlife and forest crime.

The criminal justice systems and other relevant mechanisms pertaining to wildlife and forests – even when less than optimally functional – are highly interdependent and interactive. Accordingly, the five parts of the Toolkit should not be considered in isolation. Many parts overlap and several tools and elements appear in more than one part. This duplication is intentional. Within each Part of this Toolkit are tools and checklists designed to enable a comprehensive analysis of that aspect of the wildlife and forestry system. Wherever relevant, tools are cross-referenced to applicable Sections in the other parts.

In its entirety, the Toolkit provides an initial overview of the immense and multifaceted tools available in preventing and combating wildlife and forest crime. In each individual part, the Toolkit provides guidance on specific aspects of wildlife and forest crime and respective criminal justice measures.

A thorough analysis of any jurisdiction will involve the use of the complete Toolkit, but individual parts and tools are separable to allow smaller, discrete analysis of individual sectors and thus cater to different types of analyses, budgets, and time frames. Each Part provides a practical and detailed guide to the key issues to be examined, with reference to the relevant international conventions, standards, and norms, as well as reference to additional resources produced by ICCWC partners (and other relevant organizations where applicable). The level of detail in each Part is deliberate, allowing users to gain an understanding of the depth and complexity that a thorough analysis of the criminal justice system pertaining to the wildlife and forestry sectors should involve.

The availability and quality of data available across all tools delineated in the Toolkit are vital to evidence the findings. Data is critical to realise the concept of the Toolkit: identify, analyse, understand, implement. As such, questions related to data and analysis sit across all parts of the Toolkit to ensure that key data is identified and used in the assessment. It must be noted, however, that it is important not only to identify the data that exists, but also to record, where possible, some or all of the information about how it is collected, where it is located, who owns it, if it is publicly available, how often it is updated, its level of granularity, how it is processed and shared, and whether it can be considered trustworthy, reliable and valid. For this reason, assessors are encouraged to ask follow-up questions to those asked as part of the assessment regarding the availability and quality of data to verify or solidify responses.

4 Methodology

The Toolkit is based on a comprehensive review of existing academic scholarship, the analysis of legislative material, official publications by government sources, international organizations and non-governmental organizations, and consultation with many experts.

The tools set out in this publication are not static. They exist in dynamic environments as the patterns and levels of wildlife and forest crime – and the efforts to combat them – change constantly, often at short notice. The Toolkit reflects the best available and most comprehensive information at the time of writing.

This is the second edition of the ICCWC Wildlife and Forest Crime Analytic Toolkit, and the information contained herein is current as of 31 March 2022.

The development, review and future maintenance of the Wildlife and Forest Crime Analytic Toolkit will be based on use of the Toolkit in several partner governments, as well as ongoing research of the criminal justice systems relevant to combating wildlife and forest crime.

Core areas of research include:

- Analysis of mechanisms, dynamics and loopholes in the activities of the various government institutions that are charged with combating wildlife and forest crime;
- Availability and quality of legal frameworks to counter wildlife and forest crime;
- Effectiveness of internal enforcement, national border control standards and cross-border collaboration;
- Inter-agency cooperation, bottlenecks and gaps hindering effective action, and how to counter them; and
- Availability and quality of data, statistics, and social science research and the recognized need for improvements in such.

5 Using the Toolkit

Each part of the Toolkit has been structured so that it can be consulted independently of the others, although ICCWC encourages a holistic use of the Toolkit to ensure a comprehensive assessment of the national response to wildlife and forest crime.

Users of this Toolkit who have an interest in a particular aspect may refer only to those Sections and tools that are of interest to them. The five parts do not function in isolation, however, and as such the tools are cross-referenced to relevant Sections in other parts.

Within each part, individual 'tools' are clustered around key themes. The design, structure and layout of each tool follow a simple pattern that provides background information on the significance and context of each tool. This is followed by an explanation of the tool and its application. Where possible, references to additional resources have been included.

Each subsection of this Toolkit contains one or more 'tools' that summarize the relevant analytic points, usually in the form of a question or questions.

The tools are not checklists with questions simply to be ticked off as 'yes or no' answers. Not every wildlife and forestry system in every country approaches the same issue in the same way. An appreciation of differences is as important as the acknowledgement of similarities when it comes to the development of insight into what works best in particular settings. Not all the suggested tools are appropriate or, indeed, desirable in every situation. They are there to prompt systematic enquiry and to guide users through the major areas to be analysed.

As noted above, the role of data quality, availability and validity are important to understand when undertaking the Toolkit assessment. Users of the Toolkit are encouraged to not only identify what data exists to verify and evidence the findings of the Toolkit, but also to record details about the data such as its location, ownership, whether it is publicly available, its granularity and how it is collected, processed and shared. Understanding where data gaps exist can illuminate the fundamental basis on which the Toolkit assessment is made and can also indicate where any such gaps affect the national understanding of the criminal justice response to wildlife and forest crime.

The resources cited in the Toolkit by no means comprise an exhaustive collection of all successful, creative, and innovative responses to wildlife and forest crime. The Toolkit does, however, suggest additional resources produced by ICCWC partners or entities formally recognized as subject matter experts that can help assessors and users of the Toolkit to delve deeper into specific topics.

For the most effective application of this Toolkit, it is recommended that a government-led analysis be carried out with the participation of all the relevant stakeholders, including, inter alia, government agencies, civil society and local communities and groups. Toolkit users are invited to select their area of interest and apply the tools recommended in the relevant Toolkit Section.

ICCWC recommends the use of the ICCWC Indicator Framework in tandem with the Toolkit; the Indicator Framework is a useful exercise not only for setting a baseline against which future progress in the national response to wildlife and forest crime can be measured but can also help guide the government in determining which aspects of the Toolkit would be most useful and/or feasible to undertake.

To enable an effective analysis and follow-up of recommendations made by undertaking the Toolkit process, it is recommended that the results of the analysis be collated in a report format. This report is owned by the government and could subsequently be shared with heads of the relevant national agencies and government policymakers who are responsible for instigating changes to existing legislation, agency structures, human and logistical resources, and agency and governmental policies. If the government chooses to make the report, or an Executive Summary or other parts thereof, publicly available, such a report may prove very useful for organizations and donor agencies which could be able to offer support and capacity-building to follow-up on recommendations made by the analysis. Such a report may further be of considerable use in liaising with the donor community when designing projects or programmes to instigate change at the national level.

6 Indicator Framework and other tools

ICCWC developed the *Indicator Framework for Combating Wildlife and Forest Crime* (IF) as a self-assessment tool for use by national authorities to work alongside the Toolkit and provide an additional assessment tool for use at the national level.

Further, ICCWC recommends that countries use the Toolkit analysis findings and recommendations to prioritize interventions and develop an action plan for undertaking those interventions, and stresses the importance of leveraging funds, partners and monitoring progress in implementation of the recommendations.

It is hoped that the guidance offered and the resources recommended in this second edition of the Wildlife and Forest Crime Analytic Toolkit may inspire and assist policymakers, law enforcers, judges, prosecutors, administrators, and members of civil society in playing their role in the global effort to combat illegal trade in wild fauna and flora. ICCWC offers its ongoing support to requesting countries for technical assistance and capacity building.

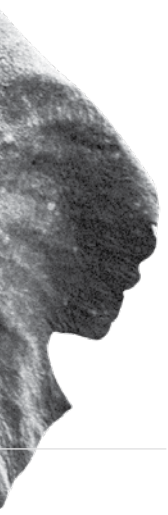
While the Toolkit provides the means for a comprehensive analysis, the IF allows for a more rapid assessment of the national law enforcement response to wildlife and forest crime. It also provides a standardized framework to monitor any changes in national law enforcement capacity and effectiveness over time by creating a baseline that can be measured against by repeating the process at selected intervals. The IF can also be used to identify which specific areas of the Toolkit process may merit further analysis and in-depth assessment. [5]

The IF comprises a comprehensive set of 50 indicators arranged against eight desired outcomes of effective law enforcement to combat wildlife crime. While the IF is intended as a self-assessment mechanism, it is best completed through a collaborative process involving all relevant national law enforcement agencies. The process has frequently been undertaken under the guidance of UNODC experts who then report the findings to the relevant national agency. Whilst the IF can be used as a stand-alone product, ICCWC recommends that it be deployed as an integral part of the Toolkit assessment process as a means of preliminary assessment.

5 See https://www.unodc.org/documents/Wildlife/Indicator_Framework_e.pdf

I LEGAL FRAMEWORKS

Part I



Over the last 50 years, a range of international legal instruments have emerged that seek to protect the environment, natural resources, habitats, and the world's fauna and flora.

While none of these initiatives is specifically aimed at preventing and suppressing wildlife and forest crime, in combination, existing international treaties and national laws provide frameworks that, directly or indirectly, regulate, control and limit international trade in fauna and flora, and criminalize many illegal activities in the wildlife and forestry sectors.

Great discrepancies continue to exist within and among national wildlife, forestry, criminal and other legal systems. Many countries do not comprehensively criminalize the various activities associated with wildlife and forest crime. In some jurisdictions, criminal law does not contain special provisions for corruption and money-laundering in the wildlife and forestry sectors. Elsewhere, it may not adequately capture attempts at committing offences or participation in these offences. In these circumstances, the reform of legal and regulatory systems becomes a prerequisite for combating wildlife and forest crime.

Just as wildlife and forest crime varies from country to country, so do wildlife and forest related laws and regulations. In most jurisdictions, relevant legal frameworks can be found in multiple statutes that address the diverse aspects of wildlife and forest crime rather than in a single piece of legislation. Violations of wildlife and forest laws or regulations can give rise to administrative, civil or criminal liability, with some States relying more on criminal sanctions and others on civil or administrative sanctions. For this reason, an analysis of the legal framework should not be limited to wildlife and forest laws or to criminal law.

Part I of this Toolkit serves to identify, outline and examine the legal framework in relation to forest and wildlife crime.

This includes:

1. International conventions and agreements that may give rise to obligations and principles relevant to any one jurisdiction,
2. National laws concerning the protection and use of fauna, flora, and the environment
3. Specific wildlife and forest offences
4. Offences facilitating or otherwise related to wildlife and forest crime
5. General laws and principles concerning criminal liability
6. Legal and administrative frameworks for international cooperation are discussed separately in Part IV, Section 1 of this Toolkit.

Part I

1 Convention on International Trade in Endangered Species of Wild Fauna and Flora

CITES, the Convention on International Trade in Endangered Species of Wild Fauna and Flora,[6] is the principal international instrument to control and regulate international trade in protected species and to ensure that international trade in specimens of wild animals and plants does not threaten their survival.

This is achieved by creating a control system for any trade and transaction in these species. The Convention contains three separate Appendices of species, each of which sets out the control and reporting mechanisms applicable to listed species:

- Appendix I includes those species threatened with extinction and in respect of which commercial trade is not appropriate or sustainable. Any trade in specimens of Appendix I-listed species is permitted only in exceptional circumstances and requires prior permits from both the importing and the exporting country. Certificates are also required for the re-export of species.
- Appendix II includes those species not necessarily in danger of extinction but which may become endangered if their trade is not strictly regulated, as well as those for which trade must be strictly regulated to permit effective control. An export permit is required for any trade in Appendix II-listed species and must be presented to the importing State's customs authorities.
- Appendix III includes those species that individual Parties to CITES choose to make subject to regulation and which require the cooperation of the other Parties in controlling trade. Trade in Appendix III-listed species requires the Management Authority[7] of the exporting State to issue an export permit, if it is the State that included the species concerned in Appendix III, or a certificate of origin, if it is another country.

CITES is the single most important international instrument dealing with illegal trade in fauna and flora because it is the only treaty that requires Parties to penalize some aspects of illegal trade in protected species. CITES is the only international treaty that sets out specific violations relating to illegal activities in the wildlife and forestry sectors, and it also enables States to confiscate illegally sourced fauna and flora.

6 999 UNTS 243 (No 14537). CITES was opened for signature in Washington, DC, on 3 March 1973 and entered into force on 1 July 1975.

7 See further Part I, Section 2.3.3 of this Toolkit.

1.1 CITES accession and implementation

With over 180 Parties, CITES enjoys nearly universal adherence. When the government of a State or a regional economic integration organization decides that it will be bound by the provisions of CITES, it can 'join' the Convention by making a formal declaration to this effect by writing to the depositary, which is the Government of Switzerland. Once a document containing this declaration has been received by the depositary through a diplomatic channel, the Convention enters into force 90 days later for the State concerned (Article XXII, Paragraph 2).

CITES can be effective only to the extent that Parties enact and enforce its specific provisions. This is often done through an endangered species statute or similarly termed legislation. The implementation of CITES into national law may occur through a single, stand-alone piece of legislation or through multiple laws. Where laws relating to species protection and international trade in fauna and flora already exist, the implementation of CITES may involve amendments to such national laws. The implementation of international treaties into national law is further outlined in Part I, Section 1.6 of this Toolkit.

Around the world, CITES is widely implemented, if not always to its full extent. The Convention has had some success in preventing the extinction of particularly endangered species, especially where commercial trade has been ended completely. Some Parties to CITES have not enacted specific legislation to implement the Convention; instead, they rely on general wildlife and forest laws, or in some cases they use their customs or foreign trade legislation to control trade in CITES-listed species. At times, these laws do not fully conform to or comply with CITES requirements, especially in cases where they were enacted before CITES came into existence. Inadequate implementation of the CITES system not only diminishes the protection of species in a particular jurisdiction but also reduces the effectiveness of the Convention internationally.

The domestic implementation of CITES obligations is further examined in Part I, Section 1.3 of this Toolkit.

TOOL
I.1

CITES accession and implementation

- Is the State a Party to CITES?
- In which national law or laws has CITES been implemented?
- Does this law/these laws empower the government to regulate international and domestic trade, possession and transport in animal and plant species?

Additional resources:
C de Klemm, Guidelines for Legislation to Implement CITES, IUCN Environmental Policy and Law Paper No 26 (1993) 5–9

1.2 CITES reservations

The operation and application of CITES may be limited in relation to specific plants or animals if a State enters a reservation with regard to any species included in the three Appendices or any parts or derivatives specified in relation to a species included in Appendix III (in accordance with Article XXIII, Paragraph 2 of CITES). This may be done upon becoming a Party to the Convention or upon amendments to the Appendices with respect to trade in the species or part or derivative concerned. The reservation mechanisms under CITES effectively allow countries to act as non-Parties in relation to specific species (Article XV, Paragraph 3 and Article XVI, pParagraph 2).

The reservations allowed under CITES are sometimes seen as weakening the purposes of the Convention, as they can open the door for countries to opt out of the protection of some species, thus enabling the commercial exploitation of endangered species. On the other hand, the reservation clauses are an avenue to increase general support for the Convention and encourage membership by countries that may otherwise not accede to CITES. Furthermore, the reservation clauses acknowledge that countries may have legitimate trading interests in some species and seek to protect their economic interests.

The protection of CITES-listed species under national law is further analysed in Part I, Section 2.3 of this Toolkit.

CITES reservations

- Has the country entered reservations in relation to specific CITES-listed species? What are these species? What are the reservations?
- How do the reservations translate into national laws?
- Is there any trade in these species? If so, has this trade been linked to criminal groups?

1.3 Domestic implementation of CITES

In most jurisdictions, provisions relating to species protection and the regulation of the trade in endangered species of fauna and flora can be found in national laws implementing the CITES.[8] Given the widespread adhesion to CITES globally, there are only very few countries in which species protection laws are unrelated to CITES. In some countries, the relevant legislation is termed 'Endangered Species Act', 'Threatened Species Protection Act' or a similarly named statute, while others use general wildlife legislation, and sometimes customs or foreign trade legislation, to control the trade in specimens of CITES-listed species.

The CITES Secretariat further notes that while

> *[t]he legislative provisions for implementing CITES in each Party are similar, Parties may have different legal structures, national policies, culture, species in trade, or types of trade. All Parties, however, should have a solid legal foundation for regulating international wildlife trade. It is only through legislation that is adequate, up to date, and efficiently enforced that CITES can really work.*[9]

8 See further Part I, Section 1.1 of this Toolkit.

9 CITES Secretariat, Model Law on International Trade, p. 2 (emphasis added).

The following tool sets out those elements of CITES that are of particular relevance to wildlife and forest crime and whether the legislation and its schedules are amended regularly as necessary.[10]

Domestic implementation of CITES

- Which national laws implement obligations and other provisions under CITES? When were these laws enacted? When were they last updated?
- Do the relevant laws set out:
- General rules to regulate international and domestic trade in endangered species;
  - Role and powers of enforcement agents;
  - Prohibitions and offences relating to illegal trade in endangered species;
  - Powers for confiscation; and
  - General powers for the government to make regulations as necessary?
- Do the laws use the CITES definitions of 'specimen', 'introduction from the sea' and other relevant terms?

Additional resources:
C de Klemm, Guidelines for Legislation to Implement CITES, IUCN Environmental Policy and Law Paper No 26 (1993) 5–106

The CITES Secretariat has issued a legislation checklist to review domestic CITES laws. It contains 70 items for review that are based on resolutions of the CITES Conference of Parties and on the Guidelines for legislation to implement CITES. This checklist contains items relating to the general design and application of domestic CITES laws; management and scientific authorities; permit requirements; the form and validity of permits and certificates; the revocation, modification and suspension of permits; exceptions to permit requirements; border controls; the control of consignments and permits; enforcement and penalties; the disposal of confiscated specimens; the acceptance and refusal of foreign permits; reports; and financial matters.

1.4 Scope and schedules

CITES classifies species and subspecies under either Appendix I, II or III depending on the level of threat such species face from exploitation through international trade. Species listed in Appendix I are subject to the most stringent restrictions, followed by Appendix II and III.

In national laws, the CITES Appendices are commonly set out in schedules that are part of the national law to which they relate. The schedules draw their legal force through reference(s) contained in substantive provisions in the main body of the legislation. Schedules are used in legislation to provide for details that, for ease of use, cannot be adequately addressed in the main body of the legislation. Depending on the legal system in question, the schedules could be included in primary legislative instruments such as statutes, or subordinate or delegated legislative instruments such as regulations.

The application and enforcement of CITES provisions are necessarily limited to specimens of species listed in the CITES Appendices. Many timber species, for instance, are not listed in CITES and are not protected by any other international agreement. This, in turn, means that the protection and enforcement mechanisms under CITES are not available to respond to illegal trade in species that are not listed in the Appendices. Neither do they apply to any trade

10 CITES Secretariat, Model Law on International Trade, p. 3.

involving countries that are not a Party to CITES. As a result, trade through non-Parties may be used as a way to circumvent reporting and permit requirements.

It is for this reason that several countries have adopted additional legislation to prevent and suppress illegal trade in non-CITES species and extend the application of documentation, permit and reporting requirements to States that are not a Party to CITES. The CITES Secretariat also recommends the use of Convention standards in any trade involving non-signatory nations, using "comparable documentation" issued by competent authorities as provided for in Article X of CITES.

The content and categorization of each State's schedules of wildlife are a matter for States. These schedules are based, at least in part, on each State's evaluation of what species or subspecies of flora and fauna are in need of legislative protection. Most States draw upon existing international lists in developing their schedules of endangered fauna and flora but also adapt these schedules to local values and local realities. Besides the CITES Appendices, relevant international lists include the *Convention on the Conservation of Migratory Species of Wild Animals* (CMS) Appendices[11] and the Red List issued by the International Union for the Conservation of Nature.

The following tool considers whether national CITES laws cover all specimens of all species (animals and plants, alive or dead, including parts and derivatives) included in the three CITES Appendices (and other international lists), and whether the legislation and its schedules are amended as regularly as necessary.

Scope of species protection laws

TOOL I.4

- » Do the relevant national laws apply to all animal and plant species listed in CITES Appendices I, II and III?
- » Are schedules and appendices updated if and when listings in the CITES Appendices change?
- » Do these laws apply to non-CITES species? Are these listed in a separate schedule?
- » Do national laws relating to species protection apply to the trade in endangered species with States not a Party to CITES?

Additional resources:
C de Klemm, Guidelines for Legislation to Implement CITES, IUCN Environmental Policy and Law Paper No 26 (1993) 13–17
UNODC, Guide on drafting legislation to combat wildlife crime (2018) 6

1.5 CITES Authorities

Parties to CITES must designate a Management Authority (or Authorities) to issue permits or certificates, as well as a Scientific Authority (or Authorities) to be consulted in certain cases before permits or certificates are issued. Any international trade, including any export, re-export, import or introduction from the sea, in any animal or plant, or part or derivative of species included in the CITES Appendices, requires the issuance of a permit or certificate (depending on the case) by the Management Authority. The procedures for issuing the permits or certificates vary depending on the CITES Appendix involved, the source of the specimen and other factors.

An analysis of national CITES Authorities should consider the legal instrument (law, regulation or decree) that authorizes the designation of CITES Management and Scientific Authorities or expressly designates those Authorities. For example, the legislation of some countries may not make a provision for the designation of a Scientific Authority.

11 See Part I, Section 1.4.3 of this Toolkit.

The analysis should further consider whether legislation clearly and precisely gives the CITES Management Authority the powers necessary to carry out its responsibilities (for example, the power to grant permits and certificates) and provides mechanisms for coordination and communication between the Management Authority and other government agencies with relevant competencies.

The mandate of the national Management Authority necessitates close collaboration with national law enforcement agencies, including police, who can provide support in identifying illegal wildlife and forest products transported by road, and customs authorities. To facilitate such cooperation, the World Customs Organization (WCO) and the CITES Secretariat recommend the signing of a national memorandum of understanding (MOU) between Customs and the CITES Management Authority. Such a framework gives customs authorities an appropriate platform for obtaining information from the Management Authority with which to target high-risk consignments and travellers. The MOU may also enable customs authorities to help the Management Authority by indicating the existence of suspicious circumstances or consignments. An increased quantity and frequency of information provided by the Management Authority enables customs authorities to identify, distinguish and target high-risk traffic more effectively, while permitting the majority of legitimate trade to move freely.[12]

The primary role of national CITES Scientific Authorities is to provide advice to the Management Authorities in their country, prior to the issuance of CITES permits and certificates, on whether the export being approved will not be detrimental to the survival of the species involved. For live specimens included in Appendix I, the Scientific Authorities in the country of import are also required to be satisfied that the proposed recipient of the specimen is suitably equipped to house and care for it. When requested by their Management Authority, a Scientific Authority should also provide advice on the return (to the country of export) or placement in a rescue centre or similar facility, of confiscated living specimens of CITES-listed species. Scientific Authorities are also called upon to review all applications to export specimens of CITES-listed species claimed to be bred in captivity or artificially propagated and advise their Management Authority as to whether the facility concerned meets the criteria for such claims.

TOOL I.5

CITES authorities

- Do the national laws implementing CITES General rules to regulate international and domestic trade in endangered species;
  - designate Management and Scientific Authorities and articulate their respective roles; and
  - set out permit requirements, including (a) the form and validity of permits and certificates, (b) the revocation, modification and suspension of permits, and (c) exceptions to permit requirements?
- How does the Management Authority cooperate with customs, police and other law enforcement agencies? Has an MOU or other agreement been set up to facilitate their cooperation? What does it state?
- How does the Management Authority collaborate with other law enforcement agencies and government agencies?
- Is the Management Authority mandated to provide other law enforcement agencies with assistance in terms of the identification, handling and disposal of detained or confiscated specimens?

Additional resources:
C de Klemm, Guidelines for Legislation to Implement CITES, IUCN Environmental Policy and Law Paper No 26 (1993) 22–25
WCO, Guidelines on Co-operation between Customs Administrations and CITES Management Authorities Managing the Trade in Animals and Plants (CITES). WCO reference number Annex IV to Doc. 41.827 (classified, only available to WCO members)

12 See further Part IV, Section 4.3.1 of this Toolkit.

2

Part I

Other International law

Existing international law relating to wildlife and forest crime comprises several conventions and other agreements that address some of the environmental and criminal aspects of this phenomenon.

This is achieved by creating a control system for any trade and transaction in these species. The Convention contains three separate Appendices of species, each of which sets out the control and reporting mechanisms applicable to listed species:

In sum, these agreements deal with:

- Organized crime, corruption and money laundering. Instruments in this category are aimed at preventing and punishing individuals and networks involved in serious criminal activities including wildlife and forest crime, depriving them of the proceeds of their crimes, combating corruption and facilitating cross-border cooperation.
- Biodiversity protection involving conservation and habitat protection to safeguard certain ecosystems or natural areas and all the species therein. The conservation of biodiversity usually involves the protection of designated land, conservation areas or reserves from any encroachment. Habitat protection refers to the measures that seek to conserve, protect and restore habitats and prevent species extinction, fragmentation or reduction in range.
- Species protection, including measures to suppress illegal trade in those species. This is important to prevent the extinction of particular animals and plants, and to prevent their unnecessary exploitation.[13]
- Protection of national parks, ecosystems or geographical areas. Instruments in this category are predominantly concerned with the preservation of a designated area of particular ecological, biological or natural value. These areas may be placed under international protection because of their rare or unique features, or their fauna or flora.

13 See Part I, Section 1 of this Toolkit.

2.1 United Nations Convention against Transnational Organized Crime

Organized criminal groups are frequently involved in wildlife trafficking. Such serious and sophisticated forms of wildlife and forest crime can fall within the scope of the *United Nations Convention against Transnational Organized Crime* (frequently referred to by the acronym UNTOC),[14] the only global instrument to prevent and combat organized crime in all its forms. Since its inception, the Convention has become an important and nearly universal tool in preventing and combating organized crime, including wildlife trafficking and other forms of wildlife and forest crime. Since both the commission and the consequences of wildlife and forest crime often transcend international borders, and given the involvement of organized criminal groups in such crime, there is considerable potential for invoking the UNTOC.[15] The UN General Assembly recognized that the Convention *"constitute[s] an effective tool and the necessary legal framework for international cooperation in combating […] such criminal activities as […] the illegal trafficking in endangered species of wild flora and fauna".*[16]

The purpose of the UNTOC *"is to promote cooperation to prevent and combat transnational organized crime more effectively"* (Article 1). The UNTOC applies to all ***"serious crime"*** with a transnational organized criminal aspect. Under Article 2, Paragraph (b), *"'serious crime' shall mean conduct, constituting an offence punishable by a maximum deprivation of liberty of at least four years of imprisonment or a more serious penalty."* Seriousness thus refers to the statutory penalty for an offence under national law; accordingly, 'serious crime' includes wildlife and forest offences with a statutory penalty of imprisonment of four years or more. To this end, the Conference of the Parties to the UNTOC in its Resolution 10/6 has urged the parties to the UNTOC to make wildlife trafficking a serious crime, as defined under the Convention.

The Convention has become an important global tool in preventing and combating organized crime in all its forms. The UNTOC encourages Parties to adopt measures against transnational organized crime, including the requirement to establish criminal offences, mechanisms for international cooperation, and prevention measures under national law. The Convention seeks to enhance the standardization and coordination of national legislative, administrative and enforcement measures relating to transnational organized crime, and to ensure a more efficient and effective global effort to prevent and suppress it. The UNTOC sets out four specific offences: participation in an organized criminal group (Article 5); money-laundering (Article 6); corruption (Article 8); and obstruction of justice (Article 23). To assist Member States in the investigation, prosecution and adjudication of these offences, the Convention promotes the use of international cooperation tools such as mutual legal assistance (Article 18), extradition (Article 16), the use of special investigative techniques (Article 20), and joint investigations (Article 19).

TOOL I.6

United Nations Convention against Transnational Organized Crime

- Is the country a Party to the United Nations Convention against Transnational Organized Crime?
- Has the country made reservations to any provisions under the Convention?
- In which national law or laws has the Convention been implemented?
- Have the offences, international cooperation measures or other provisions based on the United Nations Convention against Transnational Organized Crime been used in proceedings involving wildlife and forest crime?

Additional resources:
UNODC, Legislative Guide for the Implementation of the United Nations Convention against Transnational Organized Crime (2nd ed, 2017)
UNODC, Implementation of the United Nations Convention against Transnational Organized Crime: Needs Assessment Tools (2016)

14 United Nations, Treaty Series, vol. 2225, No. 39574. Adopted on 15 November 2000; entered into force on 29 September 2003.

15 Under the condition that such offences are considered in the laws of the States Parties to the Convention.

16 United Nations General Assembly Resolution 55/25 of 15 November 2000.

The national implementation of provisions under UNTOC is discussed further in Part I, Section 4 (in relation to criminalisation) and in Part IV (in the context of international cooperation) of this Toolkit.

2.2 United Nations Convention against Corruption

Corruption is a major enabler of wildlife and forest crime. *The United Nations Convention against Corruption* (UNCAC)[17] does not provide a single definition for corruption but recognizes that it is a continuously evolving phenomenon that is affected by a variety of factors. Legal frameworks thus differ in their descriptions of corruption. The Convention does, however, provide a list of universally agreed acts of corruption that States are to criminalize (or, in some cases, consider criminalizing), leaving each State the ability to go beyond the minimum standards set forth in the Convention. The Convention also sets out various measures to prevent and combat these acts. The UNCAC is complementary to broader efforts to prevent and combat wildlife and forest crime under the other international instruments discussed here. The UNCAC is the only legally binding universal instrument against corruption and builds on the precedent of the *United Nations Convention against Transnational Organized Crime* and incorporates a number of similar provisions.

The purposes of the UNCAC are to:

- promote and strengthen measures to prevent and combat corruption more efficiently and effectively;
- promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery; and
- promote integrity, accountability and proper management of public affairs and public property.[18]

The UNCAC contains several criminalization provisions that may be relevant to combating wildlife and forest crime. It requires criminalization of bribery of national public officials (Article 15), bribery of foreign public officials and officials of public international organizations (Article 16), embezzlement, misappropriation or other diversion of property by a public official (Article 17), money laundering (Article 23) and obstruction of justice (Article 25). It further encourages criminalization of trading in influence (Article 18), abuse of functions (Article 19), illicit enrichment (Article 20), bribery and embezzlement in the private sector (Articles 21 and 22) and concealment (Article 24). It also establishes the liability of legal persons (Article 26).

The role of the UNCAC in preventing and combating wildlife and forest crime is emphasized in numerous international documents. In 2013, the UN General Assembly stated that *"coordinated action is critical to eliminate corruption and disrupt the illicit organized criminal groups that drive and enable trafficking in wildlife"*.[19] In July 2015, the General Assembly called on States to *"prohibit, prevent and counter any form of corruption that facilitates illicit trafficking in wildlife and wildlife products"*.[20] At the eighth session of the Conference of the States Parties to the UNCAC, a

17 United Nations, *Treaty Series*, vol. 2349, No. 42146. Adopted on 31 October 2003 and entered into force on 14 December 2005.

18 United Nations Convention against Corruption, Chapter I, Art. 1.

19 N General Assembly, Resolution adopted by the General Assembly on 18 December 2013: Strengthening the United Nations crime prevention and criminal justice programme, in particular its technical cooperation capacity, UN Doc A/RES/68/193 (14 February 2014).

20 UN General Assembly, Resolution adopted by the General Assembly on 30 July 2015: Tackling illicit trafficking in wildlife, UN Doc A/RES/69/314 (19 August 2015).

comprehensive resolution on "preventing and combating corruption as it relates to crimes that have an impact on the environment" was passed which recognized the impact of corruption in this context and outlines various ways in which the UNCAC can be employed to prevent and combat wildlife and forest crime-related corruption.[21] The CITES Conference of the Parties also passed a Resolution in 2016 concerning *Prohibiting, Preventing, Detecting and Countering Corruption*, which Facilitates Activities Conducted in Violation of the Convention, which reaffirmed "that the *United Nations Convention against Corruption* (UNCAC) constitutes an effective tool and an important part of the legal framework for international cooperation in fighting illicit trafficking in endangered species of wild flora and fauna."[22] In 2021 the General Assembly adopted a resolution outlining a common commitment by States to effectively implement measures to prevent and combat corruption; to end impunity for corruption offences; to strengthen international cooperation on preventing, detecting, investigation and prosecuting corruption offences; and to enhance efforts in the tracing, recovery and return of confiscated assets in accordance with the Convention.[23]

United Nations Convention against Corruption

- Is the country a party to the United Nations Convention against Corruption?
- Has the country made reservations to any provisions under the Convention?
- In which national law or laws has the United Nations Convention against Corruption been implemented?
- Have the offences, international cooperation measures, or other provisions based on the United Nations Convention against Corruption been used in proceedings involving wildlife and forest crime?
- Has the country undergone any of the cycles of the Review Mechanism of the Convention? Are any of the recommendations issued relevant for addressing wildlife and forest crime?

Additional resources:
UNODC, Legislative guide for the implementation of the United Nations Convention against Corruption (2nd revised ed, 2012)
UNODC & UNICRI, Technical guide to the United Nations Convention against Corruption (2009)

The national implementation of provisions under the UNCAC is discussed further in Part I, Section 4 (in relation to criminalization) and in Part IV (in the context of international cooperation) of this Toolkit.

2.3 Convention on Biological Diversity

The *Convention on Biological Diversity*, opened for signature in 1992,[24] seeks to conserve biological diversity through the sustainable use of its components and fair, equitable sharing of the benefits from the use of genetic resources (Article 1). Biodiversity is defined in Article 2 of the Convention as:

> *the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are a part: this includes diversity within species, between species, and of ecosystems.*

The Convention covers a broad range of subject matters, including deforestation, access to biotechnology, and managing fragile ecosystems. The Convention is primarily concerned with

21 UN Conference of the States Parties to the United Nations Convention against Corruption, Resolution 8/12.

22 CITES Resolution Conf. 17.6, p. 1.

23 United Nations General Assembly Resolution A/75/L.116 (2021)

24 United Nations, *Treaty Series*, vol. 1760, No. 30619. Adopted on 5 June 1992 and entered into force on 29 December 1993.

the management of national development choices that impact directly upon natural resources. A key focus of the Convention is on *in situ* conservation: *"the conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings and, in the case of domesticated or cultivated species, in the surroundings where they have developed their distinctive properties"* (Article 2). The Convention asks States to take numerous measures related to *in situ* conservation that includes the protection of endangered species subject to wildlife trafficking.

In particular, Article 8 requires States Parties, inter alia and ***"as far as possible and as appropriate"*** to:

- promote the protection of ecosystems and natural habitats, and the maintenance of viable populations of species;
- legislate for the protection of threatened species and populations; and
- regulate activities determined to have significant adverse effect on biodiversity.

The Convention further requires States Parties to take various measures to promote biological diversity, such as developing national strategies, plans or programmes (Article 6), and adopting measures for the recovery and rehabilitation of threatened species (Article 9). These measures may encompass actions to prevent and combat wildlife and forest crime including implementation of the CITES. The need for cooperation between the *Convention on Biological Diversity* and the CITES has been recognized by the administrative bodies of both instruments.

Convention on Biological Diversity

- Is the country a Party to the Convention on Biological Diversity?
- Has the country made reservations to any provisions under the Convention?
- In which national law or laws has the Convention on Biological Diversity been implemented?
- How do these laws ensure the enforcement of their provisions? Do they create offences relating to wildlife and forest crime?

2.4 Convention concerning the Protection of the World Cultural and Natural Heritage

The *Convention concerning the Protection of the World Cultural and Natural Heritage, or World Heritage Convention*, was adopted in 1972.[25] It aims to establish "an effective system of collective protection of the cultural and natural heritage of outstanding universal value, organized on a permanent basis and in accordance with modern scientific methods" (Preamble).

Parties to the Convention may identify cultural and natural properties for protection. These are submitted to the World Heritage Committee for consideration and potential inclusion on the World Heritage List. For a site to be included on the World Heritage List it must be of "outstanding universal value". Outstanding universal value is determined according to criteria included in the *Operational Guidelines for the Implementation of the World Heritage Convention*. One relevant consideration (Criterion (x)) is whether the site contains important significant natural habitats for threatened species.

The World Heritage Committee further collects information about legislative and administrative measures relevant to the protection of designated properties. It also maintains and updates

25 United Nations, *Treaty Series*, vol. 1037, No. 15511. Adopted on 16 November 1972 and entered into force on 17 December 1975.

the *List of World Heritage in Danger* for natural heritage that requires major operations for its conservation. Inclusion in this list is limited to properties that face ***"serious and specific dangers such as the threat of disappearance"*** (Article 11(4)). The fact that a significant number of sites contain endangered plant and animal species, many of which are affected by wildlife and forest crime and listed in the CITES Appendices, has prompted cooperation between the governing bodies of CITES and the World Heritage Convention.

While the World Heritage Convention does not protect particular plant or animal species and does not require mandatory steps of protection and conservation, it provides important guidelines encouraging Parties to protect their cultural and natural heritage. Article 5 sets out a range of steps that countries may take to achieve the protection, conservation and preservation of natural and cultural heritage. The Convention also created the World Heritage Fund, to which Parties contribute voluntarily, and from which they can seek financial and other assistance to protect their cultural and natural heritage (Article 15).

Convention concerning the Protection of the World Cultural and Natural Heritage

- Is the State a Party to the Convention Concerning the Protection of the World Cultural and Natural Heritage?
- In which national law or laws has the Convention Concerning the Protection of the World Cultural and Natural Heritage been implemented?
- Has the country made reservations to any provisions under the Convention?
- Are any natural sites in the State listed under the Convention as world heritage of "outstanding universal value"?
- Which national law or laws protect natural heritage sites? Do these laws contain criminal offences relating to illegal trade in natural heritage?

2.5 Convention on the Conservation of Migratory Species of Wild Animals

The *Convention on the Conservation of Migratory Species of Wild Animals* (CMS) was opened for signature in 1979 and entered into force in 1983.[26] The Convention encourages States Parties individually and collectively to conserve migratory species and their habitats and "to take action to avoid any migratory species becoming endangered" (Article II). Migratory species are defined as:

> *the entire population or any geographically separate part of the population of any species or lower taxon of wild animals, a significant proportion of whose members cyclically and predictably cross one or more national jurisdictional boundaries (Article I(1)(a)).*

Similar to the CITES, the *Convention on the Conservation of Migratory Species of Wild Animals* approaches the protection of certain species by listing them in two Appendices. Species listed in Appendix I are endangered throughout all or substantial parts of their migratory range. Strict obligations are placed on States Parties that are range states in relation to Appendix I-listed species (Article III). These include requirements to conserve and restore the habitats of such species, remove impediments to their migrations, and to prohibit the taking of animals belonging to such species (Article III(4), (5)). Appendix I-listed animals may only be taken for a limited number of purposes, including scientific purposes, enhancing survival of the species, and for the needs of traditional subsistence users (Article III (5)).

26 United Nations, *Treaty Series*, vol. 1651, No. 28395. Adopted on 23 June 1979 and entered into force on 1 November 1983.

Species listed in Appendix II have an ***"unfavourable conservation status and […] require international agreements for their conservation and management",*** or would otherwise benefit from international cooperation. The Convention states that States Parties that are range states shall endeavour to conclude agreements "where these would benefit the species and should give priority to those species in an unfavourable conservation status" (Article IV (3). Such agreements are separate instruments and may include States that are not parties to the Convention.

Range states in relation to a particular migratory species means "any State (and where appropriate any other Party referred to under subparagraph (k) of this paragraph) that exercises jurisdiction over any part of the range of that migratory species, or a State, flag vessels of which are engaged outside national jurisdictional limits in taking that migratory species" (Article 1(1) (h)).

Many species covered by the *Convention on the Conservation of Migratory Species of Wild Animals* are affected by wildlife and forest crime and the CMS' governing bodies have devoted increasing attention to the issue. Of particular relevance are resolutions of the Conference of the Parties, such as the *Resolution on the Prevention of Illegal Killing, Taking and Trade of Migratory Birds*, as well as the establishment of a CMS-CITES Joint Work Programme.

Convention on the Conservation of Migratory Species

- Is the country a Party to the Convention on the Conservation of Migratory Species?
- Has the country made reservations to any provisions under the Convention?
- In which national law(s) has the Convention on the Conservation of Migratory Species been implemented?
- Which other national law(s) seek to protect migratory species? Do these laws contain criminal offences relating to illegal killing, taking and trade of migratory species?

TOOL I.10

2.6 Bilateral agreements

Many States or their responsible authorities have entered into bilateral agreements, such as mutual administrative or judicial assistance agreements and memoranda of understanding (MOUs), for general enforcement issues which could also apply to combating transnational wildlife and forest crime. Some States have even entered into specific bilateral agreements to curtail wildlife and forest crime. Such agreements may be set up between individual producer and consumer States that agree to take action to prevent and suppress the illegal trade in fauna or flora that affects them. The possibility of having such voluntary agreements has also been endorsed by the Forest Law Enforcement and Governance initiatives, which are further discussed in Part IV, Section 4.1 of this Toolkit.

Bilateral agreements

- Has the country entered into any bilateral agreements with other countries that, directly or indirectly, relate to combating wildlife and forest crime?
- What is the main focus of the agreement(s)? Does it include criminal offences?
- What mechanisms does the agreement(s) contain to ensure its enforcement; have these mechanisms been used before, and are these mechanisms effective?

TOOL I.11

2.7 Domestic implementation of international law

The implementation, application, use and enforcement of obligations arising from international agreements like those outlined in the previous Sections depend on the legal system of each State. In States where the direct application of treaties is possible (so-called monist systems), self-executing provisions under international law apply without the need for specific implementation legislation. In States where such legislation is required (so-called dualist systems), the provisions of a treaty cannot be applied without the adoption of enabling laws. Which of these systems is used is often set out in the State's constitution: it may grant the executive the power to conclude and enter into international treaties, require parliamentary approval for ratification, or use a hybrid system. In order to understand the domestic application of international treaties, as a preliminary matter, it can be useful to examine how international treaties are ratified and implemented in the national legal system.

Domestic application of international law

- » Which branch of government has legal authority under national law to sign international treaties?
- » What steps are needed to implement international treaties and obligations arising from international law into national law?
- » If national legislation is needed to give effect to international treaties relating to wildlife and forest crime, has such legislation been passed?
- » What are the national laws giving effect to the treaties?
- » Are there any inconsistencies with pre-existing or subsequent national laws?

3

Part I

National wildlife and forest laws

This section of the Toolkit serves to identify the main sources of national law relating to wildlife and forest crime, especially those that set out rules and responsibilities relating to the management of forest and wildlife resources, the administration of cites, and other relevant environmental laws.

As outlined in Part I, Section 1 of this Toolkit, there is no stand-alone international instrument on wildlife and forest crime. It is therefore likely that provisions relevant to preventing and combating wildlife and forest crime will be scattered across multiple pieces of national legislation. Some jurisdictions may have multiple, highly specific forest and wildlife laws. Elsewhere, relevant laws may be more general, covering forest and wildlife issues in the broader context of environmental protection.

In some States, laws relating to wildlife and forests are poorly developed or suffer from significant gaps. Elsewhere, legal frameworks may be so extensive that government agencies, including law enforcement agencies, do not have the resources to monitor compliance adequately. In such circumstances, the reform of legal and regulatory systems is a prerequisite for effectively addressing wildlife and forest crime. One of the many challenges in developing and enhancing these systems is the fact that wildlife and forest crime may fall under the auspices of a range of government sectors that are governed by a great variety of legislative instruments.

In analyzing national wildlife and forest laws - and in developing recommendations for law reform - it is important to avoid unnecessary duplication, complication and bureaucratization: "[s]implicity and efficiency of regulations often go hand in hand":[27]

> *[F]ewer and simpler government rules reduce opportunities for arbitrary interpretation and malfeasance… [l]aws that are too complex and difficult to understand require complicated and expensive procedures and abrupt reorientation of institutional or social behaviour, run the risk of becoming unenforceable, irrelevant, and open opportunities for corruption and other illegal activities.*[28]

Furthermore, it is not sufficient to have the right laws: transparency is also critical. This includes both the broad dissemination of laws and a commitment to ensuring that the language they use is understandable to the public.[29]

27 Esa Puustjärvi, Proposal for Typology of Illegal Logging (Helsinki, Savcor Indufor Oy, 2008), p. 30.

28 Arnoldo Contreras-Hermosilla, Law compliance in the forest sector: an overview, World Bank Institute Working Paper (Washington, DC, World Bank, 2002), pp. 15-16.

29 World Bank, Strengthening forest law enforcement and governance: addressing a systematic constraint to sustainable development, Report No. 36638-GLB (Washington, DC, 2006), p. 6.

The World Bank notes that, although there is no 'one size fits all' description of good wildlife and forest laws, lawmakers can design laws in ways that can prevent illegal activities and corruption by considering the following:

- **Avoid legislative overreaching:** Do not write laws that exceed national capacity, that are more elaborate than necessary to achieve the intended policy or that are socially unacceptable.
- **Avoid unnecessary requirements for licences or permissions:** These add to the burden on both government and private sector resources and offer opportunities for corruption. Make sure licence and control requirements serve a genuine purpose.
- **Promote transparency and accountability:** These serve both to deter bad acts and to make their detection easier. Where the law grants discretion to officials, it should provide standards for exercise of that discretion.
- **Enhance the stake of local, non-government interests in [wildlife and] forest management**: The law can do this by better recognizing existing rights or by creating new opportunities for local people to benefit from forest management. Without local support, law enforcement in forest areas is difficult.
- **Adopt the law through a broadly participatory process:** This promotes a sense of ownership of the law among stakeholders and a resulting respect for it.
- **Increase the effectiveness of law enforcement mechanisms in the law:** Set appropriate penalties and have effective enforcement powers and procedures.[30]

National laws are generally influenced by government policy. Wildlife and forestry policy development is an essential precursor to developing and maintaining adequate legislation. It is pertinent to note that policy decisions should be made carefully and in consultation with relevant stakeholders.

A clear wildlife and forestry policy basis facilitates the introduction of procedures and practices to ensure, inter alia:

- Coherence and predictability of the legislation;
- Transparency of legal rights and obligations;
- Consistency, fairness and due process in application of legislation; and
- Efficiency of management and ease of implementation.[31]

Donor agencies and international organizations can assist in the process of improving governance by providing financial and technical assistance and, in some cases, by making the disbursement of development assistance conditional on such improvements.[32]

30 Aspects of forest management and participation are further discussed in Part IV of the Toolkit.

31 CITES Secretariat, *Model Law on International Trade in Wild Fauna and Flora* (Geneva, n.d.), p. 5.

32 See furthe Part IV, Section 5 of the Toolkit.

3.1 Wildlife-related laws

In most countries, the ownership and management of, and offences relating to, the wildlife sector are usually set out in laws concerning the conservation and management of wildlife resources, such as a 'Wildlife Act', 'Wildlife Protection Act', or a similarly named statute.

Historically, competing claims relating to hunting and trapping of wildlife have been a major driver behind the development of wildlife laws. Environmental concerns as well as human-wildlife conflicts (where wildlife destroys crops, property, kills domestic animals, or threatens or kills humans) have been further important drivers. In some countries, national wildlife laws are intended to address issues arising from claims concerning conflicts over wild animals living on or transiting through public spaces, or private lands or waterways.

In some States, such statutes cover both wild fauna and flora. Some States have specific laws on the use of wild flora. Such laws are often related to species protection, which is examined in the next section of this Toolkit. It is possible that separate statutes, such as conservation acts, wild flora acts or similar laws, exist and set out provisions to administer and manage the harvesting, taking, processing, trade, supply, sale or possession of specific plants or of wild flora. Insofar as they exist, these statutes should be integrated into an analysis of national wildlife and forest laws.

When examining national wildlife laws, it needs to be considered how these laws deal with issues of tenure, including rights to use and control wildlife, lands and territories, the transferability of those rights, and associated responsibilities, obligations and restraints. Tenure refers to the relationship between people (whether individually, in groups, or through the State) and land, flora and fauna (whether legally or customarily defined). In some jurisdictions, wildlife may be considered res nullius, that is, belonging to nobody. In other systems, the State may own the wildlife or local and indigenous people may hold wildlife under community management. The legal status of wildlife also may depend on the legal status of the land or forest on or in which it is located. These matters can have a significant influence on how national wildlife laws are drafted and operate, including both substantive offences and procedural provisions relating to matters such as compensation.

In general, national laws relating to the wildlife sector should, at a minimum, set out rules for the following aspects:

- ¬ Ownership over wildlife, that is, State-ownership, private property rights, community rights, rights of indigenous people or native title;
- ¬ Designation of government agencies to oversee and regulate the wildlife sector, administrative processes and so forth;
- ¬ Schedules of wildlife, protected areas, game reserves and hunting areas, including the identification of the areas where subsistence, commercial or leisure hunting is prohibited or permitted;
- ¬ Licence systems for leisure and commercial hunting, including conditions for granting, renewing and cancelling licences as well as schedules of prohibited and regulated weapons, devices and methods;
- ¬ Transport and import/export rules to control the movement of wildlife, dead or alive, animal parts and products made from wildlife across the country and across international borders; and
- ¬ Offences for violations of domestic wildlife laws and enforcement measures.

While many aspects of national wildlife laws focus predominantly on administrative matters, these frameworks directly and indirectly shape the patterns of criminal activity in the wildlife sector. Criminals quickly adapt to loopholes in national laws, attempt to circumvent certain rules and processes, or identify access points for facilitating criminal activities through corruption and coercion. Accordingly, national wildlife laws, including those related to ownership and management, should form part of any analysis of the criminal justice response to wildlife crime.

The following tool sets out basic analytic questions to identify the core components and organization of domestic wildlife laws. Provisions relating specifically to wildlife offences and the enforcement of wildlife laws are examined separately in Part I, Section 3.1, and Part II of this Toolkit.

TOOL
I.13

Domestic wildlife laws

- Which national laws regulate the wildlife sector? When were these laws enacted? When were they last updated?
- Which national laws specifically regulate ownership and property rights over wildlife?
- Which national laws specifically regulate the management and administration of the wildlife sector?
- Which agency is charged with wildlife administration? Which government department does the agency belong to, and to whom does it report?
- Do national wildlife laws set out specific responsibilities of each agency or authority and mechanisms of coordination and cooperation?
- Do national wildlife laws include schedules of protected species?
- Do national wildlife laws include schedules of protected areas such as game reserves or other areas in which no hunting is permitted? Do they designate areas in which subsistence, leisure or commercial hunting is permissible? What are the requirements to hunt legally?
- Do national wildlife laws include schedules of prohibited and regulated weapons, devices and methods for hunting or trapping?
- Do national laws set out a system for hunting concessions? Who issues hunting concessions; who monitors them? How can they be obtained, renewed, suspended and cancelled?
- Do national laws set out rules for the transportation and import/export of wildlife specimens? What do they include?
- Do domestic wildlife laws set out specific offences and enforcement measures?
- Have the laws related to wildlife sectors been broadly disseminated? Are they available in all relevant languages?

Additional resources:
UNODC, Guide on drafting legislation to combat wildlife crime (2018) 9

3.2 Forest-related laws

In most countries, the ownership and management of, and offences relating to, the forestry sector are set out in a 'Forest Act', 'Forestry Act', 'Forest Protection Act' or a similarly named statute. Such laws cover conservation and management of forest resources.

When examining provisions relating to the protection and management of forests, it needs to be considered how national laws deal with issues of tenure, including rights to use and control forest resources, the transferability of those rights, and associated responsibilities, obligations and restraints. In some jurisdictions, the State may own forests or local and indigenous people may hold forests under community management. The legal status of forests also may further

depend on the legal status of the land on which they are located. These matters can have a significant influence on how national forest laws are drafted and operate, including both substantive offences and procedural provisions relating to matters such as compensation.

At a minimum, national laws pertaining to the forestry sector should set out rules for the following aspects:

- ¬ Ownership over forests, that is, State-ownership, private property rights, community rights, rights of indigenous people or native title;
- ¬ Designation of government agencies to oversee and regulate the forestry sector, administrative processes and so forth;
- ¬ Forest and nature reserves, catchment areas and logging areas, including the identification of the areas where subsistence and/or commercial logging (or other commercial interests) are prohibited and those where they are permissible;
- ¬ Licence systems for logging, including conditions for granting, renewing and cancelling logging concessions, and licensing systems for changes of classification of forests that dedicate them to commercial purposes;
- ¬ Licence systems for timber processing, including conditions for granting, renewing and cancelling licences;
- ¬ Transport and export rules to control the movement of timber (logs, sawn timber and other products) across the country and across international borders; and
- ¬ Offences for violations of domestic forest laws and enforcement measures.

Furthermore, other industries may affect forests and associated legislation may overlap or contradict forest laws. It is critical that national laws should be harmonized, with rules regarding non-forestry activities that may affect forests – such as agriculture, mining, or the expansion of infrastructure – being reviewed and deconflicted.

The following tool sets out basic questions designed to identify the core components and organization of domestic forest laws. Provisions relating specifically to forest offences and the enforcement of forest laws are outlined in Part I, Section 3.2, and Part II of this Toolkit.

TOOL
I.14

Domestic forest laws

- » Which national laws regulate the forestry sector? When were these laws enacted? When were they last updated?
- » Are national laws on forests focused on the conservation or use of forests (i.e. who will receive rights to use the forests)?
- » Which national laws specifically regulate ownership and property rights pertaining to forests?
- » Which national laws specifically regulate the management and administration of forests and forest resources?
- » Which department or agency is charged with forest administration? Which section of government does the department or agency belong to, and to whom does it report?
- » Do domestic forest laws set out the specific responsibilities of each agency or authority and mechanisms of coordination and cooperation?
- » Do national laws designate protected areas such as forests, nature reserves and catchment areas (in which no logging or taking of plants is permitted)?
  - Is an approval by local or indigenous communities needed, or is there an impact assessment required before harvesting is permitted?

Domestic forest laws

- Do national laws designate areas in which subsistence or commercial logging is permissible? What are the requirements to extract timber and take other plants legally?
- Do national laws regulate the cultivation and harvesting of protected species on private land?
- Could a mining concession be approved in a protected area, thereby overruling forests laws that prohibit such?
- Is subsistence agriculture permissible in forested areas under national law? If yes, what laws are there to regulate, for example, shifting agricultural practices?
- Do national laws set out a system for logging concessions? Who issues logging concessions? How can these be obtained, renewed, suspended and cancelled?
- Does national law require licences to process timber (for example, for sawmills)? Who issues these licences? How can these be obtained, renewed, suspended and cancelled?
- Do national laws set out rules for the transportation, import and export of forest risk commodities, such as timber, including logs and sawn timber?
- Do domestic forest laws set out specific offences and enforcement measures?
- Have the laws related to forest sectors been broadly disseminated? Are they available in all relevant languages?

Additional resources:
UNODC, Rooting Out Corruption: An introduction to addressing corruption driving forest loss (2022)

3.3 Captive breeding and possession of animals

National laws and regulations relating to captive breeding and the possession of animals can have an impact on patterns of wildlife crime and can assist in preventing and combating it.

Possession of animals

Depending on the jurisdiction, the possession of animals taken from the wild may be subject to few, if any, restrictions or may be conditional on a notice to or a concession by public authorities. In other jurisdictions, possession of animals from the wild is prohibited for individual (private) owners and/or limited to specific entities (sanctuaries, zoos, research institutions, et cetera). Restrictions may also be placed on keeping (i.e. housing, sanitation) and handling (food, training/control devices, et cetera) such animals. Possession may further be conditional on the categorization of the animal in question, for example, whether it is classified as, inter alia, wild, endangered or dangerous.

TOOL I.15

Possession of animals

- Which national law or laws regulate the possession of animals taken from the wild?
- Who is allowed to possess wildlife and on what (if any) condition?
- What happens to specimens seized from illegal wildlife trade?

Captive breeding

The less regulated the private possession of wild animal species is, the more pressing questions of captive breeding and the subsequent use and sale of these animals become. Many animals enter the captive-bred wild animal trade. Some of these animals are 'surplus' from zoos or

other animal enclosures. Others are captured from their native habitats or come from backyard breeders or the black market. These wild animals are often sold at illegal auctions, pet stores or over the internet.

Even when private ownership is restricted and/or the trade in wild animals is prohibited, there may be a need for captive breeding regulation. For example, captive breeding of certain species may be authorized for conservation purposes or for the pet trade, which can contribute to the protection of wild populations. If captive breeding of wildlife is conducted ethically and sustainably it can prevent detrimental sourcing from the wild. On the other hand, if captive breeding is conducted illegally and/or unsustainably it can contribute to illegal trade, stimulate unsustainable consumer demand and lead to animal abuse, endangerment and the extinction of species. Captive breeding may be an entry point for illegally wild-caught specimens, especially if the origin of the stock is not regulated and limited, for instance, to import from trusted countries of origin or other captive breeding facilities. Additional questions relate to the marking of specimens bred in captivity (such as bands, tags, microchips).

Captive breeding

- What (if any) regulations apply to the captive breeding of wildlife?
- Is captive breeding of wildlife regulated for all owners or only for commercial use?
- What are the conditions (if any) to obtain and hold a captive breeding permit?
- Which agency is charged with ensuring that captive breeding facilities comply with legal requirements?
- How are captively bred animals marked and how is the integrity of supply chains monitored?
- Are there provisions criminalising breeding methods that are particularly cruel or harmful to animals?
- Do regulations concerning captive breeding of wildlife also apply to the breeding of domestic/captive-wild hybrids?
- Are there comparable provisions for artificial propagation of certain plants?

Additional resources:
UNODC, World Wildlife Crime Report, Trafficking in protected species (2020) 26

3.4 Animal welfare laws and regulations

Animal welfare, unlike trade, international cooperation in criminal matters, or environmental conservation, has been largely neglected across the international legal framework, with no single instrument addressing the issue. There do exist certain initiatives aimed at creating international principles, such as the proposed *Universal Declaration on Animal Welfare and the draft United Nations Convention on Animal Health and Protection.*

CITES contains several provisions regulating human interactions with wild animals and animal welfare in the course of international trade. This includes Article XII(2)(c), which mandates that the Secretariat prepare "studies concerning standards for appropriate preparation and shipment of living specimens". As a result of this requirement, the *CITES Guidelines for the Non-Air Transport of Live Wild Animals and Plants* have been adopted by the Conference of the Parties. Air transport is regulated by *Live Animals Regulations* of the International Air Transport Association (IATA).[33]

Other CITES provisions relevant to animal welfare include the permit-granting requirements under Articles III, IV and V to ensure that "any living specimen will be so prepared and shipped

33 CITES Resolution Conf. 10.21 (Rev. CoP16)

as to minimize the risk of injury, damage to health or cruel treatment". Article VIII(4) further provides that illegally traded specimens that are confiscated are placed in rescue centres or other places appropriate or consistent with the Convention. Resolution 17.8 of the Conference of the Parties further deals with this issue.[34] Nonetheless, CITES is not a vehicle for the advancement of general animal welfare; it is limited in scope to treatment during international trading activities. Further, many States Parties to CITES fail to maintain effective records of proper treatment of specimens during transportation, including instances of mistreatment and mortality.

Environmental treaties, such as the *Convention on Biological Diversity and the Convention on the Conservation of Migratory Species of Wild Animals*, deal with human interactions with animals through conservation and biodiversity perspectives aimed at preserving animals at the species level.[35] Conversely, animal welfare approaches seek to protect individual animals irrespective of conservation and endangered status. Integration of animal welfare considerations in international rules relating to biodiversity and conservation is slowly emerging.

In national law, many jurisdictions have provisions on animal protection and welfare. Although animals are traditionally conceived of (or treated) as property, commodities, and/or resources, this 'property-based approach' is increasingly supplemented by welfare considerations, as evidenced by the growing number of animal welfare laws. Some jurisdictions further recognize that humans should not have absolute rights over animals and have introduced offences criminalizing violations of animal rights (such as the right not to experience pain). Usually, such recognition has been limited to animals, in particular mammals.

Animal welfare

- What national law or laws apply to and protect animal welfare?
- Are animals granted a special status under national law?
- What types of animals are protected by these laws? Do they cover wildlife?
- Do animal welfare laws include criminal offences that may be relevant to the illegal wildlife trade?
- Are there provisions in relation to animal testing and the use of wildlife in experimentation? If so, how is the use, supply and potential release of wildlife for experimentation purposes regulated?

Additional resources:
United Nations Convention on Animal Health and Protection, www.uncahp.org.

3.5 General environmental laws

Depending on the jurisdiction, provisions relevant to wildlife and forest crime may be found in other, more general environmental laws rather than in specific statutes concerning the wildlife and forestry sectors. This may include, for instance, general statutes addressing the protection of the environment, and laws relating to biodiversity, environmental degradation or habitat loss. Elsewhere, general laws relating to agriculture, hunting, or planning laws may be relevant to fully assess the legal framework pertaining to wildlife and forest crime.

General environmental laws

- What other relevant laws relating to, inter alia, environmental protection, hunting or biodiversity apply to and/or impact on wildlife and forest crime?

34 CITES Resolution Conf. 17.8

35 See further Part I, Sections 1.4.1 and 1.4.3 of this Toolkit.

4

Part I

Specialized wildlife and forest offences

Wildlife and forest offences cover a wide range of conduct and circumstances. Some offences concern protected species. Others relate to protected areas or involve illegal products or illegal practices. Offences may relate to different stages and activities of wildlife trafficking, such as poaching, processing, exporting, importing or selling.

The ICCWC further explains:

> *This may start with the illicit exploitation of natural resources, such as the poaching of an elephant, uprooting of a rare orchid, unauthorized logging of trees, or unlicensed netting of sturgeons. It may also include subsequent acts, such as the processing of wildlife into products, their transportation, offer for sale, sale, possession, et cetera. It also includes the concealment and laundering of the financial benefits made out of these crimes. Some of these crimes will take place solely in the country of origin, whilst others will also occur in the country of destination, where live fauna or flora specimens, or their parts and derivatives, are finally consumed.* [36]

Wildlife and forest crime can occur equally in countries of origin, at transit points and in destination countries. Some offences only apply to conduct that occurs inside one jurisdiction, others relate to cross-border activities.

To combat wildlife and forest crime effectively, it is important to identify and define all possible offences and to enforce appropriate penalties for the complete array of offences. Identifying the many offences that constitute or contribute to wildlife and forest crime goes some way in defining the phenomenon and in articulating what wildlife and forest crime is, and — just as importantly — what it is not. Exploring the whole spectrum of criminal activities associated with wildlife and forest crime, including corruption, money laundering, fraud or tax evasion, also assists in identifying access points for law enforcement investigations and other government interventions.

Figure 1 below presents a non-exhaustive overview of the categories of criminal offences at points of origin, of transit and of destination, as well as a list of associated offences. Each category is further explored in the following Sections of this Toolkit. The repetition and overlap in these categories is deliberate as countries often play more than one role. For instance, a country may be simultaneously the source of the plant or animal and the place in which plant or animal material is further processed and perhaps also consumed.

36 CITES Secretariat, n.d., *Wildlife Crime*, accessed 31 March 2022, < https://cites.org/eng/prog/iccwc/crime.php>.

Figure 1. Wildlife and forest crime and associated offences at origin, transit and destination points

	Wildlife offences	Forest and flora offences	Facilitation and enabling offences
Origin	• Poaching (illegal hunting) • Use of prohibited hunting equipment or methods • Taking of restricted prey (breeding females, young, protected species) • Illegal possession • Illegal processing of animal material • Illegal export and re-export • Illegal captive breeding • Illegal destruction	• Illegal logging • Illegal harvesting of non-timber products • Illegal possession • Illegal processing of plant material • Illegal export	• Corruption • Tax evasion and non-payment of fees • Document fraud • Money-laundering • Offences relating to the internet • Obstruction
Transit	• Illegal import • Illegal possession • Illegal supply and sale • Illegal processing • Illegal export	• Illegal import • Illegal possession • Illegal supply and sale • Illegal processing • Illegal export	• Corruption • Tax evasion and non-payment of fees • Document fraud • Money-laundering • Offences relating to the internet • Obstruction of justice
Destination	• Illegal import • Illegal processing • Illegal possession • Illegal supply and sale • Illegal acquisition/ consumption	• Illegal import • Illegal processing • Illegal possession • Illegal supply and sale • Illegal acquisition/ consumption	• Corruption • Tax evasion and non-payment of fees • Document fraud • Money-laundering • Offences relating to the internet • Obstruction of justice

The same criminal act may involve more than one criminal offence. For instance, hunting using a prohibited method in a protected area could entail the breach of several provisions. To help ensure that wildlife and forest crime activities are tackled appropriately, criminalization may occur from a variety of angles. How States deal with prosecuting offenders in the case of multiple, partially overlapping offences is a matter for each State in accordance with its legal tradition. In some States, multiple partially overlapping charges are possible on a criminal indictment. In other States, this would not be possible.

In most jurisdictions, wildlife and forest offences are set out in specific statutes relating to environmental law, wildlife, forests, endangered species, protected areas, conservation or

biodiversity (see further Part I, Section 2 of this Toolkit). It is less common to find such offences in general criminal laws or penal codes. Nevertheless, general rules relating to criminal responsibility, criminal procedure, sentencing and punishment are relevant to wildlife and forest offences as they determine the ways in which criminal offences are composed, criminal liability is established, and the degree to which liability extends to attempts and participation. These general rules are further discussed in Part I, Section 5 of this Toolkit.

There is little commonality among jurisdictions about the exact scope and elements of wildlife and forest offences. What may be illegal in one State may be legal in neighbouring States. In analyzing relevant wildlife and forest offences and developing recommendations for reform, it is important to avoid creating marked imbalances between jurisdictions. If one State has very strong, well-defined wildlife and forest laws, then a relatively wide spectrum of wildlife and forest activities may be illegal. In contrast, in a neighbouring State, the same activities may be lawful. Purely national-level concepts of 'legality' therefore have the potential to create disparities between countries when controls are applied at the international level.

The legalization and criminalization of certain activities in the wildlife and forestry sectors are driven by a variety of forces, including political, economic, social and environmental factors, that are beyond the scope of any analysis pertaining to the criminal justice system response to wildlife and forest crime. Part V of this Toolkit offers tools to analyse some of these factors, as well as preventive interventions to address them.

Additional resources:
UNODC, Guide on drafting legislation to combat wildlife crime (2018) 18

4.1 Illegal hunting and related offences

4.1.1 Poaching

Poaching (or illegal hunting) refers to a variety of offences that criminalize the unlawful taking of wild animals. For example, poaching frequently involves the hunting of animals that belong to a protected or prohibited species. Hunting activities may also be illegal because of the location in which they are carried out. This is usually the case if hunting takes place in geographical areas that are placed under environmental protection, such as national parks or game reserves, or if the hunting takes place outside of designated areas. Relevant offences also include taking of restricted prey (breeding females, young animals) or of animal parts (such as antlers).

Other types of poaching involve activities that exceed allocated quotas or persons or organizations that do not hold a valid licence or permit to hunt. This latter is the case if hunting licences or permits were never obtained, are invalid, have expired or have been forged. Hunting licences or permits may also be void because they have been obtained by way of coercion or corruption.

In some instances, governments offer customary rights to groups or communities, allowing for hunting to take place for subsistence, livelihoods or another form of recognized right to hunt. In these instances, careful distinction needs to be considered when determining whether a poaching incident has taken place or whether the hunting has taken place within the customary rights of the individual.

TOOL
I.19

Poaching

- » Are the following activities criminalized under national law?
  - Killing or capturing protected animal species;
  - Killing or capturing wild animals without valid authorization (including no permit, expired permits, forged permits, permits obtained by coercion or force, permits issued in another name and permits falsely issued);
  - Killing or capturing wild animals in protected areas (including game reserves and national parks);
  - Killing or capturing wild animals outside licensed boundaries;
  - Killing or capturing wild animals above licensed quotas;
  - Killing or capturing young animals; the destruction of or damage to nests, dens and eggs; and the removal of eggs;
  - Killing or capturing unprescribed sex;
  - Killing or capturing pregnant animals.
- » Under which law(s) are these activities criminalized?
- » What are the elements of these offences?
- » Does liability for the offences cover intentionally, knowingly or negligently (without due care) engaging in the prohibited conduct? Can the offences be committed without proof of fault (strict liability)?
- » Does liability for the offences extend to participation in, attempts to, conspiring to, aiding, abetting, facilitating and counselling the commission of these offences?
- » In what circumstances are these offences aggravated, attracting higher penalties?
- » Do the offences criminalize incidental poaching (when the result is incidental to some other activity)?
- » What are the statutory penalties for these offences?
- » Are there exceptions to criminalization of any of the aforementioned activities under national law, such as for wild meat for personal consumption?

4.1.2 Poaching-related offences

Many jurisdictions criminalize the use of particular hunting equipment and methods. This can include methods of shooting, taking, hunting, capturing, killing, injuring, collecting, cutting, chopping off or destroying specimens, or using particular types of weapons, snares, traps, and prohibited weapons, devices and methods. This further includes equipment and methods for which permits or certificates would never be granted (by reason, for example, of their indiscriminate nature or because they are particularly inhumane) as well as regulated equipment and methods in situations in which their use is not permitted. For example, a minimum calibre of firearm may need to be used to hunt big game or the use of crossbows, bow and arrows, or snares or traps may be prohibited to hunters. Considerations of equipment and methods are not limited to weapons, but may also include explosives, poisons, and traps.

Other related offences include interferences with other people's hunting or trapping, and underreporting and misreporting hunting activities or quotas.

Poaching-related offences

- Are the following activities criminalized under national law?
  - Taking of restricted prey (breeding females, young animals);
  - Use of unauthorized hunting devices or hunting methods (including traps and explosives);
  - Interference with other people's hunting or trapping;
  - Underreporting and misreporting hunting activities or quotas; and
  - Hunting at night.
- Under which laws are these activities criminalized?
- What other offences are included?
- What are the elements of these offences?
- Does liability for the offences cover intentionally, knowingly or negligently (without due care) engaging in the prohibited conduct? Can the offences be committed without proof of fault (strict liability)?
- Does liability for the offences extend to participation in, attempts to, conspiring to, aiding, abetting, facilitating and counselling the commission of these offences?
- In what circumstances are these offences aggravated, attracting higher penalties?
- What are the statutory penalties for these offences?

4.2 Illegal logging and related offences

4.2.1 Illegal logging

The term 'illegal logging' is often used synonymously for forest-related offences that encompass a great range of activities associated with the felling of trees. In the wider sense, it is used to describe any breach of forestry laws; in the narrow sense, illegal logging usually refers to one or more of the following activities.

Logging of protected species

Illegal logging frequently involves the felling of trees that belong to a protected species. Most countries protect tree species of conservation concern under national law and prohibit their logging. Illegal logging occurs if trees are taken in violation of these prohibitions or in the absence of any authority or permit to take them.

Logging in protected areas

Logging activities may be illegal because of the location in which they are carried out. This is usually the case if logging takes place in geographical areas that are placed under environmental protection, such as national parks or conservation areas. Most States prohibit logging activities in areas that have been placed under protection to preserve their biodiversity, natural habitat or heritage, or to protect the livelihoods of indigenous people or local communities. This type of illegal logging also includes situations in which the logging is carried out in areas reserved for the use by indigenous people or local communities, or in particularly vulnerable areas, such as steep slopes, river banks or water catchments.

Excessive logging

A further type of illegal logging involves activities that exceed allocated concessions. This usually involves cases in which concession holders harvest trees in excess of their concession where that concession sets out a logging quota. This problem is particularly common in States with little, if any, capacity to take inventories of their forests, so there is no ready way to identify excess harvests. Excessive logging also includes situations in which the logging is carried out outside concession boundaries.

Logging without permits or with forged permits

Many logging activities are illegal because the person or company carrying out the activities does not hold a valid permit to do so. This is the case if permits were never obtained or have expired, or if the activities carried out are outside the scope of the logging permit. Areas that are only infrequently inspected by government officials are particularly vulnerable to unauthorized logging of this kind. Also included here are the use of fraudulently obtained permits and the duplication of permits.

Obtaining logging permits illegally

Perhaps one of the most widespread forms of illegal logging involves instances in which logging concessions have been obtained illegally. This may occur because of coercion, conflict of interest or fraud, or by providing false information to forest authorities. More commonly though, logging concessions are issued illegally by government officials in return for bribes. Allegations of corruption are widespread in the forestry sector of many countries and equally affect the harvesting, processing, transportation, export and import stages of the timber trade.

TOOL
I.21

Illegal logging

- Are the following activities criminalized under national law?
  - Logging protected timber species;
  - Logging without valid authorization (including no permit, expired permits, forged permits, permits obtained by coercion or force, permits issued in another name and permits falsely issued);
  - Logging in protected areas (including natural reserves and national parks);
  - Logging in prohibited areas (such as steep slopes, river banks and catchment areas);
  - Logging outside concession boundaries;
  - Logging above concession quotas; and
  - Logging or destruction of or damage to young trees.
- Under which laws are these activities criminalized? Are there exceptions to criminalization, i.e. for traditional use?
- What other offences are included?
- What are the elements of these offences?
- Does liability for the offences cover intentionally, knowingly or negligently (without due care) engaging in the prohibited conduct? Can the offences be committed without proof of fault (strict liability)?
- Does liability for the offences extend to participation in, attempts to, conspiring to, aiding, abetting, facilitating and counselling the commission of these offences?
- In what circumstances are these offences aggravated, attracting higher penalties?
- Do the offences criminalize incidental illegal logging (when the result is incidental to some other activity)?
- What are the statutory penalties for these offences?

4.2.2 Offences related to logging

Illegal logging methods and equipment

Some jurisdictions criminalize the use of particular logging equipment and methods. This can include methods of collecting or cutting trees, removing trees or land clearing. It also includes equipment and methods for which permits or certificates would never be granted as well as regulated equipment and methods in situations in which their use is not permitted.

Damaging forest ecosystems

A further activity associated with illegal logging involves the damaging of trees, especially by way of girdling, ringbarking or burning them. The purpose of this activity is to damage the trees to the extent that they can be harvested legally as most countries allow the removal of damaged trees to reduce the risk of bushfires and other hazards. Once a tree is removed from its original location, it becomes difficult if not impossible to distinguish legally sourced timber from illegally damaged trees.

Some jurisdictions have special offences for cutting similar but different timber species than the one permitted and for harvesting trees below legal diameter or in a larger volume than authorized. Other offences relate to instances in which public or protected forests are illegally occupied and converted to land for agricultural use or cattle ranching.

Logging-related offences

- Are the following activities criminalized under national law?
  - Illegal occupation and use of forest lands;
  - Removing under- or oversized trees, damaging trees, using slash and burn practices, girdling and ringbarking;
  - Underreporting and misreporting logging activities or quotas.
- Under which laws are these activities criminalized?
- What other offences are included?
- What are the elements of these offences?
- Does liability for the offences cover intentionally, knowingly or negligently (without due care) engaging in the prohibited conduct? Can the offences be committed without proof of fault (strict liability)?
- Does liability for the offences extend to participation in, attempts to, conspiring to, aiding, abetting, facilitating and counselling the commission of these offences?
- In what circumstances are these offences aggravated, attracting higher penalties?
- What are the statutory penalties for these offences?

4.3 Illegal harvesting of non-timber flora

Non-timber flora include plants as well as plant material such as resins, bamboo, fruits, nuts and seeds. Offences relating to non-timber flora capture a wide range of criminal activities associated with the harvesting of plants, including taking of protected species, removal of rare and endangered specimens from their natural habitat (also referred to as 'plant poaching'), excessive harvesting, damaging plants, taking of plants or plant material without permits or licences, the use of fraudulent permits and obtaining permits illegally.

Illegal harvesting of non-timber flora

- Are the following activities criminalized under national law?
  - Harvesting (as well as theft and other taking) of protected species;
  - Harvesting without valid authorization (including no permit, expired permits and forged permits);
  - Harvesting in protected areas (including natural reserves and national parks);
  - Harvesting in prohibited areas (such as steep slopes, river banks and catchment areas);
  - Harvesting outside concession boundaries;
  - Harvesting above concession quotas;
  - Obtaining harvesting concessions illegally; and
  - Underreporting and misreporting harvest activities or quotas.
  - Under which laws are these activities criminalized?
- Are there special offences in relation to seeds, fruits, nuts, resins, or fungi?
- Under which law(s) are these activities criminalized? Are there exceptions to criminalization, i.e. for traditional use?
- What other offences are included?
- What are the elements of these offences?
- Does liability for the offences cover intentionally, knowingly or negligently (without due care) engaging in the prohibited conduct? Can the offences be committed without proof of fault (strict liability)?
- Does liability for the offences extend to participation in, attempts to, conspiring to, aiding, abetting, facilitating and counselling the commission of these offences?
- In what circumstances are these offences aggravated, attracting higher penalties?
- Do the offences criminalize incidental illegal harvesting (when the result is incidental to some other activity)?
- What are the statutory penalties for these offences?

Note: These questions would also be relevant to fungi, which may be relevant in some country contexts.

4.4 Illegal processing of animal and plant material

The illegal processing (such as milling of trees or slaughtering of animals) and manufacturing of wildlife and forest products is one of the most complex steps in the supply chain and it is often used to disguise the origin of the material used and the types of species involved so that the final product becomes indistinguishable from products involving materials obtained legally.

The 'laundering' of animal and plant material in general, and timber in particular, refers to situations where illegally obtained material is concealed, mixed, or processed to disguise the illegal source. In relation to timber this includes, for example, mixing illegally logged logs with legal logs by exceeding cutting quotas on-site, by transporting illegal timber from an illegal cutting site to a legal forest operation, using permits or logging concessions in one area to cut in a different area, using road transport to hide the origin, and mixing illegally logged timber with legal logs at a sawmill or pulp mill, sometimes exceeding the official capacity of the mill.

The use of illegally obtained plants or animals sometimes reduces the production costs and ultimately the costs of the finished product, thus creating an advantage for operators who do not adhere to laws and industry regulations. If exotic species are involved, the processing stage frequently involves the manufacturing of luxury goods made from rare materials, such as ivory, mahogany or other hardwoods, or of food items and medicines that contain protected plant or animal material.[37] Illegal processing and manufacturing also involve activities such as processing without a licence, with a fake licence or with illegally obtained licences.

Illegal processing of animal and plant material

- Are the following activities criminalized under national law?
  - Processing (including mixing, concealing and laundering) illegally obtained or protected plant or animal material;
  - Processing above set quotas;
  - Processing without documentation verifying the legal origin of the material;
  - Failure to comply with processing rules;
  - Manufacturing of prohibited goods made from wild fauna or flora;
  - Operating processing facilities for timber or other plant or animal material without a licence; and
  - False reporting of processing quantities and activities.
- Under which laws are these activities criminalized?
- What other offences are included?
- What are the elements of these offences?
- Does liability for the offences cover intentionally, knowingly or negligently (without due care) engaging in the prohibited conduct? Can the offences be committed without proof of fault (strict liability)?
- Does liability for the offences extend to participation in, attempts to, conspiring to, aiding, abetting, facilitating and counselling the commission of these offences?
- In what circumstances are these offences aggravated, attracting higher penalties?
- What are the statutory penalties for these offences?

4.5 Trafficking and other offences relating to trade and transportation

Offences relating to trafficking cover a range of commercial activities involving fauna and flora, and activities relating to their transportation. For example, national law may criminalize the sale and supply of protected species and illegally obtained wildlife and animal material or may otherwise prohibit the trade in and transport of such material. By extension, this also includes offences for fraudulent sales and offers for sale. Offences relating to transportation include transportation without valid permits, with fraudulent documents, above set quotas and against biosecurity laws. Offences relating to exports, imports and other cross-border transactions are set out separately in Part I, Section 3.6 of this Toolkit.

37 See further Part V, Section 2.3.5 of this Toolkit

TOOL
I.25

Trafficking and other offences relating to trade and transportation

- Are the following activities criminalized under national law?
  - Selling fauna or flora that has been illegally logged, harvested or otherwise obtained illegally;
  - Transport, sale and offering for sale of any specimen of CITES-listed species that has been imported, introduced from the sea or taken from the wild without the required permits;
  - Trade and transport of unlawfully imported specimens; and
  - Trade and transport in violation of other restrictions or national control measures.
- Are these criminal offences or administrative offences?
- What other offences are included?
- What are the elements of these offences?
- Does liability for the offences cover intentionally, knowingly or negligently (without due care) engaging in the prohibited conduct? Can the offences be committed without proof of fault (strict liability)?
- Does liability for the offences extend to participation in, attempts to, conspiring to, aiding, abetting, facilitating and counselling the commission of these offences?
- In what circumstances are these offences aggravated, attracting higher penalties?
- What are the statutory penalties for these offences?

In addition to these criminal offences, some countries impose far-reaching restrictions on trade in wildlife and animal material in an attempt to close the market to any product where legal origins cannot be proved. Such trade regulations are not explored further in this Toolkit, but they can be integrated into wider strategies to stop wildlife and forest crime.

4.6 Import and export offences

Export offences involve a range of illegal cross-border activities such as the export of illegally obtained wildlife and forest products, the illegal export of protected species and the misclassification of exports. They also include export with fraudulent documents, excessive export and the declaring of lower values and volumes, clandestine export, export without permits and illegally obtaining export permits.

Similar to these export offences, the import of fauna and flora into a country may be illegal because of violations of customs and other border control requirements. Relevant offences may relate to, inter alia, the import of protected species, violations of a ban of imports from a particular source, failure to declare imports, false declarations and importation in excess of set quotas.

CITES provides measures that are specifically tailored to enforce the provisions of the Convention and to prohibit the export and import of CITES-listed species. Under Article VIII, Paragraph 1 States Parties are required to take the appropriate measures to enforce the provisions of the Convention and to prohibit trade in specimens in violation thereof. In particular, they must prohibit and make it an offence to import or export specimens in violation of the provisions of the Convention, which is to say without appropriate and valid permits. Article VIII does not in itself create a criminal offence and it does not provide any guidance as to the design of criminal offences under national law. The creation of the offence and the enforcement of the provisions of CITES are left to the signatories, and States Parties are at liberty to adopt more stringent prohibition and restriction requirements than required by the Convention. The criminalization of the retail trade in illegally sourced species and of attempts to trade in or possess protected species is not included in the Convention.

In most jurisdictions, a customs statute or similar law criminalizes the import and export of prohibited goods and sets up a licensing system for the legitimate cross-border trade in otherwise prohibited items. Such laws usually apply to a range of contraband ranging from wild fauna and flora to illicit drugs, weapons, and other banned items. They do not always contain measures specifically tailored for wild fauna and flora; usually animals and plants are listed alongside other prohibited goods. Also relevant are quarantine laws that ban the import of certain species of fauna and flora, though these laws are generally concerned with disease and pest control and focus on species and other environmental protection only as a side effect.

Import and export offences

- Are the following activities criminalized under national law?
  - Export and import of protected species (protected under national law or protected in the CITES Appendices);
  - Export and import of fauna and flora without valid permits (including no permit, invalid permits, forged permits);
  - Export and import with incorrect documentation (in relation to content, species, quantities, origin and destination)
  - Export and import of fauna and flora above set quotas or above documented quotas;
  - Export and import of fauna and flora in contravention of national bans; and
  - Other export and import of fauna and flora not in consistency with valid permits.
- Under which laws are these activities criminalized?
- What other offences are included?
- What are the elements of these offences?
- Does liability for the offences cover intentionally, knowingly or negligently (without due care) engaging in the prohibited conduct? Can the offences be committed without proof of fault (strict liability)?
- Does liability for the offences extend to participation in, attempts to, conspiring to, aiding, abetting, facilitating and counselling the commission of these offences?
- In what circumstances are these offences aggravated, attracting higher penalties?
- What are the statutory penalties for these offences?

4.7 Illegal acquisition, possession and consumption

The demand for and consumption of fauna and flora is an integral driver of wildlife and forest crime. While many offences take place in source and transit countries, these crimes would not occur if it were not for continuing demand in destination countries. Without demand for exotic pets, furniture made from tropical timber, food containing rare animals or plants, carvings made from ivory or rhinoceros horn, inexpensive imported veneer and plywood, and so forth, wildlife and forest crime would be dramatically reduced. Demand as a driving factor for wildlife and forest crime is discussed further in Part V, Section 2.3 of this Toolkit.

Many States, especially those with higher levels of consumption, have only recently introduced mechanisms to address the demand for illegal fauna and flora. Offences aimed at criminalizing those who, wittingly or unwittingly, acquire, possess or consume illicitly produced, traded or obtained animals, plants, material or derivatives can only be found in a small number of jurisdictions. There are generally no requirements to hold permits to obtain or purchase certain materials, unless protected species are involved. In addition, few States prohibit the purchase

of plant or animal products that come from an illegal source or involve protected species, and there are generally no penalties for the possession of illegally acquired specimens of wild fauna or flora. For the most part, the consumers of illegal fauna and flora are immune from prosecutions, seizures and sanctions. Article VIII, Paragraph 1, of CITES is among the few provisions that require States Parties to penalize the possession of any of the species listed in the CITES Appendices.

Illegal acquisition, possession and consumption

- Are the following activities criminalized under national law?
  - Possession and purchasing of any specimens of CITES-listed species that have been imported, introduced from the sea or taken from the wild without the required permits;
  - Possession and purchasing of unlawfully imported specimens; and
  - Obtaining, consuming and using illegally sourced/imported fauna and flora.
- Under which law(s) are these activities criminalized? Are these criminal or administrative offences?
- What are the elements of these offences?
- Does liability for the offences cover intentionally, knowingly or negligently (without due care) engaging in the prohibited conduct? Can the offences be committed without proof of fault (strict liability)?
- In what circumstances are these offences aggravated, attracting higher penalties?
- Does liability for the offences extend to participation in, attempts to, conspiring to, aiding, abetting, facilitating and counselling the commission of these offences?
- What are the statutory penalties for these offences?

4.8 Further offences

In addition to offences specifically associated with wildlife trafficking and other forms of wildlife and forest crime, more general offences under environmental laws, animal protection laws, captive-breeding related offences or under the general criminal law can play an important role in combating this crime.

Animal cruelty offences, for instance, can serve to punish the way in which live animals are captured, transported, traded, poached or slaughtered. They have been particularly important in cases in which birds were transported in plastic bottles or where the legs and heads of turtles and tortoises were taped to stop them moving in transit. Such offences may also relate specifically to captive breeding or to cruel breeding methods.

Some jurisdictions have offences relating to bushmeat, which is typically defined as meat from wild animals that have been illegally killed or poached and is meant for human consumption. In some countries, bushmeat is a key threat to conservation and contributes to a decline in wildlife populations, as well as posing risks to public health. Offences noted in national legislation may include the prohibition of the trade and the possession of, or the dealing in, any meat of any wildlife species. It may also include the prohibition of the unlawful consumption of wildlife. The issue is particularly complex, however, as there may be a blurring between laws related to human/wildlife conflict and bushmeat. Further, it can be difficult to prove motivation for the killing of the animal under different legislation.

General environmental offences, often found in administrative rather than criminal law, may be relevant to criminalize and punish particular aspects of wildlife and forest crime or associated activities. This may include, for instance, offences relating to pollution of water, land or air, offences relating to habitat loss, and offences relating to prohibited activities in nature or game

reserves. Some jurisdictions have general 'endangering of fauna and flora/of the environment' offences that can be relevant in the context of wildlife and forest crime.

In jurisdictions that have few, if any, specific offences relating to wildlife and forest crime, it may be necessary to resort to broader, more general offences to criminalize and capture relevant activities. This may include, for instance, offences relating to wilful damage and the destruction of another person's property, offences relating to the possession of firearms or the setting of traps, and offences relating to quarantine or animal welfare. The application and use of (general) offences relating to document fraud, money laundering, corruption and tax evasion are further discussed in Part I, Section 5 of this Toolkit.

Import and export offences

- Which offences address animal cruelty and other aspects of breeding, transporting and treating animals?
- Are there specific offences relating to captive breeding?
- Are there specific offences relating to the trade in or possession/consumption of bushmeat?
- What other environmental offences may be relevant in the context of wildlife and forest crime?
- Are these provisions criminal offences or administrative offences?

4.9 Statutory penalties

The types and levels of penalties that may be imposed for wildlife and forest offences vary greatly between jurisdictions. In some countries, only small fines and/or short prison terms are provided for. In others, fines can be very high and prison terms can be long. In extreme cases, wildlife and forest offences can attract life imprisonment or even capital punishment. The specific statutory penalties for the many offences identified in previous Sections will vary depending on the different types of conduct involved and the circumstances and consequences of that conduct.

CITES, for instance, does not prescribe specific penalties for illegal trade in protected species under Article VIII and, accordingly, Parties to the Convention are free to determine the fines or sentences imposed on the illegal trade. As a general rule, penalties should, on the one hand, be fair and commensurate with the harm caused and, on the other hand, be severe enough to constitute an effective deterrent. They must also be socially acceptable, as otherwise the courts may feel bound not to apply them. Many of the offences set out above are serious crimes and it is imperative that the penalties for these offences reflect their serious nature. Other offences set out above are not equally grave. The penalty for each offence must be proportionate to its seriousness. Fines and other non-custodial sanctions should be available for minor offences; imprisonment should only be imposed in very serious cases. The statutory penalty may also restrict the use of certain investigative techniques such as surveillance, the interception of communications, access to bank accounts and other financial records, and controlled deliveries, which in general are only applicable to serious crimes.

The discrepancies among countries regarding the penalties imposed can create challenges in multilateral efforts to effectively combat wildlife and forest crime. Countries with comparatively lower penalties may be seen as soft targets and may thus be more vulnerable to illegal activity. It would therefore seem desirable to achieve a certain degree of harmonization of statutory penalties as some perpetrators could be more easily deterred if they knew they would face the prospect of similar punishment wherever they operate. States should also ensure that financial penalties remain relevant and keep their deterrent power over time, for example by indexing them to inflation rates where appropriate.

Calls for sanctions for wildlife and forest crime to be greatly increased and to be made mandatory for all detected illegal activities should be answered with caution. Particularly severe penalties should be reserved for serious offences that are committed intentionally, for repeat offending, and for offences that cause harm or death to another person. It is important to note that increasing the statutory penalties for illegal activities is not always an effective deterrent. In some instances it may be counterproductive, as it can increase the willingness to pay bribes and may lead to higher levels of corruption. Higher penalties will thus only act as a deterrent where overall governance of the wildlife and forestry sectors is improved.

The following tool is designed to identify the types of statutory penalties available as well as the maximum and minimum statutory penalties provided for wildlife and forest offences. These will often differ from the actual penalty imposed on an offender. The full spectrum of available sanctions, along with the principles of sentencing, are further analysed in Part III, Section 4 of this Toolkit.

TOOL
I.29

Statutory penalties

- What types of statutory penalties are provided for wildlife and forest offences (such as fines or imprisonment)?
- Does the legislation set out maximum terms of imprisonment or maximum fines?
- Does the legislation set out minimum terms of imprisonment or minimum fines?
- Does the severity of the penalty for each offence adequately reflect the severity of the harm or damage caused by the perpetrator and his/her guilty mind?
- How do these penalties and their severity compare to those for other types of criminal offences?
- Is there any forfeiture statute or provisions on general or special forfeiture?

Additional resources:
UNODC, Guide on drafting legislation to combat wildlife crime (United Nations, 2018) 34–35

4.10 Crime statistics and other data

4.10.1 Incidence of wildlife and forest offences

In some jurisdictions, statistics are collected for each individual criminal offence, while elsewhere data is clustered in broader categories such as forest offences, environmental crime and import/export offences. In some jurisdictions, crime statistics on wildlife and forest crime are not collected at all.

In most jurisdictions, separate statistics are collected for reported offences, investigations, prosecutions and convictions. If collected and reported consistently, such information makes it possible to review investigation and prosecution procedures and identify potential weaknesses in the criminal justice system that cause cases to falter. Many jurisdictions include in their crime statistics information about the offender, victims (if any), harm or damage caused, and the location of the offence, which is helpful in identifying trends and patterns of criminal activity. In collecting data and statistics on wildlife and forest offences, it is important to also collect data on other crimes that facilitated/enabled or were linked to these offences, such as corruption, money-laundering, document fraud, tax evasion, non-payment of fees, offences relating to the internet and obstruction of justice.

Crime statistics

- Which agencies collect crime statistics?
- How regularly are crime statistics collected? How, how often, and where are they published?
- Do crime statistics separate wildlife and forest offences from other offences? If so, what species are being targeted, if any?
- Do crime statistics establish whether wildlife and forest offences are linked to other crimes such as corruption, tax evasion, document fraud, money-laundering and offences relating to the internet?
- How many wildlife and forest offences are reported? How many are investigated? How many investigations result in prosecutions and convictions?
- Of the wildlife and forest offences that are linked to other crimes, how many result in investigation of such linked or enabling crimes including corruption, tax evasion, document fraud, money-laundering, offences relating to the internet? How many of these other crimes are prosecuted and convicted?
- Do these statistics contain information about the perpetrators, including their gender, the location of the offence and any harm or damage caused?
- Is any analysis of crime statistics relating to wildlife and forest crime undertaken? What trends and issues can be identified from the available statistics?

4.10.2 Unreported crime

Crime statistics count only those criminal offences that come to the attention of the police or other law enforcement agencies. For a variety of reasons, witnesses and victims of crime, including of wildlife and forest crime, may not report offences to the authorities. The reporting rate may be affected by a number of factors, including access to law enforcement agencies and confidence in the police and other authorities. Crime statistics are therefore a very imperfect measure of the number of wildlife and forest offences actually committed and further research and analysis may be required to get a better understanding of the full scale and characteristics of wildlife and forest crime. Many crime statistics are also not available disaggregated by gender, which creates a gap in understanding of a critical factor that is important when designing effective responses.

The difference between how much crime actually occurs and how much crime is reported to or discovered by the authorities is referred to as the 'dark figure'. Whereas only reported crime appears in crime statistics, unreported crime figures encompass crimes that did not trigger an official reaction or response by law enforcement agencies.

To uncover the level and circumstances of unreported crime, and thus reveal its true extent, supplementary data-gathering methods need to be employed. This may involve conducting surveys of victims, perpetrators, other participants or whistle-blowers, creating test situations or using hidden cameras. For example, to get a better understanding of the full scale of wildlife and forest crime, it may be necessary to randomly and anonymously survey perpetrators as to whether they have committed a crime that has not been detected by law enforcement authorities in the past (self-reported delinquency). In addition, corporate entities operating in the wildlife sector can be questioned using the same strategy. Another way to shed light on the dark figure of wildlife and forest crime is to compare reported and unreported crime statistics with another country. For example, carcasses discovered during population surveys of endangered species, or seizures conducted during import/transit/export, can indicate levels of unreported crimes.

TOOL
I.31

Unreported crime

- Do available crime statistics relate only to reported crime or do they contain estimates of the crime level in general?
- Are there any other estimates or other information about the dark figure of wildlife and forest crime?
- Do available statistics include comparisons to wildlife and forest crime data from other jurisdictions or comparisons to other crime types? If yes, what conclusion can be made for the statistics on unreported crime?
- Is there any research into the dark figure of wildlife and forest crime? If yes, what methods have been used for the research?

5

Part I

Facilitating and enabling offences

In addition to the specific wildlife and forest offences outlined in Part I, Section 3 of this Toolkit, wildlife and forest crime frequently involves a range of other activities that can fulfil other, more general offences under domestic criminal law.

Some of these activities may serve to facilitate or enable wildlife and forest crime, such as the use of illegally obtained weapons, the production or use of fraudulent documents, or the payment of bribes. Other activities may take place in the aftermath of wildlife and forest crime, such as the laundering of proceeds of crime, or the intimidation of witnesses. As wildlife and forest crime may be linked to other forms of criminal activity, the prioritisation of wildlife and forest offences could be reconsidered in some cases.

While related activities and relevant offences cannot be examined exhaustively in this Toolkit, the following Sections focus on those facilitation, enabling and general offences that are most frequently connected to wildlife and forest crime. The use of these offences can be of great significance in actual cases, as they may enable the use of investigatory powers and techniques not otherwise available for wildlife and forest offences. Further, they may be easier for prosecutors to prove in some cases and may enable courts to impose higher sentences than would otherwise be available.

5.1 Document fraud and related matters

Document fraud is frequently used to disguise the authenticity, legality, quantity, volume, origin, and destination of wildlife and forest products. Fraud may take place at the source, transit and destination points and may be committed by filling in a document with false information or by forging the document itself. Fraudulent permits and certificates may be used to cloak illegal wildlife and forestry products as ostensibly legitimate merchandise. False documents may be used to obtain permits or certificates allowing entry into a protected area or to allow the possession or use of certain weapons, devices or methods, and activities related to hunting, logging, harvesting, and taking, possessing or trading fauna and flora. There are a wide variety of ways in which genuine documents can be tampered with and in which fraudulent documents can be created.

Document fraud not only relates to paper-based fraud but can involve the removal, alteration, defacing or erasure of marks or tags affixed to animals, plants and parts thereof. Fraud may occur when false information is given or when misrepresentations are made to government officials who issue the relevant permits, licences, concessions and other documents, with the intention to omit or mislead. For example, false declarations of the captive breeding of animals

or the artificial propagation of plants are a common means of fraudulently obtaining genuine CITES permits and certificates. Document fraud can also be linked to corruption if government officials are bribed to issue false documents. The theft and sale of blank documents or the use of false information in online forms and transactions can similarly undermine the system. The overreliance on documents, marks and stamps is seen by many as a fundamental vulnerability of trade in fauna and flora because they themselves are often traded illegally and recycled in multiple transactions.

To implement the obligations arising from CITES, the following activities should be established as criminal offences pursuant to a country's legislation:

a. any violation of the conditions attached to permits and licences;

b. the making of false or misleading statements in, or in connection with, applications for permits and licences;

c. the making of false or misleading statements to enforcement officers; and

d. the forging of permits or security stamps.

The removal, alteration, defacement or erasure of marks or tags affixed to specimens should also be included, pursuant to regulations. In addition, the failure to keep records, the keeping of incomplete records, and the falsification of records, where the keeping of records is required, should also be established as criminal conduct.

TOOL
I.32

Document fraud and related offences

» Are the following activities criminalized pursuant to national law? What types of offences are included?
  - Forging of government-issued documents, security stamps and markings;
  - Theft of blank documents;
  - Providing false information, including making false statements and misrepresentations, to government officials in order to obtain required licences and permits;
  - Using permits or documents issued to another person;
  - Providing, selling and procuring blank documents;
  - Unauthorized removal, defacing, erasure and alteration of stamps and marks;
  - Falsification of records and failure to keep records; and
  - Misrepresentation and omission of material facts when applying for permits or documents.
» Under which laws are these activities criminalized? Are these general fraud offences, identity-related offences or offences specific to wildlife and forest crime? Are these criminal offences or administrative offences?
» What are the elements of these offences?
» Does liability for the offences cover intentionally, knowingly or negligently (without due care) engaging in the prohibited conduct? Can the offences be committed without proof of fault (strict liability)?
» Does liability for the offences extend to participation in, attempts to, conspiring to, aiding, abetting, facilitating and counselling the commission of these offences?
» In what circumstances are these offences aggravated, attracting higher penalties?
» What are the statutory penalties for these offences?
» What data, statistics or other information is available of document fraud relating to wildlife and forest crime?

5.2 Money laundering

Wildlife and forest crime can generate significant profits that need to be laundered to disguise their illegal origin and avoid currency control and other financial regulations. While most jurisdictions have laws that directly or indirectly criminalize the transferring, receiving, concealing and possession of proceeds of a crime, in some places, wildlife and forest offences are not predicate (or underlying) offences for money laundering.[38] This can make it difficult, if not impossible, for investigators to 'follow the money trail' and freeze and ultimately confiscate the proceeds of wildlife and forest crime, and identify and punish those who fund or profit from such crime. Where such laws exist, they are sometimes limited to proceeds from illegal logging and/or are rarely used to investigate money laundering across borders.

5.2.1 Money laundering offences

A number of international frameworks can be utilized to criminalize and investigate the laundering of wildlife and forest crime proceeds. *The United Nations Convention against Transnational Organized Crime* (UNTOC), for instance, contains a provision to comprehensively criminalize money laundering insofar as it relates to organized crime and other serious offences. It also sets out a range of other measures to prevent and detect money laundering.[39] Article 23 of the *United Nations Convention against Corruption* (UNCAC) similarly includes a money laundering offence that is modelled after the UNTOC offence. In simplified form, Article 6, Paragraph 1, of the UNTOC and Article 23, Paragraph 1, of the UNCAC define "laundering of the proceeds of crime" as:

> a. (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property…;
>
> b. (ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or right with respect to property, knowing that such property is the proceeds of crime;
>
> c. (i) The acquisition, possession or use of property, knowing at the time of receipt, that such property is the proceeds of crime.

These conventions also state that the application of relevant provisions shall extend to: participation in; association with or conspiracy to commit; attempts to commit; and aiding, abetting, facilitating and counselling the commission of these money-laundering offences.[40]

38 Article 2(h) of the United Nations Convention against Transnational Organized Crime states: "'Predicate offence' shall mean any offence as a result of which proceeds have been generated that may become the subject of an offence as defined in article 6 of this Convention".

39 United Nations Convention against Transnational Organized Crime, Art. 6 and Art. 7.

40 United Nations Convention against Transnational Organized Crime, Art. 6, Para. 1 (b) (ii); United Nations Convention against Corruption, Art. 23, Para. 1 (b) (ii).

Money laundering offences

- In which national law(s) are provisions relating to money laundering and proceeds of crime, including offences, set out?
- Does national law criminalize the conversion, transfer or concealment of property, or the disguise of its true nature, source, location, disposition, movement or ownership, knowing that such property is the proceeds of crime?
- Does national law criminalize the acquisition, possession or use of property, knowing that such property is the proceeds of crime?
- Do these offences apply to the proceeds derived from all serious crimes?
- Are relevant wildlife and forest offences predicate crimes to which money-laundering provisions apply? If so, do predicate offences include offences committed both within and outside the national territory? If committed outside the national territory, does the double criminality requirement apply?
- Are there specific money-laundering offences relating to wildlife and forest crime? Where are the offences defined (such as the penal code or specific criminal laws)? What are their constituent elements?
- Are the money-laundering provisions applicable to the persons who committed the predicate offence (self-laundering) or are predicate offences and money-laundering punished separately?
- What are the elements of these offences?
- Does liability for the offences cover intentionally, knowingly or negligently (without due care) engaging in the prohibited conduct? Can the offences be committed without proof of fault (strict liability)?
- Does liability for the offences extend to participating in, attempting to commit, conspiring to commit, aiding, abetting, facilitating, and counselling the commission of these offences?
- In what circumstances are these offences aggravated, attracting higher penalties?
- What are the statutory penalties for these offences?
- Can the law be used to freeze and confiscate illicit proceeds and other assets connected to wildlife and forest crime?

Additional tools relating to financial investigations, confiscation and seizure are explored in Part II, Section 5.6 and 6.7 of this Toolkit.

5.2.2 Financial Action Task Force Recommendations

The Financial Action Task Force (FATF) is an intergovernmental agency set up specifically to address money laundering. Nine so-called 'FATF-style regional bodies' have been set up to complement the work of FATF.

The FATF has developed global standards, known as the *FATF Recommendations*, that set out a comprehensive framework of measures which countries should implement in order to combat money laundering, terrorist financing and the financing of weapons proliferation. The Recommendations comprise measures that countries should have in place within their criminal justice and regulatory systems; the preventive measures to be taken by financial institutions and other businesses and professions; measures to ensure transparency on the ownership of legal persons and arrangements; the establishment of competent authorities with appropriate functions and powers and mechanisms for cooperation; and arrangements to cooperate with other countries. The *FATF Recommendations* recognize that countries have

diverse legal, administrative and operational frameworks and different financial systems, and so cannot all take identical measures to counter these threats. The *FATF Recommendations*, therefore, set an international standard, which countries should implement through measures adapted to their particular circumstances.

The *FATF Recommendations*, while not legally binding, have found broad acceptance, and FATF monitors compliance with the standards set by the Recommendations in Member and non-Member States. These Recommendations are not designed for a particular type of crime and are thus easily adaptable to combat the laundering of proceeds derived from wildlife and forest crime. To assist countries in their efforts to assess and enhance domestic anti-money laundering laws, the FATF, in partnership with the World Bank and the International Monetary Fund, has developed a detailed handbook on anti-money-laundering and counter-terrorism financing evaluations and assessments.[41] FATF released a study in June 2020 that assesses the money laundering aspects of wildlife crime, and demonstrates how jurisdictions should apply the FATF standards to combat these crimes. In June 2021, a similar report followed on broader crimes that affect the environment such as forest crime.

FATF Recommendations

TOOL I.34

- Is the country a member of the FATF?
- Is the country a member of a FATF-style regional body?
- Has the country, in its National Risk Assessment, considered and identified money laundering/terrorist financing risks emanating from wildlife and forest crimes?
- Has the country undergone a mutual evaluation by its peers (in the context of FATF or a FATF-style regional body)?
  - If so, when was the assessment carried out and what was its outcome on technical compliance and on effectiveness?
  - Has the country been listed by FATF as a high-risk jurisdiction or a jurisdiction under increased monitoring?
  - Did the evaluation make reference to wildlife and forest crime and related transactions? What deficiencies were identified (i.e. risk assessment, financial investigations, asset recovery, international cooperation) in relation to wildlife and forest crimes? What steps have been taken to remedy these deficiencies?

Additional resources:
FATF. Money Laundering from Environmental Crime (2021). https://www.fatf-gafi.org/publications/methodsandtrends/documents/money-laundering-from-environmental-crime.html
FATF. Money Laundering and the Illegal Wildlife Trade (2020). https://www.fatf-gafi.org/publications/methodsandtrends/documents/money-laundering-wildlife-trade.html
Egmont Centre of FIU Excellent and Leadership (ECOFEL). Financial Investigations into Wildlife Crime (2021). https://egmontgroup.org
World Bank. National Risk Assessment for Anti-Money Laundering and Terrorism Financing, module on "Environmental and Natural Resource Crimes"

41 FATF, 2009, AML/CTF *Evaluations and Assessments: Handbook for Countries and Assessors*, Paris, Organization for Economic Cooperation and Development, accessed 3 April 2021, < www.fatf-gafi.org/dataoecd/7/42/38896285.pdf >

5.3 Corruption-related offences

Wildlife and forest crime is frequently facilitated by corruption. Corruption may occur prior to operation (e.g. granting permits, certificates, quotas or licences), during operation (e.g. control of activity) and after operation (e.g. granting permits and licences for the export or commercialization of products) at the points of origin, transit, and destination.

5.3.1 Contexts and types of corruption

Corruption related to wildlife and forest crime can take many forms, from officials receiving bribes and colluding with criminals, to abuse of office and embezzlement of resources allocated to wildlife and forest management and protection.

There are numerous ways in which bribes can be offered and paid to government officials, commercial enterprises and individuals who exercise control over certain areas, industries and materials. Corruption often involves active bribery: the promise, offering or giving to another of an undue advantage, in order that the other person acts or refrains from acting in matters relevant to his/her duties. Another common form of corruption is passive bribery: the solicitation or acceptance by another of an undue advantage, in order to act or refrain from acting in matters relevant to his/her duties.

Bribes can be offered at all stages of the commission of wildlife and forest crime. One of the most common situations is when permits, certificates or other authorizations or documents are required to acquire land or to hunt, harvest, transport, process, sell, import, export, possess or acquire fauna and flora, their products and derivatives. Bribes can also be offered to obtain information on the movement of wildlife or patrols to enable poaching, to allow illegal specimens to pass through checkpoints, or to ensure that illegal shipments are not inspected or seized.

Officials can also embezzle or misuse funds and resources intended for wildlife and forest conservation, management and protection, or embezzle seized wildlife or wildlife or forest products.

Further, corruption can offset any attempts to control or enforce laws linked to forest crimes, as corruption in the initial stages of obtaining land rights or land classification can make all further acts of exploitation of forest resources, which were supposed to be protected, look legitimate. Similarly, wildlife criminals may engage in corruption to create a veneer of legitimacy; illegal enterprises can be presented as legitimate sources of wildlife and wildlife products.

Corruption can also reach the highest levels of government officials. Such officials may trade influence or abuse their functions to weaken policy decisions or legislation related to the wildlife and forestry sectors, in order to illegally access protected land or to ignore environmental standards. Further, they may grant illegal or unsustainable hunting or logging concessions or large-scale procurement contracts to their own or allies' interests. High-level corruption is the most damaging form of corruption as it causes significant financial losses and encourages corruption at the lower levels of government. In some cases, corruption in the forestry and wildlife sectors may be an intrinsic part of the patronage systems that sustain the power of a country's ruling elite. Political manipulation can be a major issue in persistent illegal activities in the wildlife and forestry sectors. It can lead to a breakdown of law and order and hamper private and foreign investment in these sectors.

Further encouraging corruption in the forestry and wildlife sectors is the fact that the risk of being caught is often low because the relevant crimes are committed far from public view, in remote regions where supervision, monitoring and media scrutiny may be quite limited. Another key factor is the absence of effective and dissuasive sanctions. Furthermore, unclear

mandates and a lack of transparency in public wildlife and forest administrations and other agencies, including law enforcement authorities, unclear accountability structures and a lack of public disclosure of key documents are all conducive to the flourishing of corrupt practices.

It is also important to consider gender in the context of corruption and wildlife crime. Women can be more severely affected by particular forms of corruption, for instance when corrupt (male) actors demand sexual rather than financial 'favours.'

5.3.2 Corruption offences

Offences relating to corruption can vary greatly between jurisdictions. In general, they are not limited to offering or accepting bribes, but include a range of offences in which officials misuse their position or are instigated to do so, and encompass corruption in both the public and private sectors.

Apart from the bribery of national public officials, corruption offences generally also include bribery of foreign public officials and officials of public international organizations, as well as embezzlement, misappropriation or other diversion of property by a public official, trading in influence, abuse of functions, or illicit enrichment. Bribery and embezzlement of property can also take place among private actors.[42]

For those charged with investigating and prosecuting wildlife and forest crime, evidence to prove one of these corruption-related offences can be used alongside proof of a specific wildlife and forest offence, allowing for a wider range of entry points to prosecute illegal conduct. In some cases, it may even be easier to show that a person offered or accepted a bribe than to prove that the person engaged in wildlife or forest crime. While small-scale corruption, such as the bribery of low-level officials, may be hidden behind closed doors, many types of corruption linked to the wildlife and forest sectors leave a paper and money trail that can be reconstructed by investigators and prosecutors. This can provide the proof of criminal activity that is necessary to secure a conviction. Using anti-corruption legislation to prevent and suppress wildlife and forest crime can also be helpful to impose heavier sentences or use investigative powers and techniques that may not be available for wildlife and forest offences. Further, some facilitators of wildlife and forest crime may have facilitated such acts by committing a corruption offence (rather than committing a wildlife and forest offence, as such). For example, an officer selling a license to a person who is entitled to such a licence and embezzling the fee has committed a corruption offence rather than a wildlife and forest offence. Linking corruption and wildlife and forest crime, and investigating them together or in parallel, can often be the only way to hold 'facilitators' accountable for their actions.

The following tool is designed to identify and analyse general corruption offences under domestic criminal law and specific corruption offences pertaining to the wildlife and forestry sectors (insofar as they exist). Enforcement measures relating to corruption investigations, including measures to address the corruption of prosecution services and the judiciary, are explored in Part II, Section 8 and Part III, Sections 2.3 and 3.4 of this Toolkit.

42 See further, Articles 15–25 of the United Nations Convention against Corruption

TOOL
I.35

Corruption-related offences

- Are the following activities criminalized under national law? If so, under which laws are these activities criminalized (penal code, specific laws or other)? What are the constituent elements of these offences?
  - Active and passive bribery, complicity in bribery offences and other forms of corruption;
  - Embezzlement, misappropriation or other diversion of property by a public official;
  - Bribery of foreign public officials and officials in public international organizations;
  - Trading in influence;
  - Abuse of functions;
  - Illicit enrichment;
  - Bribery and embezzlement in the private sector;
  - Concealment; and
  - Obstruction of justice.
- Are there special offences pursuant to wildlife and forestry sector laws to criminalize the following?
  - Soliciting by or payment of bribes to government officials and politicians to receive a timber concession, hunting permit or processing licence; or to avoid reporting restrictions, overlook petty infringements, ignore illegal logging, harvesting and poaching activities;
  - Soliciting by or payment of bribes to government officials and politicians to receive a timber concession, hunting permit or processing licence; or to avoid reporting restrictions, overlook petty infringements, ignore illegal logging, harvesting and poaching activities;
  - Payment of bribes to avoid prosecution or administrative intervention for non-compliance with wildlife and forest laws and regulations;
  - Trading in influence to shape favourable legislation, guidelines, decisions et cetera;
  - Cronyism (that is, favourable decisions by wildlife and forestry officials for friends and relatives); and
  - Manipulating bidding processes or leaking bidding information to preferred contractors.
- What are the elements of these offences?
- Does liability for the offences cover intentionally, knowingly or negligently (without due care) engaging in the prohibited conduct? Can the offences be committed without proof of fault (strict liability)?
- Does liability for the offences extend to participation in, attempting to, conspiring to, aiding, abetting, facilitating and counselling the commission of these offences?
- Is the liability of legal persons for the relevant offences established domestically? What is the nature of such liability?
- In what circumstances are these offences aggravated, attracting higher penalties?
- What are the statutory penalties for these offences?

Additional resources:
UNODC, The Global Programme against Corruption: UN Anti-Corruption Toolkit, 3rd ed. (Vienna, 2004)
UNODC. Scaling Back Corruption: A guide on addressing corruption for wildlife management authorities. https://www.unodc.org/documents/Wildlife/19-08373_Scaling_Back_Corruption_ebook.pdf
UNODC. The time is now: addressing the gender dimension of corruption (Vienna, 2020)
Targeting Natural Resource Corruption: https://worldwildlife.org/pages/tnrc-knowledge-hub-publications

5.4 Tax evasion and non-payment of fees

Tax evasion and the non-payment of duties, tariffs and other fees are not unique to the wildlife and forestry sectors but play an important role in this context. For example, even if an operator has obtained a legal permit to harvest, the non-payment of taxes, royalties or other fees make the operation illegal. Often these violations go hand in hand, and if, for instance, the operator harvests additional trees, other fees remain unpaid. The arrears can in some cases become a huge drain on public resources and revenue. Failure to pay the relevant taxes and fees deprives governments and local communities of important revenues and can seriously undermine economic development and the fulfilment of human rights.

Unfair competition also poses a serious challenge to those operators that comply with the relevant laws and regulations and pay the relevant fees as their products may be more expensive at wholesale and retail stages. Moreover, tax evasion and the non-payment of fees are frequently linked to money-laundering and corruption, especially when government officials are bribed to avoid the paying of fees. Also worth noting in this context is the avoidance of currency controls, which often takes place when cash is carried by couriers in order to make payments to those in a chain of criminality.

Tax evasion and non-payment of fees

- Are the following activities punishable under national law? Are they punishable as criminal or administrative offences? Under which laws are these crimes punishable? What are the elements of these offences?
  - Declaring animal and plant material or products below market prices or value;
  - False declarations of species to avoid or reduce tariffs or fees;
  - Overvaluing services received from related companies to reduce declared profits and corporate income taxes;
  - Avoiding royalties and duties by underreporting or undervaluing animal and plant material or products;
  - Non-payment of licence fees, royalties, taxes and other government charges relating to activities in the wildlife and forestry sectors; and
  - Concealing of profits and manipulating revenue flows for services to avoid duties and taxes.
- What are the statutory penalties for these offences? Are the following activities punishable under national law?

5.5 Wildlife and forest crime linked to the internet

Wildlife, animal and plant materials are frequently traded online. Sellers and buyers of illicitly acquired specimens or of products made from protected species are using publicly accessible online marketplaces, as well as the darknet, to promote, sell, or source animals, plants, products and derivatives. Due to the many opportunities to offer and buy products online, States need to ensure that their laws, including criminal offences, adequately address wildlife and forest crime linked to the internet. The CITES Secretariat defines "wildlife crime linked to the internet" as:

> *crimes involving any wildlife specimen, enabled, or facilitated by the use of information and communication technology networks or any application in the digital world, including inter alia the public (clear) web, the dark web, online marketplaces, social network platforms, instant chat applications, peer to peer networks or email service.*[43]

43 See CITES: https://cites.org/eng/resources/terms/glossary.php#c

5.5.1 Online marketplaces

Online marketplaces pose a particular challenge to law enforcement and to those charged with regulating them.

Both licit websites (such as social media platforms, online sales sites) and illicit online environments (such as the darknet) enable sellers to offer their goods and services to a wide range of customers. Social media channels enable dealers in the early stages of the trade chain (smugglers, wholesalers and manufacturers) to reach end consumers more easily, which can stimulate further demand and associated trafficking of wild fauna and flora. Furthermore, advertisements for illegal wildlife and forest commodities can be shared with a large number of potential buyers through private chats on social media and thus increase exposure and, ultimately, sales.

In many cases, wildlife and forest crime linked to the internet occurs in conjunction with legal markets. For example, legitimate companies may provide legal coverage for illegal trade or embrace criminal opportunities online to increase their profits. Online marketplaces also provide opportunities to offer sales at much lower prices, though frequently such prices come with hidden costs for shipment and delivery or involve fraudulent offers for goods that are never shipped or do not even exist.

The rise of cryptocurrencies has, in many cases, facilitated the sale of illicit products on the internet by obscuring capital flows. Regulation in this area is particularly challenging as it is the purpose of many cryptocurrencies to evade State control. However, the popularity and usefulness of cryptocurrencies are oftentimes dependent on their convertibility into legal tender. Successful regulation will likely have to involve an international effort.

Laws and regulations for online sales should, for the most part, be no different to sales made through other marketplaces. The sale, offer for sale, acquisition and possession of contraband is generally criminalized, regardless of whether they occur in physical or online marketplaces; bans and prohibitions on sales, trade, import and export similarly should apply to physical and online markets alike. Where this is not the case, relevant laws and regulations will need to be adjusted to adequately cover online trade and electronic means. Domestic measures should be regularly evaluated to ensure that they remain effective, and quickly adapted to respond to any new trends.

TOOL
I.37

Online marketplaces

- Do existing laws prohibiting the sale, offer for sale, advertising, supply, trafficking, purchase, or acquisition of wildlife and forest contraband extend to online sales and the use of electronic means?
- Are there any restrictions under national law on selling endangered species (e.g. CITES-listed species) online?
- Which laws regulate cryptocurrencies and their convertibility into legal tender?
- Which laws regulate the darknet and the sale et cetera of contraband through the darknet? Do these laws cover the sale et cetera of wildlife and forest contraband?

Additional resources:
CITES, Wildlife crime linked to the internet: https://cites.org/eng/prog/imp/wildlife_crime_linked_to_the_internet
UNODC, Guide on drafting legislation to combat wildlife crime (United Nations, 2018) 29.
INTERPOL. Wildlife crime linked to the internet: Practical guidelines for law enforcement practitioners, https://cites.org/sites/default/files/20COM0566-ENS-Interpol_Guidelines%20v5%20(003)(1)-1-2_0.pdf

5.5.2 Liability of online intermediaries

Online sales of wildlife and forest contraband frequently involve complex transactions facilitated by multiple natural or legal persons, such as electronic payment service providers, mail, courier, transport and storage services, internet service providers, providers of web-hosting services, as well as the owners, providers and operators of social media platforms. The involvement of these online intermediaries can be seemingly limitless and a full account and assessment of these providers is beyond the scope and purpose of this Toolkit.

To prevent and combat wildlife and forest crime related to the internet effectively, it is important that national laws adequately regulate the variety of different natural and legal persons who provide services necessary for electronic and distance selling of wildlife and forest commodities. Specifically, national law should criminalize persons providing services to other persons knowing (or being reckless about the fact) that the service is used for, inter alia, illegally selling, offering for sale, trafficking and purchasing of wildlife and forest contraband.

Liability of online intermediaries

- Does national law create (criminal) liability for online intermediaries that are conduits/caching/hosting illegal content?
- Does national law create (criminal) liability for online intermediaries for linking to websites with illegal content?
- Which due diligence rules apply to online intermediaries to avoid liability for illegal content?
- Are there special laws to oblige/encourage online platform providers to:
  - Introduce public policies to address and prevent the use of such platforms for illegal trade in fauna and flora including measures to ensure compliance with such policies;
  - Ensure that such policies are presented clearly and visibly;
  - Encourage them to inform their users about illegal online trade in wildlife, by using targeted alerts and other technological measures to make users aware of relevant laws and website policies?

Additional resources:
UNODC, Guide on drafting legislation to combat wildlife crime (2018) 29
UNODC, Policymaking and the role of online intermediaries in illicit trafficking (2021) 35–40

TOOL I.38

5.6 Offences relating to organized criminal groups

Many forms of wildlife and forest crime are directly or indirectly associated with organized crime. Some organized criminal groups systematically engage in illegal activities in the wildlife and forestry sectors and operate across borders. Members of such groups may occupy different roles: some may physically commit established offences by poaching wildlife, smuggling contraband or forging documents, while others act as aids or supporters, or as organizers and directors who themselves are not directly involved in the commission of the crime.

To address these challenges, the *United Nations Convention against Transnational Organized Crime* (UNTOC) sets out a separate offence for participating in an organized criminal group. The main purpose of Article 5 of the UNTOC is to establish an offence that creates criminal liability for persons who intentionally participate in or contribute to the criminal activities of organized criminal groups. The offence is aimed at tackling organized crime at its core by criminalizing acts that involve participation in or contributions to an organized criminal group. Another purpose of Article 5 is to extend criminal liability for different ways in which a

person may participate in the commission of a serious crime involving an organized criminal group, including as organizers, directors, and as those who aid, abet, facilitate or counsel the commission of serious crime involving an organized criminal group. This enables States to hold accountable those who plan, mastermind, found, finance, or actively support the criminal activities of an organized criminal group but who themselves do not commit, or have not yet committed, a specific criminal offence. In Article 2(a) the UNTOC defines an "organized criminal group" to mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit.

"Serious crime" is further defined in Article 2(b) as "conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty". This criterion is essential to the definition of the scope of application of the Convention since, when specific offences reach this threshold, State parties can invoke the international cooperation provisions contained in this international legally binding instrument.

The approaches adopted by States to criminalize participation in organized criminal groups vary depending on historical, political, and legal backgrounds. Traditionally, common law jurisdictions mostly relied on the offence of conspiracy while civil law jurisdictions developed the offence of criminal association. These are reflected in Article 5(1)(a)(i) (the agreement-type offence) and Article 5(1)(a)(ii) (the criminal association offence) respectively.

Whether domestic provisions based on Article 5 of the UNTOC apply to wildlife and forest offences thus depends on whether these offences are punishable under national law by a maximum deprivation of liberty of at least four years. States parties to the UNTOC have been urged by the UN Economic and Social Council and the CITES Conference of the Parties to make wildlife trafficking a serious crime, as defined under the UNTOC.[44]

TOOL
I.39

Participation in an organized criminal group

- Is participation in an organized criminal group a criminal offence under national law? If so, in which law can this offence be found? What are its elements?
- Does this offence extend to all serious offences? Are wildlife and forest offences considered serious offences pursuant to national law?
- Does this offence extend to those who lead, direct or finance organized criminal groups?
- Does liability for this offence extend to attempting, aiding, abetting, facilitating and counselling the commission of this offence?
- What is the statutory penalty for this offence?

44 E/RES/2013/40; Resolution Conf. 11.3 (Rev. CoP17).

5.7 Obstruction of justice

Those engaged in wildlife and forest crime, in particular organized criminal groups and those involved in corruption, may maintain or expand their wealth, power and influence by seeking to undermine systems of justice. Threats, coercion and violence are sometimes used to pervert the course of justice, including through creating or presenting false evidence, giving false testimony or by influencing or intimidating witnesses in criminal proceedings involving wildlife and forest crime. This may also include using force against law enforcement officials, judges, or prosecutors.

Article 23 of the *United Nations Convention against Transnational Organized Crime* (UNTOC) and Article 25 of the United Nations Convention against Corruption (UNCAC) criminalize the obstruction of justice. Under the two Conventions, obstruction of justice includes the use of inducements, physical force, threats or intimidation to interfere with witnesses and judicial or law enforcement officials whose role is to produce accurate evidence and testimony.

Obstruction of justice

- » Is obstruction of justice (or perverting the course of justice) a criminal offence under national law? Where is it criminalized? What are the elements of this offence?
- » Does the offence criminalize
  - The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding involving wildlife and forest offences;
  - The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of wildlife and forest offences?
- » What are the penalties for these offences?

TOOL
I.40

6 Criminal law – general matters

To fully grasp the scope and operation of both specific wildlife and forest offences, as well as facilitation and enabling offences, under national law, it will be necessary to get a general understanding of the sources of domestic criminal law, its main principles, and the scope of criminal responsibility.

This includes, inter alia, the elements of offences, extensions and limitations of criminal liability, general defences, the limitations and conditions applicable to children and legal entities (corporations), burden of proof and geographical application. Regardless of the crime type involved, these general rules and principles set out the way in which criminal liability is established and explain the organization, scope and operation of the relevant offences, including those that relate, directly or indirectly, to wildlife and forest crime.

This Toolkit is not designed to conduct a comprehensive analysis of the legal system, the general rules of criminal law or of all specific offences in one jurisdiction. The following Sections highlight those general principles that are of particular importance to criminal liability for wildlife and forest offences. It should be emphasized that the analysis of criminal justice systems must be tailor-made, as each country's legal system may apply principles of criminal law in different manners and under different designations and definitions.

6.1 Sources of criminal law

Depending on the jurisdiction, the general principles of criminal liability — along with specific offences — are set out in a single statute or a series of laws, or, depending on the legal system, in case law. The sources and principles of criminal law may further follow a particular tradition or system, such as the common law system, civil law traditions, or socialist criminal law; it may reflect legal systems introduced by former external powers or may adopt a hybrid system.

Furthermore, in most jurisdictions, criminal law is made by national (or federal) authorities such as parliaments. However, in some jurisdictions, lower levels such as state, provincial, or territory legislative bodies have authority to pass criminal laws. In some systems, criminal law may be made by ordinance or presidential decree.

Sources of criminal law

- Which level of government has authority to enact criminal laws?
- In which law or laws are general principles of criminal liability set out?
- When was this law/these laws first enacted? When were they last amended?
- What role does case law play in the articulation and application of criminal law principles?
- What legal traditions and systems does domestic criminal law follow?
- How do these principles apply to wildlife and forest offences?

6.2 Principles of criminal liability

In nearly all jurisdictions, regardless of their legal systems, criminal liability is based on elements reflecting the harm done and the guilt of the defendant. These 'building blocks' are commonly referred to as the physical elements or actus reus of the offence (which relate to what the accused has done, in what circumstances and with which consequences) and the mental elements or mens rea (which refer to state of mind and fault of the accused). Defences serve to excuse or justify offences in certain circumstances.

Establishing *mens rea*

Most common law and civil law jurisdictions require proof of fault for criminal offences. Before a person is found guilty of an offence, the prosecution must prove the mens rea, or mental elements, of the offence. This is based on the principle that persons should not be convicted for something they did not intend, did not know, or were unaware of.

In determining the scope of the application of wildlife and forest offences, it is important to decide whether only those offences that have been committed intentionally, knowingly or recklessly, should be punishable or whether liability for an offence should apply in all cases, even when the person concerned was negligent or had no awareness whatsoever that his or her conduct was unlawful.

Absent a confession, it can be difficult to prove mens rea, especially when it is required to establish that a defendant intended a particular outcome or knew a particular fact. Some jurisdictions make it possible to infer the necessary knowledge, intent or other subjective mental element from other (circumstantial) evidence. This would be in line with, for example, Article 5, Paragraph 2, of the *United Nations Convention against Transnational Organized Crime* (UNTOC), which provides that "the knowledge, aim, purpose or agreement may be inferred from objective factual circumstances". The same provision is found in Article 28 of the *United Nations Convention against Corruption* (UNCAC).

Some legal systems use the concept of 'strict liability', where certain forms of conduct are criminalized without the need to prove mental elements. This can ease the work of investigation and prosecution authorities and can, in theory, constitute a greater deterrent. However, strict liability (that is liability without fault) is controversial and is not acceptable in some criminal law systems. A system of administrative offences may then be considered in complement of criminal offences to address harmful conduct against wildlife and forest resources, where proof of subjective elements is not possible.

Proof of *mens rea*

- What mental elements (mens rea) are required for wildlife and forest offences?
- Does the criminal law presume that every offence requires the proof of mental elements (such as intention, knowledge or recklessness)?
- Does the criminal law permit criminal liability to arise without the proof of a fault element? Is the concept of strict liability available? In what circumstances can liability without fault arise? Is it used in wildlife and forest offences?
- Does the national criminal law permit the use of objective factual circumstances to prove subjective mental elements such as intention, knowledge and so forth? Is it permissible to infer the subjective mental elements of the relevant wildlife and forest offences from objective factual circumstances?

6.3 Extensions of criminal liability

Criminal liability is usually not limited to completed offences and extends to persons who attempt, conspire, incite or participate in a criminal offence. These extensions enable the prosecution of offenders who try but fail, who are accessories to someone else's crime or who instigate others to commit a relevant offence. This can be particularly relevant in the context of some wildlife and forest offences and may stop some perpetrators before they cause any damage, harm any animals, destroy plants and so forth.

Liability for attempt serves to punish those who intend to commit an offence, who commit more than mere acts of preparation, but who are unsuccessful in carrying out their intended crime. Liability for attempt may also arise if the prosecution cannot prove that the accused committed the complete offence because relevant evidence is missing or because the planned activities were abandoned, aborted, interrupted or were doomed to fail from the outset.

Liability for incitement covers situations in which a person tries to persuade another to commit a crime that the inciter wants and intends to have committed by the other person. It is an offence to incite another person to commit an offence, even if that offence is not carried out and even if the incitement has no effect on the individual who incited the crime. Depending on the circumstance, such behaviour may equal, or amount to, corruption.

Conspiracy serves to criminalize an agreement between two or more persons to commit an unlawful act where there is an intention to commit that unlawful act.

Secondary liability extends criminalization beyond the main offenders to capture perpetrators who commit offences jointly or who contribute to the commission of a criminal offence by others. Secondary liability applies to persons who are parties to the principal offence but who themselves are not criminally responsible as principal offenders. The rationale for extending liability beyond the principal offender(s) is that a person who promotes or assists in the commission of a crime is just as blameworthy as the person who actually commits it.

Accordingly, criminal liability for wildlife and forest offences should extend to persons who attempt or incite such offences or who are participants or accomplices in such offences. In most jurisdictions, the scope and criteria for these extensions of criminal liability are set out in provisions under general criminal law. If they are not, specific wildlife and forest laws may need to be examined.

Extensions to criminal liability

- Are attempts of and incitement to wildlife and forest offences criminalized? If so, where and what are the requirements to establish such liability?
- Does liability for wildlife and forest offences extend to persons aiding, abetting, counselling or facilitating the offence, as well as to other accomplices? What are the requirements to hold persons criminally liable as participants or accessories?
- Does liability for wildlife and forest offences extend to persons conspiring to commit such offence? What are the requirements to hold persons criminally liable as co-conspirators?

6.4 Liability of legal persons

Wildlife and forest crime is frequently committed through or under the cover of legal entities, such as corporations. In some cases, corporations may be directly involved in illegal logging, illegal processing or transport of animal or plant material, or in the illegal import, export, or sale of fauna and flora. In more complex cases, corporate structures may be employed to hide the true ownership, clients or particular transactions related to wildlife and forest crimes ranging from smuggling to money laundering and corruption.

Legal personality is a characteristic of organizations that have some – but not necessarily all – of the rights and obligations of a natural person in a particular jurisdiction. The age-old debate on whether legal entities can bear responsibility for crimes has shifted to the question of how to define and regulate such responsibility. National legal regimes remain quite diverse in the ways in which they address issues of the liability of legal persons, how to attribute responsibility or guilt and how to determine sanctions, with some States resorting to criminal penalties against the organization itself, such as fines, forfeiture of property or deprivation of legal rights, whereas others employ non-criminal or quasi-criminal measures.

Article 10 of the *United Nations Convention against Transnational Organized Crime* (UNTOC) and Article 26 of the *United Nations Convention against Corruption* (UNCAC) require States Parties to adopt measures to establish the liability of legal persons for offences under these conventions. Subject to the legal principles of the jurisdiction, such liability may be criminal, civil or administrative.

Criminal liability is the most serious form of liability a State can impose on legal persons. It is generally associated with trials in criminal courts, high levels of potential sanctions and high levels of procedural protection for defendants. Criminal liability of a legal entity has the potential to cause costly reputational damage to the entity and may also deter legal persons from engaging in unlawful conduct.

Civil and administrative liability for legal persons are options available for legal systems that do not recognize the capacity of legal persons to commit criminal offences. Though these terms have distinct meanings, in some States they are used interchangeably. Civil liability refers to civil penalties imposed by courts or similar bodies. Administrative liability is generally associated with liability imposed by a regulator, though in some legal systems judicial bodies may impose administrative penalties. Like civil liability, administrative liability does not result in a criminal conviction. Civil and administrative liability are both generally associated with lower standards of proof than criminal liability.[45] Regardless of the type of liability used, the liability of legal persons must be established without prejudice to the criminal liability of the natural persons who have committed the offences.

45 UNODC, *Guide on drafting legislation to combat wildlife crime* (2018) 12.

Establishing liability for legal persons requires States to also introduce penalties and sanctions appropriate for legal persons. Penalties associated with criminal liability of legal persons may include orders that a legal person be dissolved, excluded from public bidding or entitlement to public benefits or aid, disqualified or prohibited from participating in public procurement or the practice of particular commercial, social or professional activities, disqualified from creating another legal person, required to publish the judgement of the court, or required to close one or more of the legal person's establishments.[46] Part III, Section 4 of this Toolkit sets out further tools in relation to penalties and sentencing.

The establishment of the legal liability of a legal person should also consider whether or not due diligence was applied. Due diligence refers to the steps that a legal person takes to ensure compliance with a particular law. Although what due diligence entails may differ from State to State, it generally involves a system of risk management to prevent and detect misconduct. In the context of criminal law, whether the legal person has applied a due diligence policy or not may serve as a mitigating or aggravating factor. In some States, proof of due diligence provides an absolute defence to legal persons. In other States, due diligence may be a factor relevant to the exercise of prosecutorial discretion in bringing a case against a legal person or may provide a mitigating factor in sentencing.

TOOL
I.44

Liability of legal persons

- Can legal persons be held criminally responsible for wildlife and forest offences? How are legal persons defined; does this cover public entities?
- Does the prosecution of the corporation prejudice the prosecution of individuals?
- What types of sanctions can be imposed on corporations?
- May the legal person's due diligence serve as a defence or mitigating factor in a prosecution?
- If corporate criminal liability does not exist, is it possible to impose civil or administrative sanctions on corporations?

46 UNODC, *Guide on drafting legislation to combat wildlife crime* (2018) 12.

II ENFORCEMENT

Part II

Law enforcement involves any government action taken to determine or respond to non-compliance with relevant laws and regulations. It is one of the main, most immediate, and most visible ways to stop wildlife and forest crime.

Law enforcement increases the risks for perpetrators through the probability of being caught, the probability of conviction, and the sanctions that apply if convicted. Accordingly, well-regarded and highly skilled police, wildlife and forestry enforcement officials, and border control services are prerequisites for the proper functioning and positive perception of justice.

Approaches to law enforcement vary greatly among jurisdictions. Policing the wildlife and forestry sectors frequently involves a range of agencies with different mandates, objectives, powers, investigative techniques and procedures. In some jurisdictions, law enforcement is highly centralized, while in other places it may be decentralized and involve local communities. The way in which law enforcement is delivered in the wildlife and forestry sectors depends on a host of variables, including the prevailing political, economic and cultural systems and circumstances, as well as social norms and local traditions. Law enforcement mechanisms based upon national custom or culture, or on alternative social hierarchies, may also be present, especially where a lack of faith in the fairness and efficiency of the official system is prevalent.

As shown in Part I, Section 4 of this Toolkit, wildlife and forest crime often involves complex offences comprising a multitude of criminals, with many incidents crossing national borders. It may also be facilitated/enabled by or occur together with other crimes including corruption, money laundering, tax evasion and obstruction of justice. This can make appropriate and effective enforcement more challenging. Investigating wildlife and forest crime involves a combination of proactive, disruptive and reactive methods. These can be time- and resource-intensive processes that often require domestic and international cooperation among different agencies, as well as parallel financial (and sometimes environmental) investigations, coupled with extensive training in various disciplines.

Part II of this Toolkit serves to identify the various components of any one jurisdiction's wildlife and forest crime enforcement system and examine its capacity to detect and investigate relevant criminal activities. This involves, firstly, an outline of relevant enforcement agencies, their human resources and enforcement powers. Next, an exploration of the available tools, techniques, and procedures used to collect intelligence and investigate wildlife and forest crime is offered. The specific role of border and customs authorities, and issues of accountability and integrity, are examined at the end of Part II.

Part II

1 Enforcement agencies

The first step in analysing law enforcement capacities in relation to wildlife and forest crime involves an understanding of law enforcement macro-structures and of the role and responsibilities of different stakeholders, both nationally and locally.

It is important to bring clarity to the 'who is who' and 'who does what' in wildlife and forest law enforcement, as doubts about mandates and authority to enforce the relevant laws may lead to difficulties, discrepancies or duplication.

1.1 Enforcement structures

Responding to wildlife and forest crime usually involves a variety of government sectors. In most jurisdictions, there is more than one entity with responsibility for enforcing the many aspects of the relevant wildlife, forest, customs and criminal laws and other statutes. There are often several national agencies, organizations or institutions, as well as regional or local agencies, offering either complementary or similar coverage. Even in jurisdictions with a single national police force, there are likely to be additional law enforcement organizations with either highly specialized skills or with specific functions, such as wildlife and forest enforcement units, customs, border police and so forth.

In some jurisdictions, wildlife, forest and customs officials may have no enforcement power under criminal law, and must hand over suspects and contraband to the police as soon as they are apprehended. In contrast, in other countries, customs officials are authorized to exercise the powers of police or vice versa.

Jurisdictions with federal structures often have multiple layers of law enforcement, with a single federal law enforcement agency that complements local, provincial or state police forces. Federal/national police forces are generally authorized to address criminal issues of national concern or those with interstate implications. Import and export offences, including those involving wildlife and plants (dead or alive), usually fall into this category. The terms of reference and mandate for the different jurisdictions and areas of competence involved may not always be as clear as they should be, and there is potential for a clash between local and federal approaches.

Enforcement structures

- How is law enforcement structured nationally?
- Which agencies have responsibility for national, state/provincial and local policing?
- Which agencies have responsibility for wildlife and forest law enforcement?
- Are there any inter-agency task forces or other agencies that work on wildlife, forest, environmental or related offences?
- Which government ministries are in control of wildlife and forest law enforcement?
- Does a national wildlife and forest crime strategy, action plan or other policy exist that guides enforcement efforts?

Additional resources:
UNODC, Criminal Justice Assessment Toolkit: Policing, Volume I Public Safety and Police Service Delivery (2006) 6–7

1.2 Enforcement mandates and management

Once the macro-structures of law enforcement have been identified, it is necessary to outline and examine the individual agencies charged with the enforcement of the relevant wildlife, forest, customs and other criminal offences.[47] In some jurisdictions, the general police agency may be responsible for investigating wildlife and forest offences. Elsewhere, forestry, agriculture or treasury departments, customs, coast guards or environmental agencies may carry out this function, in whole or in part. The enforcement of legislation established in accordance with the *Convention on International Trade in Endangered Species of Wild Fauna and Flora* (CITES) is sometimes vested in customs services or in other specialized agencies. In some jurisdictions, the enforcement mandate is determined by the seriousness of the offence, so that the police force is tasked with the investigation of (serious) crimes, while wildlife and forestry officials handle (less serious) misdemeanours. It may also be the case that some enforcement functions are delegated or outsourced to private security firms; [48]elsewhere, the military may carry out enforcement functions in relation to wildlife and forest crime.[49] This diversity in enforcement mandates within and among jurisdictions adds to the complexities and difficulties in investigating and combating wildlife and forest crime, and renders international cooperation more challenging.

Early and close cooperation between relevant authorities such as wildlife and forest law enforcement agencies, police, customs, financial intelligence units, anti-corruption agencies and public prosecutors is vital for complex and multi-pronged investigations against organized criminal groups. The creation of specialized, multi-agency wildlife and forest law enforcement teams also allows for the pooling of expertise and resources in dedicated units, rather than attempting to achieve a broad and general level of enforcement across the country. The use of multi-agency teams can enhance the integrity of investigations and prevent corruption risks due to separate reporting hierarchies in the different agencies involved. Furthermore, engagement with national human rights institutions and other human rights-focused organizations could help ensure, inter alia, enforcement efforts respect States' obligations in this area.

Involvement of anti-corruption agencies in investigating cases of wildlife and forest crime where corruption-related activities have been identified or suspected can help to build a stronger case and may result in perpetrators being charged with corruption-related offences alongside wildlife and forest offences. Where wildlife and forest authorities themselves have the power to undertake investigations of corruption, anti-corruption agencies can offer their expertise and capacity in support.

47 See Part I, Sections 4 and 5 of this Toolkit.

48 See Part II, Section 1.8 of this Toolkit.

49 See Part II, Section 1.5 of this Toolkit.

General police agencies are often constrained by limited staff and budgets and may thus not be able to adequately prioritize the investigation of wildlife and forest offences vis-à-vis other crime types. As a general point, the presence of specialized wildlife and forest crime enforcement units is crucial to ensure that the investigation of wildlife and forest crime receives levels of attention similar to those of mainstream criminal investigations.

Enforcement mandate

- Is the jurisdiction of each agency clear or is there disjuncture?
- What are the responsibilities of each agency in relation to wildlife and forest law enforcement? Are the duties of the relevant agencies clearly defined and understood by their staff and the agencies with which they interact?
- Do these agencies have adequate authority or discretion to properly undertake their functions?
- Have agencies responsible for enforcement received appropriate training in human rights?
- Which agencies have the responsibility of enforcing anti-corruption laws? Which laws empower the agencies? Do the agencies have specialized units or staff dedicated to investigate corruption activities related to wildlife and forest crime?
- Do the wildlife and forest agencies have powers to investigate corruption activities linked to wildlife and forest crime? If so, what legislation empowers the agency? If not, what happens when the agencies identify or suspect corruption activities linked to wildlife crime?
- Are the agencies part of one government ministry or several? Which ministries are involved?
- How are the agencies financed? What are their budgets spent on? Where specifically are funding shortfalls and needs?
- Who has control over these agencies? Who assesses and reviews their function?
- If specialized agencies or departments exist, are they made up of individuals from a number of different agencies?
- Are there agencies dedicated exclusively to wildlife and forest crime or do they also have responsibilities for other types of crime (for example, drugs, organized crime or money-laundering)?
- Are the same or other agencies responsible for the enforcement of CITES?
- Have multi-agency teams, units or task forces been set up specifically to investigate wildlife and forest offences? If so, which agencies are involved, how do they cooperate; what are the human, financial, technical and other resources of these teams?

In countries with a federal system, additional questions may arise about how local, provincial and state investigators cooperate with federal law enforcement officers. In such circumstances, clear agreements or protocols are needed to define the respective jurisdictions.

Generally, the mandate for policing is set out in legislation or regulations that assign the enforcement of certain laws to the relevant agencies. For example, a customs statute may empower a border and customs administration, the department of interior or a similar agency with enforcing actions against border offences.

TOOL II.3

Legal basis of enforcement mandate

» Which laws or regulations assign the responsibilities for enforcing wildlife, forest and related laws to specific agencies?
» Does the legislation assign and distinguish between the roles of different agencies in delivering policing?

Additional resources:
UNODC, Criminal Justice Assessment Toolkit: Policing, Volume I Public Safety and Police Service Delivery (2006) 3–5
UNODC, Criminal Justice Assessment Toolkit: Policing, Volume 3 Crime Investigation (2006) 6–8

1.3 CITES Management

1.3.1 CITES Management Authority

An important element of the CITES framework is the creation or identification of national agencies charged with the administration and execution of CITES obligations.[50] Article IX, Paragraph 1 (a), of the Convention requires each Party to designate, at the time of accession to CITES, a domestic agency mandated with the management of CITES.

Its responsibilities include:

¬ The authorization and issuing of permits and certificates of approval;

¬ The communication of information to other Parties and the CITES Secretariat; and

¬ The reporting on CITES compliance matters.

This information is then made available to the Secretariat and to all other Parties, thus creating a directory.

The way in which the CITES Management Authority is set up is left to the discretion of the individual Party. In most jurisdictions, the Management Authority has been appointed by a simple administrative decision, while some countries have established the Authority through legislation. In most jurisdictions, CITES enforcement remains within the mandate of customs services. In some jurisdictions, the CITES Management Authority is also charged with the enforcement of law and regulations relating to species protection. Elsewhere, other wildlife and forestry agencies carry out the CITES management functions.

TOOL II.4

CITES Management Authority

» Which national agency is the designated CITES Management Authority (if the country is a Party to CITES)?
» Does the CITES Management Authority have enforcement functions? If not, which agency is charged with enforcing CITES obligations? Have such enforcement authorities been designated to the CITES Secretariat?
» How does the CITES Management Authority cooperate with other enforcement agencies and ministries involved in wildlife and forest law enforcement and management?

50 See also Part I, Section 1.5 of this Toolkit.

1.3.2 CITES reporting

Under Article VIII, Paragraph 6 of CITES, Parties are required to maintain records of trade in CITES-listed species. This mechanism is an important feature of effective enforcement and control. The information thus generated can potentially identify routes of the illegal trade and highlight some of the main source, transit and destination points.

The CITES Secretariat has established mechanisms to collect trade records from Parties to the Convention and other information about CITES implementation and compliance.[51] Reports are to be submitted annually to the Secretariat. CITES also requires Parties to submit biennial reports on legislative, regulatory and administrative measures taken to enforce the provisions of the Convention, as well as annual illegal trade reports (AITRs).[52]

Furthermore, the CITES Secretariat has attempted to gain an overview of specific forms of wildlife and forest offences and requires States Parties to submit reports on illicit trade. For example, its Monitoring the Illegal Killing of Elephants (MIKE) and Elephant Trade Information System (ETIS) schemes have gathered data on poaching and illicit trade.

CITES reporting

- Does the CITES Management Authority (or another agency) maintain records of trade in CITES-listed species? If so, are these records (publicly) available? Are trade records submitted to the CITES Secretariat annually? If so, are these records complete?
- Does the country submit biennial reports on legislative, regulatory and administrative measures taken to enforce the CITES provisions?
- Has the country submitted additional information to CITES on any specific form of wildlife and forest crime?
- If records are not maintained or reports are not submitted to the CITES Secretariat, what are the reasons for not doing so?

1.4 National coordination and collaboration

The enforcement of laws relating to wildlife and forest crime usually involves a variety of government agencies and other entities with different mandates and investigatory powers. Investigations may also involve interactions with CITES Management and Scientific Authorities, specialized and accredited laboratories, civil society organizations and private sector organizations. The involvement of prosecutors or judicial authorities also may be required at the investigation stage, depending on the national legal system and legislation.

Coordination and collaboration between different agencies — often with conflicting or opposing mandates and objectives — are not always easy. Some organizations and entities may be reluctant to assist law enforcement agencies because of concerns they might alienate their constituents, because priorities may be different, sufficient resources may not be available, or due to legal constraints (for instance, in the case of classified information and data protection). However, dealing with wildlife and forest crime in isolation, especially without the buy-in of enforcement agencies such as police and customs, or agencies enforcing laws related to crimes that facilitate wildlife and forest crime, such as anti-corruption agencies, reduces the ability to effectively address the causes and consequences of these phenomena.

51 Convention on International Trade in Endangered Species of Wild Fauna and Flora, Art. VIII, Para. 7, and Art. XII.

52 CITES Annual Illegal Trade Report. https://cites.org/eng/resources/reports/Annual_Illegal_trade_report

For these reasons, national coordination, and consultation and partnerships with key stakeholders, are crucial. It is important that key stakeholders consult one another and build partnerships to combat wildlife and forest crime effectively. An environment should be created in which seizures and arrests for wildlife and forest offences are not ends in and of themselves but are rather linked to the wider fight against serious criminality. Seizures may, for instance, be converted into controlled delivery operations to detect wider criminal networks.[53] This requires close collaboration between wildlife and forestry officials and the wider law enforcement community, both nationally and internationally, dealing with criminal intelligence as well as the criminal justice system as a whole.

Given the potentially large number of government agencies and other bodies that may be involved in the investigation of wildlife and forest crime, it is crucial that clear procedures for national and international coordination and cooperation are set up. Consultation and partnership-building can occur at various levels and may be formalized in a national coordination framework, memoranda of understanding (MoUs), in committee structures, or may be ad hoc and informal, based on changing needs and developments. In some jurisdictions, inter-departmental committees have been set up to coordinate control and enforcement measures across government sectors. Along with formal coordination, it is important that all agencies involved in preventing and suppressing wildlife and forest crime share relevant information and engage in frequent communication, both domestically and internationally. International cooperation is examined separately in Part IV of this Toolkit.

TOOL II.6

National coordination and collaboration

- What mechanisms are in place to facilitate national inter-agency cooperation to combat and prevent wildlife and forest crime?
- What partnerships exist among law enforcement agencies and between enforcement agencies and other public service departments?
- Are mechanisms in place to enable and facilitate cooperation among wildlife and forestry administration, law enforcement officers, prosecutors and the judiciary?
- Do such arrangements include provisions on data sharing? If so, are there adequate protocols and facilities for that purpose?
- Since corruption is a key facilitator of wildlife and forest crime, what cooperation and partnerships exist between wildlife and forest authorities and anti-corruption agencies?
- How do these partnerships work in practice? Are there written protocols, MoUs, committees and so forth? Does collaboration occur without undue delay?
- What cooperation exists between law enforcement and other government agencies and non-government service providers, including community organizations?
- If a national coordinating body/committee exists, which agencies are represented on it? Which agency/office chairs the body/committee? What are the tasks and duties of the national coordination body/committee?

Additional resources:
CITES Resolution Conf. 18.6 – 4 on the designation and role of Management Authorities
INTERPOL and WCO, Customs–Police Cooperation Handbook (2018)
UNODC, Criminal Justice Assessment Toolkit: Policing, Volume I Public Safety and Police Service Delivery (2006) 17
UNODC, World Wildlife Crime Report, Trafficking in protected species (2020) 23
WCO and Egmont Group, Customs–FIU Cooperation Handbook (2020)

53 See further Part II, Section 5.1.1 of this Toolkit.

1.5 Involvement of the military

In some places, the military is involved in the investigation, prosecution and adjudication of wildlife and forest crime. This may be the case in particular locations where regular law enforcement units and civil courts are not present or cannot operate, or in cases that may involve particular functions that require the use of equipment held only by the military. Furthermore, in post-conflict situations, the military often carries out quite extensive law enforcement functions while regular state authorities are being reconstituted, reorganized, and rebuilt.

The use of the military, designated military units, or military courts to combat wildlife and forest crime may be confrontational and controversial due to the nature of the powers, training and equipment at their disposal.

Military personnel have various limitations with regard to the investigation of wildlife and forest crime. They are not trained in law enforcement and in the many facets of preventing and suppressing wildlife and forest crime.[54] Cooperation with local communities and public-private partnerships may be more difficult to achieve if the military is involved. Most nations' constitutions specifically restrict the use of military resources to being an 'aid to the civil authorities.' Where use is made of such aid, it must be under the supervision and direction of the agency with primacy in relation to wildlife and forest law enforcement. Furthermore, there are, regrettably, ample reports of situations in which military personnel misused their powers, committed human rights violations, colluded with criminal organizations or even took an active part in facilitating or committing wildlife and forest crime.

Regarding prosecution and adjudication, there is a general consensus that the jurisdiction of military courts should be limited to military officials. Trials of civilians by military tribunals contravene the non-derogable right to a fair trial by a competent, independent and impartial court as established under the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

For these reasons, the involvement of the military in wildlife and forest law enforcement should be strictly confined to designated functions and/or areas, limited to certain types of offences and/or personnel, and should only be a temporary measure until regular law enforcement agencies can exercise these functions.

Involvement of the military

- Is the military (army, navy, air force, coast guard) or any of its units involved in any aspect of wildlife and forest law enforcement? If so, what are their functions?
- If so, how and when did this involvement come about? Is this a temporary measure or a permanent arrangement?
- How is the involvement of the military in wildlife and forest law enforcement directed and supervised?
- Have military courts rendered judgement(s) on wildlife and forest crime-related cases?
- If so, what were the criminal charges? Were there civilians involved?
- What are the outcomes and experiences of their involvement?
  - Has this involvement led to human rights violations, or alleged human rights violations? If so, what has been the response?

54 See further Part II, Section 6.5 of this Toolkit.

1.6 Community involvement in policing

Community involvement in policing is an effective and productive strategy for enforcing law at the local level. In the wildlife and forestry sectors, some government agencies deploy local rangers, guards and other officers to patrol game reserves, monitor logging activities, and ensure compliance with the relevant laws and regulations. Some countries have instituted 'bush watch' schemes, similar to Neighbourhood Watch programmes, designed to detect and prevent wildlife theft and to protect native fauna and flora.

One of the characteristics of community involvement in policing is the use of decentralized decision-making. This engages and employs the community and community structures in a partnership approach to diagnose, identify, respond to and solve the problems of wildlife and forest crime affecting the local area. Community involvement in policing is reliant on an effective working relationship between law enforcement agencies and the community. Establishing partnerships among wildlife and forest law enforcement agencies, civil society and the private sector to monitor compliance may help to limit the arbitrary or capricious use of powers and increase transparency. A close relationship between agencies and the community can also foster better information sharing and intelligence development, and can facilitate the investigation of crime. Law enforcement structures may require adaptation to become more consultative and inclusive in order to develop that close relationship.

As a strategy to prevent and suppress wildlife and forest crime, community involvement in policing is not a universal panacea, but may be particularly useful at points of origin where the local community is affected by or involved in the wildlife and forestry industries, such as nature and game reserves, and in areas with commercial logging and hunting activities. In these places, community involvement in policing and the management of their natural resources[55] can help to eliminate misunderstandings, suspicion and conflict among industry, law enforcement officers and the communities in which they operate. Such engagement may also be an alternative to engaging in criminal activities, notably in areas of weak state control.

Community members can also be a good source of information on corruption activities that occur at different stages of wildlife and forest crime. For this reason, wildlife, forest and anti-corruption agencies should establish channels that will encourage the public to report suspected or actual instances of corruption. In this context, the relevant agencies should also ensure that they have effective whistle-blower protection policies and programmes in place. Any information from the public or whistle-blowers must be treated confidentially so as not to jeopardize their safety, and the relevant agencies should be able to offer adequate protection to those whistle-blowers who may find themselves at risk after having reported corruption activities. The agencies should sensitize affected communities and the public at large to their responsibilities to report, prevent and address corruption in the wildlife and forest sectors. The public should also be made aware, in general terms, if information provided by the public led to the identification of cases and suspects and to other actions being taken.

55 See further Part V, Sections 3.3 and 4.3 of this Toolkit.

Community involvement in policing

- Does a community policing strategy related to wildlife and forest crime exist? If it does, what does it include? Are local priorities and performance measures set?
- Do such arrangements include provisions on data sharing? If so, are there adequate protocols and facilities for that purpose?
- Are there formally defined mechanisms in place by which civil society, community organizations or their representatives, are consulted on local policing issues? How often does this happen and under which circumstances? Who is involved? What are the outcomes of such consultations?
- Have wildlife, forest and anti-corruption agencies established a system allowing members of the public to report instances and suspicions of corruption in the wildlife and forest sector? Is the community aware of their role and abilities in identifying and reporting corruption?
- Have the agencies established effective and functional whistle-blower protection policies and mechanisms?
- How is community policing perceived by other criminal justice agencies and the public?

Additional resources:
UNODC, Criminal Justice Assessment Toolkit: Policing, Volume I Public Safety and Police Service Delivery (2006) 15–16

1.7 Public-private partnerships

Efforts to detect and stop wildlife and forest crime are not limited to law enforcement agencies; they require the input of a range of government departments, private industry and civil society organizations, each of which can help to bring an additional dimension to the response. In many places, so-called 'public-private partnerships' (PPPs) have been established to foster formal and informal cooperation between public officials, including law enforcement, and private entities such as business corporations, trade associations, non-governmental organizations (NGOs), international governmental organizations, the media and civil society groups.

These partnerships offer avenues to bring together groups and individuals with shared interests and enable them to exchange information, join forces and coordinate their activities. They also offer a forum for conflicting positions to be discussed and, where possible, reconciled. For example, public-private partnerships relating to the commercial use of wildlife and forest resources through tourism can bring together wildlife park management officials, private tour operators, local community representatives and other stakeholders who have a shared interest in conservation efforts and wildlife protection but may have opposing views on commercialisation and access to protected areas. Another example is the 'United for Wildlife' initiative, a coalition of transport companies and financial institutions determined to prevent wildlife traffickers from using their networks. Through these types of collaborations, the financial sector can assist in detecting and reporting suspicious transactions and help government authorities with the tracing, freezing and forfeiting of assets and the investigation and prosecution of traffickers. Transport companies can help spot and stop the smuggling of wildlife and forest contraband and alert the authorities of suspicious shipments.

Online intermediaries may be able to assist law enforcement authorities that are investigating wildlife crime. The capacity for online intermediaries to take effective and proportionate action against crime online varies considerably according to their functions. In general, the more direct the business relationship is between the online intermediary and the person using its services for criminal purposes, the more likely that the online intermediary will be able to take effective

action, in relative terms. For example, Internet Service Providers can take steps to restrict or block access to particular websites, while hosting and social media providers can provide law enforcement agencies data hosted on their servers, remove data from their servers and share information about their users. Cloud providers can block or remove accounts. They sometimes filter material that is being uploaded to their services to check for any illegal material.

Consultation and partnership building can occur at various levels and may be formalized or informal, ongoing or ad hoc, depending on particular needs, interests and developments. In some jurisdictions, regular meetings between government and industry representatives take place to discuss how best to balance commercial and other economic interests with wildlife and forest conservation, protection and enforcement efforts. In addition to combating wildlife and forest offences, public-private partnership fora can be used to combat other crimes that facilitate these offences including corruption, money laundering and tax and fee evasion.

Natural resource management concessions, such as forest concessions (also mining, recreational, hunting and others) are examples of public-private partnerships that can involve varying levels, forms and associated risks with regard to law enforcement. Concession arrangements are premised on a need or preference for private parties undertaking some activities on or near publicly-owned areas.

These can range from and include:

1. resource development and exploitation operations, such as exploration, harvesting, infrastructure development and regeneration;
2. social services, such as schools, health clinics, and other local development measures (which can be particularly valuable for remote and often underserved communities); and
3. implementation of resource conservation and protection activities, such as preservation of critical habitats, controlling access and activities by third parties, and protection of regeneration.

There can be significant overlap between and among these arrangements, and their execution can involve concessionaires in different sorts of activities related to law enforcement, including informing third parties of legal restrictions and requirements (verbally, through signage, or via other media); involving concession staff and contractors in intervening in cases of ongoing violations; notifying authorities of violations; providing information and evidence; and supporting investigations and prosecutions. In parallel, a variety of public agencies, including not only the concession-granting authority, will be similarly undertaking law enforcement and supervisory activities related to the concession area.

Responsibilities and obligations in respect of law enforcement and compliance can be, but often are not, specified in concession contracts as well as in associated rules, regulations and legislation. Where and when uncertainties and ambiguities arise, mechanisms for consultation and coordination may already be defined or may be needed.

Public-private partnerships need to be planned carefully. One common frustration encountered in such partnerships is that some partners view contact with law enforcement agencies as being a one-way flow and that the private sector or non-governmental partners get little or no feedback on the information and assistance they supplied. Confidentiality and other rules relating to investigations may prevent such feedback, but all partners need to be aware of this and law enforcement needs to provide as much of a response as is legally possible. Another frustration stems from the fact that some private entities may be reluctant or slow to share

information with government authorities if this can disrupt their operations, schedules, or planning.

Caution also needs to be exercised with regard to investigative work that is carried out independently by NGOs or other non-state actors. While it is acknowledged that, in many countries, work by such actors is important to better understand and document wildlife and forest crime, information obtained from independent investigations may not be admissible in court or may be detrimental to ongoing police investigations. To that end, the partners involved in these partnerships also need to respect the boundaries of what each partner can and cannot do.

Public-private partnerships

- What formal or informal partnerships involving public, private or non-governmental sectors exist to prevent and suppress wildlife and forest crime?
- Are there public-private partnerships that provide financial, logistical or other support for the enforcement of wildlife and forest offences, especially involving the financial, transport or tourism sectors?
- Which agencies, organizations, companies, civil society groups come together in these partnerships? How do they cooperate and exchange information? How do these partnerships work in practice? What initiatives and activities have come out of these partnerships?
- Are these partnerships limited to national groups and individuals or do they also allow for international cooperation?
- Are there concerns that the government agencies and officials are getting too close to certain industries or interest groups? Is there any suggestion that such partnerships create unequal service delivery, that is, are there fears of favouritism?
- Do any of these arrangements include provisions on data sharing? If so, are there adequate protocols and facilities for that purpose?

Additional resources:
UNODC, World Wildlife Crime Report, Trafficking in protected species (2020) 22
UNODC, Policymaking and the Role of Online Intermediaries (2021) 15–77
United for Wildlife. https://unitedforwildlife.org/

1.8 Policing and enforcement by private security firms

In the context of wildlife and forest crime, policing and enforcement often involves a mixture of public agencies and private entities. Some State authorities outsource selected policing services to private security firms that have the expertise and equipment to perform specific tasks or because the use of private companies may be less expensive. Similarly, private landowners may employ external contractors or have their own staff to patrol their land, game or nature reserves, or forestry businesses. For these reasons, the private sector can play an important role in detecting wildlife and forest crime. In this context, the private sector involves security firms or the use of individuals with prior training in this field.

It is important to note in this context that privately employed personnel may have no legal mandate to carry out official law enforcement functions and thus are not substitutes for law enforcement personnel. While they may be entitled to protect the property of their employer, private security firms have no power to arrest suspects, search persons and places, or seize assets. These functions are — and must be — reserved for State authorities. For these

reasons, monitoring of private security firms is important, particularly in remote areas where institutionalized oversight is challenging and where violations may easily go unnoticed.

The involvement of private security firms in policing and enforcement has many advantages and can produce many desirable outcomes in preventing and combating wildlife and forest crime. However, it also entails serious challenges, especially if coercive means or force are used by private entities, such as if they carry firearms or other weapons. Regrettably, there have been cases in which private security firms were implicated in severe human rights abuses. While issues relating to the use of force and the rule of law are not limited to private actors' involvement in enforcement, it certainly compounds questions about accountability and legality.[56] In some instances, private security firms are not only involved in delivering policing and enforcement services in protected areas, but also carry out quasi-judicial functions. Such situations exacerbate problems and rifts between public and private powers and responsibilities and between law enforcement and local communities. It can increase mutual distrust and hamper the flow of information, ultimately reducing the efficiency and effectiveness of wildlife and forest law enforcement.

Against this background, it is important to closely monitor the role and activities of private security firms and ensure that their personnel are adequately trained in their mandate, their powers and the limitations of these powers, the use of equipment, including the conditions under which weapons may be used, if any, and their human rights responsibilities. As in the case of public law enforcement agencies, training, equipment and powers need to suit the environment in which private security firms work.

TOOL
II.10

Policing and enforcement by private security firms

- To what extent and in which specific contexts and locations are private security firms involved in wildlife and forest enforcement?
- What are the reasons for their involvement and how does this relate to the presence and operations of law enforcement in this location?
- What are the specific functions of private security firms in relation to wildlife and forest enforcement? Where are these functions (and their limitations) set out? Are there any laws governing the creation and activities of private security firms in the wildlife and forestry sector (e.g. powers, training, reporting duties and use of force)?
- What types of private security firms are involved in wildlife and forest enforcement?
- How are these firms monitored? To whom are they accountable?
- How are these firms funded, staffed, and trained? What types of equipment do they use/are they permitted to use?
- How are these firms perceived by official agencies and local communities?
- What have been the outcomes and experiences with the use of private security firms in wildlife and forest enforcement?
- Have there been reports of non-compliance, violations, or human rights abuses by private security firms? If yes, what were the consequences?

56 See also Part II, Section 6.5 of this Toolkit.

Part II

2 Enforcement agency resources

In the past, many countries have considered wildlife and forest crime to be a low priority and staffing levels, recruitment and training have reflected this stance.

As a result, many wildlife and forest crimes go unnoticed, and offenders have evaded detection and arrest. As countries enhance their efforts to reduce wildlife and forest crime, staffing levels and associated activities such as training must be increased to meet the needs of these efforts.

2.1 Staffing

The agencies charged with enforcing wildlife and forest laws require the human resources to fulfil their diverse duties. Regrettably, in some places relevant agencies are not adequately staffed; elsewhere, posts remain unfilled for years and salaries and allowances may not adequately reflect the work that is being undertaken and/or be months overdue. Salaries must be commensurate with the workload and responsibilities of enforcement officers. Human resources processes (e.g. recruitment, hiring, retention, promotion, transfer and retirement) need to be fair, inclusive and transparent in order to prevent corruption and nepotism, to promote diversity and inclusion, including gender and racial equity, and to ensure that staff feel responsible and motivated.

2.1.1 Staffing levels

An assessment of enforcement capacities requires a basic stocktaking of the human resources available to police wildlife and forest crimes. This involves identifying staffing levels, locations and hierarchies, as well as the composition of the staff. This latter involves identifying whether there is representation of women, minority groups, indigenous populations and/or local communities.

Staffing levels

- Do the units tasked with enforcement have enough staff to meet the needs of each area being covered? If not, what reason is given for this?
- What are the minimum qualifications needed to undertake the work?
- What training do staff need to have before undertaking the work?
- What is the composition of staff e.g. how are women and persons from minority groups represented in each unit and at each level/rank? Are efforts being made to ensure gender and racial equity?
- Within the relevant units, what proportion of enforcement officers is in supervisory or management ranks?
- What is the ratio of officers with less than two years of service to those with two or more years of service? How long on average do officers stay in the relevant units?
- Within the relevant units, what proportion of staff is full-time/part-time, administrative/investigative?
- Are enforcement officers deployed strategically in important locations such as game and forest reserves, national parks, ports, border crossings and so forth? What is the balance between staff working in the field and those working in central offices?

Additional resources:
UNODC, Criminal Justice Assessment Toolkit: Policing, Volume I Public Safety and Police Service Delivery (2006) 7–8
UNODC, Criminal Justice Assessment Toolkit: Policing, Volume 2 The Integrity and Accountability of the Police (2006) 9–10

2.1.2 Salaries and benefits

The salaries and other entitlements of enforcement officers need to reflect their responsibilities, education and experience. Inadequate salaries, or the failure to pay salaries regularly and on time, demoralizes staff and makes them less inclined to work.

Associated with salaries and benefits are issues of parity. Some forest guards, game wardens, game scouts, wildlife wardens and others working in wildlife and forest law enforcement do not enjoy parity with their counterparts in agencies such as customs and the police. This applies in relation to pay and benefits but also in relation to authority and powers provided in national laws, training and equipment. Wildlife and forestry officials are sometimes regarded as 'second class' enforcement officers by their counterparts. This makes it difficult for wildlife and forest law enforcement agencies and officers to obtain support from their counterparts and it restricts their ability to engage in multi-agency operations. This lack of parity flows into the wider community, so that wildlife and forestry officials may lack the respect of the general public. It may also contribute to presenting an image of limited deterrence to criminals.

Some jurisdictions operate reward schemes for enforcement officers as incentives for apprehensions and seizures relating to wildlife and forest crime. While these schemes have the potential to raise detection rates, they are very problematic as they can create the risk of evidence being planted and some suspects being unduly targeted. Furthermore, as a matter of principle, law enforcement officers should not carry out their duties in the hope of rewards or other benefits.

TOOL
II.12

Salaries and benefits

- What is the salary structure for wildlife and forest law enforcement officers and other staff? What is the average salary, including overtime, for each level? How does this compare to the national average wage? How does it compare to those of other official enforcement agencies?
- What is the expected workload for wildlife, forestry, and police officers and unsworn staff in the relevant units?
- Do wildlife and forest law enforcement officers engage in additional employment or private enterprise to supplement their income? If yes, why is that?
- Are salary levels commensurate with the responsibilities and risks involved?
- Do wildlife, forestry and police officers and other staff actually receive their pay? Do they receive it on time?
- Are relevant and appropriate overtime payments and allowances available and are they actually paid?
- Are wildlife and forest law enforcement officers covered by injury/health insurance? Do they have access to benefits such as maternity/paternity/sick leave?
- Are there injury/death compensation schemes for officers and their families?
- Do award and recognition schemes exist? How do they operate?

2.2 Recruitment, tenure and promotion

Recruitment procedures for enforcement personnel need to be fair and transparent in order to ensure professionalism and integrity, and to avoid discrimination, nepotism and corruption. The selection of staff at all levels must be based on merit, experience and education, and selection criteria need to be clearly articulated. Especially in larger agencies, recruitment should occur at junior, mid-level and senior levels. Internal policies can assist in balancing the need to maintain expertise and experience with the desire to rotate staff and bring in new ideas, fresh perspectives and generational change. Recruitment policies and procedures should foster the inclusion of women and diversity, as well as recruitment from local communities. This can be essential to achieving organizational change in law enforcement, improving public perception and better responding to institutional and community needs. It is further worth examining where staff are posted geographically after completing relevant inductions and training. Some agencies, for instance, do not allow recruits to work in their local communities to avoid nepotism and undue influence, though such practices also risk losing local knowledge. If recruits have to move away from local areas, there are further questions about whether families are able to relocate with them or if allowances are paid.

As with recruitment, it is important that promotion opportunities are available to all suitably qualified candidates, and that everything possible is done to avoid perceptions of nepotism or favouritism. Advancement should be based on assessments of competency and performance, and the means to measure these should be clearly set out and available.

A system of rotation of staff or tenure of office can avoid 'staleness' in the same post, broaden the experience base of personnel, assist in career development and lessen the likelihood of corrupt practices. Again, any such system should be equitable and not arbitrary, and should be balanced against the need to maximise any specialist training a staff member has received for a particular role.

Recruitment, tenure and promotion

- What are the selection processes and recruitment procedures for joining the units and agencies tasked with enforcing wildlife and forest laws, rules and regulations? How are staff selected?
- What levels of qualification, skills and professional experience are required to join these units? What are the basic educational requirements for recruitment (such as the level of literacy and numeracy)?
- Is there a vetting procedure for applicants? Is recruitment based on objective assessment and interviews? Does the selection process appear fair and objective?
- Do staff complete a probationary period before being confirmed as officers?
- Are recruitment and selection procedures fair and transparent? Do they promote the employment of women and persons from diverse backgrounds?
- Are staff drawn from multiple agencies or are they recruited independently?
- Are staff recruited from within a unit or agency or recruited from outside directly into a wildlife and forest enforcement unit?
- Are new staff allowed to work within their local communities or are they placed elsewhere?
- If new staff is moved away, can their families relocate with them or are allowances paid to see family?
- Is there provision for drawing upon other agencies to supplement staff needs for operational requirements or during times of shortages?
- Is there a tenure system in which staff are moved to different departments or agencies after a set period of time?
- Is there a career progression mechanism in place for wildlife and forest law enforcement officers based on competency and performance?
- Is there a fair and equitable promotion selection process in place?

Additional resources:
UNODC, Criminal Justice Assessment Toolkit: Policing, Volume I Public Safety and Police Service Delivery (2006) 8-10
UNODC, Criminal Justice Assessment Toolkit: Policing, Volume 2 The Integrity and Accountability of the Police (2006) 10

2.3 Training

It is crucial that staff at all levels are adequately trained and skilled to meet the many challenges and hazards associated with combating wildlife and forest offences. If the alleged wildlife or forest offence is investigated by officers not sufficiently familiar with the relevant background, techniques, processes and legal requirements, it is possible that the integrity of the investigations may become compromised, with potential implications for subsequent prosecutions and trials.

An analysis of enforcement capacities should therefore involve a comprehensive review of training programmes, their delivery and content, and the types and depth of training available to specialized units, general law enforcement agencies, new recruits, senior investigators and other staff involved in wildlife and forest law enforcement.

2.3.1 Content

Law enforcement in the wildlife and forestry sectors requires an understanding of relevant investigative powers and procedures, human rights laws and standards related to law enforcement and other crimes that are enablers or linked to wildlife and forest offences (e.g. corruption, money laundering, tax and fees evasion et cetera). It also demands technical knowledge of the operation of these sectors, environmental issues, land and property rights, and commercial and trade issues. Furthermore, training in wildlife and forest crime-specific investigative techniques and, should the need arise, advanced law enforcement methods such as covert investigations and other special investigative techniques, is necessary. Moreover, personnel at border control points have to be familiar with customs and quarantine procedures, import, export and CITES requirements, species identification, and the relevant international obligations. Attention should also be paid to whether and how often the content of the training is assessed and improved, and to whether and how often ongoing and refreshing training takes place to ensure skills are adequately embedded and updated, and that job and career development and enrichment occurs.

Training must be efficiently designed for the target audience and sufficiently specific to be effective. The content of the available training programmes necessarily varies among jurisdictions and depends on the level and type of staff trained, their prior knowledge and duties. While those specifically tasked with responding to wildlife crime may very well require specialized training, it is equally important that the primary law enforcement agencies in each jurisdiction, such as customs and the police, have a basic awareness of applicable national legislation, of CITES, and of the role they may be called upon to play in enforcement and implementation. Customs and police academies and colleges are encouraged to include a module or modules on wildlife and forest offences in the curricula of basic training courses for new recruits. Furthermore, seaport and airport security personnel would benefit from receiving such awareness-raising, as they are ideally placed to discover the smuggling of wildlife and forest contraband during their work in screening passengers, baggage and cargo. This is particularly important in countries where customs officials are not routinely placed to control export flows. Equally, the inclusion of basic money-laundering and financial crime modules in general training for customs, police and other enforcement institutions helps to enhance awareness and understanding of the different links in the wildlife and forest crime chain.

Accordingly, there is no single template for the training of wildlife and forest law enforcement officers. The following tool provides some simple indicators of the variety and type of content that can be included in the relevant training programmes.

Training: content

- » What basic training is given to persons joining the relevant wildlife and forestry enforcement units?
- » Does the training of wildlife and forest law enforcement officers cover the following issues?
  - Domestic wildlife and forest laws, including procedures and offences
  - Levels and characteristics of criminal activity in these sectors
  - Species protection and relevant environmental issues
  - Trade, correct documentation and customs procedures
  - Information gathering and dissemination
  - Identification of commodities
  - Investigative techniques, investigation procedures and the handling of seized wildlife and forest products

TOOL
II.14

Training: content

- How corruption facilitates wildlife and forest crime and how to detect and investigate corruption
- Availability and limitations of enforcement powers
- Use of equipment, technology and forensic procedures
- International cooperation
- Partnership building and collaboration with domestic and international agencies
- Prevention, education and awareness-raising
- Accountability, ethics, human rights, integrity and corruption
- Fire fighting
- Survival skills/field survival techniques
- First aid training
- Management training for those with supervisory responsibility

» Is the training supplemented by manuals and other material summarizing these issues?

Additional resources:
UNODC, Criminal Justice Assessment Toolkit: Policing, Volume 2 The Integrity and Accountability of the Police (2006) 11
UNODC, Criminal Justice Assessment Toolkit: Policing, Volume 3 Crime Investigation (2006) 8–9
UNODC, Manual on Wildlife and Forest Crime for frontline officers (2014)
UNODC, Wildlife and Forest Crime: a field guide for frontline offices (2018)

2.3.2 Delivery

Training may be delivered to various audiences in a variety of ways, both in person and online. Trainers need to be sufficiently qualified and experienced and the training material needs to be up-to-date and suitable for the target audience. Accompanying training materials are vital for officers to maintain a high level of knowledge and skills in investigating wildlife and forest crime. Even where comprehensive training programmes exist, it is important that syllabi and curricula are reviewed regularly to ensure they remain up-to-date and keep pace with the ever-changing nature of wildlife and forest crime. Capacity issues also need to be considered when training is delivered.

A further way to grow capacity is to offer 'train the trainer' courses, which enables agencies to become self-sufficient for training and become less reliant on outside help. Where training and capacity-building is delivered by external experts, it must take adequate account of relevant national policies and legislation and should, wherever possible, be delivered in the national language, using interpreters or translated materials.

Training programmes can also be designed to build new enforcement networks and partnerships if they involve participants from a variety of backgrounds and agencies, both domestic and international. This is particularly important when developing effective responses to wildlife and forest crime, a process which involves multiple government departments, including those responsible for combating other crimes that enable or are linked to these crimes (e.g. corruption, money laundering, fees and tax evasion), and spans international borders. Some agencies may offer opportunities for secondments to other agencies, professional development and higher education outside the agency, thus enhancing their knowledge base and skill set.

Training: delivery

- What is the annual capacity for the training of recruits and for specialized training?
- How often do officers receive refresher training? What specialized training courses are available? How are training needs assessed?
- How is the training delivered (for example, classroom, self-study or computer-based)?
- Who delivers the training? What measures are taken to assess the qualifications of trainers?
- Who develops the syllabi for the training? Do partner agencies contribute to syllabus development? When were training programmes last updated?
- What materials are used to support the training? When were they last updated?
- Does the training involve participants from multiple agencies (domestic and foreign)? Are agencies involved in combating crimes that are linked to or facilitate wildlife and forest offences involved (e.g. anti-corruption agencies, revenue collection agencies, anti-money-laundering agencies)? How is new staff introduced to counterparts in partner agencies?
- Is there any input or assistance from international or regional organizations?
- Is there a measure of accreditation applied to ensure the quality and standardization of training?
- What other training opportunities are available (such as further study, professional development, secondments or attachments to central units or to other agencies)?
- Is training accredited?
- What training on the relevant wildlife and forest crime issues is available for customs and police agencies? Is the subject of wildlife and forest offences included in the basic training of all customs and police officers?
- Is the subject of smuggling wildlife and forest contraband smuggling included in seaport and airport security staff training?
- Is there a cross-agency training programme?

Additional resources:
World Bank, Tools and Resources to Combat Illegal Wildlife Trade (2018) 12–13
UNODC, Criminal Justice Assessment Toolkit: Policing, Volume I Public Safety and Police Service Delivery (2006) 8–9

TOOL II.15

2.4 Facilities and equipment

Powers assigned to law enforcement agencies and investigation procedures often bear little relationship to their ability to fulfil and follow them. Investigators of wildlife and forest crime require certain facilities and need general resources and special equipment to carry out their duties. This begins with basic resources such as offices, stationery, transportation, access to motor vehicles, and hand-cuffs. Core resources and tools such as computers, internet access, mobile phones, radios, and patrol vehicles are additional basic requirements to be able to mount effective enforcement responses. Sufficient funding is also required to carry out day-to-day functions as well as to purchase, store and service necessary equipment.

In order to effectively conduct wildlife and forest crime scene work, including forensics,[57] investigators of wildlife and forest crime may require sophisticated equipment such as specific computers and software, equipment for forensic procedures, laboratories, and firearms. Drones (unmanned aerial vehicles) can offer enforcement officials a solution to

57 See Part II, Sections 5.4 and 5.5 of this Toolkit.

some of the challenges involved in monitoring large or remote areas of protected wildlife habitat and in gathering intelligence on wildlife criminals. There are also drawbacks to the use of drones, however, as they can pose a threat to data protection and privacy, confidentiality, and even cyber security. Other remote sensing technologies, such as satellite imagery, thermal infrared sensors, aerial surveys, seismic ground sensors, and heartbeat monitors, are increasingly a feature of sophisticated responses to wildlife and forest crime in source countries. Detector dogs can be trained to detect ivory, rhino horn, other biological material, cash, and other commodities in a variety of locations, especially at airports, seaports, cargo warehouses, containers, and mail facilities. Additionally, where appropriate, protective combat clothing, firearms equipment, and training for rangers and border officers is required in responding to armed poachers who have been reported to use high-calibre weaponry. It should be noted that such equipment is costly and requires regular quality maintenance, which could be beyond the financial capacities of some units. Furthermore, as with all aspects of wildlife and forest law enforcement, it is essential that relevant staff are properly trained in using and, where relevant, storing and servicing the equipment.

TOOL
II.16

Facilities and equipment

- In which facilities are investigators of wildlife and forest crime housed? Where are they located and what is the condition of relevant buildings, sites, offices, furniture et cetera?
- Do they have access to basic amenities such as clean drinking water, toilets, et cetera?
- Do investigators of wildlife and forest crime have access to basic equipment and material such as computers and internet, mobile phones, office equipment, patrol vehicles? What is the condition of this equipment?
- How is the equipment recorded, maintained, serviced and stored?
- Do investigators of wildlife and forest crime have access to the software and databases required to conduct their work? Do they have access to dedicated software and databases?
- Where and how are seized property, assets, and evidence stored? Is the storage secure?
- What facilities are there for housing live animals/plants? Is there data on absolute numbers of specimens, the capacity utilization and the respective outcomes for animals/plants?
- What specialized facilities and equipment is needed by wildlife and forest crime investigators? Which of those is available and functional, including, for example:
  - Software
  - Protective clothing
  - Firearms and ammunition
  - Detector dogs
  - Drones
  - Remote sensing technology

Additional resources:
UNODC, Criminal Justice Assessment Toolkit: Policing, Volume 3 Crime Investigation (2006) 9
World Bank, Tools and Resources to Combat Illegal Wildlife Trade (2018) 5.

3

Part II

Enforcement powers

For law enforcement to be meaningful, investigators of wildlife and forest crime and the police, customs and other agencies need to possess adequate powers and equipment in order to enable them to conduct searches, interview witnesses and suspects, enter premises, collect evidence, seize assets and make arrests.

In some jurisdictions, wildlife and forestry enforcement officers are sworn officers with statutory authority to conduct investigations, carry firearms, make arrests, and serve and execute warrants. As these powers are intrusive, they need to be limited and monitored in order to prevent abuses of power and unnecessary infringements of human rights and civil liberties. Elsewhere, wildlife and forestry departments do not have the power to engage in coercive methods of environmental law enforcement and rely upon the police for coercive interventions as required.

3.1 Sources of enforcement powers

Law enforcement functions, powers and procedures are usually set out in — and limited by — legislation. Relevant statutes may include a police powers and responsibilities act, a code of criminal procedure or a criminal code. Specific police powers acts usually encompass organizational elements as well as the relevant powers of a police agency, particularly in the public order realm. If other agencies and specialized units are involved in the investigation of wildlife and forest offences, such as wildlife enforcement units, forestry departments, customs and serious crime agencies, their investigative powers are equally set out in the relevant statutes, such as a wildlife, forestry or customs statute. Police powers relating to criminal investigations are likely to be found in the domestic criminal procedure code.

Even in jurisdictions where general or codified police legislation has been enacted, these statutes are usually not the sole source of enforcement powers. Specialized statutes are sometimes enacted in response to particular issues (such as corruption and money laundering) and often give additional or expanded powers to law enforcement in order to assist them in dealing with these issues or to clarify their roles.

TOOL
II.17

Sources of enforcement powers

- Do the units tasked with enforcement have enough staff to meet the needs of each area being covered? If not, what reason is given for this?
- What are the minimum qualifications needed to undertake the work?
- What training do staff need to have before undertaking the work?
- What is the composition of staff e.g. how are women and persons from minority groups represented in each unit and at each level/rank? Are efforts being made to ensure gender and racial equity?
- Within the relevant units, what proportion of enforcement officers is in supervisory or management ranks?
- What is the ratio of officers with less than two years of service to those with two or more years of service? How long on average do officers stay in the relevant units?
- Within the relevant units, what proportion of staff is full-time/part-time, administrative/investigative?
- Are enforcement officers deployed strategically in important locations such as game and forest reserves, national parks, ports, border crossings and so forth? What is the balance between staff working in the field and those working in central offices?

Additional resources:
UNODC, Criminal Justice Assessment Toolkit: Policing, Volume I Public Safety and Police Service Delivery (2006) 7–8
UNODC, Criminal Justice Assessment Toolkit: Policing, Volume 2 The Integrity and Accountability of the Police (2006) 9–10

3.2 Types of investigative powers

In some cases, enforcement agencies rely on coercive powers to demand compliance with relevant wildlife and forest laws. For this reason, the enforcement powers of officers must be clearly specified. The main powers traditionally exercised by law enforcement agencies in relation to the investigation of offences include the search and seizure of property, arrest and questioning. These are outlined in Part II, Section 6 of this Toolkit.

Special investigative techniques (such as surveillance, controlled delivery and undercover activities), the use of informants, financial investigations, and investigative powers specifically created for the investigation of wildlife and forest offences are further explored in Part II, Section 5, of this Toolkit.

Types of investigative powers

- Are agencies involved in enforcing wildlife and forest offences authorized to carry out the following activities?
  - Stop, question, inspect and conduct searches of goods, people, premises and conveyances;
  - Gather information on people, places, means of transport and so forth if they are suspected of being involved in wildlife and forest offences;
  - Make arrests;
  - Seize property;
  - Seize vessels, vehicles, aircraft and other means and equipment used to transport wildlife or plants;
  - Access licences, permits and certificates, trade records, import and export paperwork, tax and property records, bank accounts, communication records and the like;
  - Investigate wildlife and forest offences; and
  - Carry firearms or other weapons.
- What other investigative powers are available to officers charged with investigating wildlife and forest offences; for example can they undertake investigations in relation to corruption, money laundering and proceeds of crime that are linked to wildlife and forest crime? If not, how are offences linked to wildlife and forest crimes investigated?
- Are the available and permissible powers sufficient to prevent and disrupt wildlife and forest offences?

3.3 Exercise of power, checks and balances

Relevant laws usually include a range of procedural checks and balances that are implicit in the granting of a particular power. In fact, it is rare that law enforcement agencies are granted a power that does not have some express limitations and delineations.

Virtually all enforcement powers are matters for discretion. While most valid police powers are created by law, it is rare for a law to prescribe that a certain power must be exercised. The decision about whether or not to exercise a certain power, as well as the factors that influence discretion, are important issues in understanding how law enforcement affects people and communities.

The use of enforcement powers has serious human rights implications. The exercise of enforcement powers should be limited to what is strictly necessary and reasonable in the circumstances, and unlimited and indiscriminate force should not be used. Inappropriate and unlawful exercise of enforcement powers can result in innocent people being harmed and punished, and in the acquittal of people who have in fact committed criminal offences. The use of excessive or unlawful force can also seriously undermine public confidence in enforcement agencies and the administration of justice.

TOOL
II.19

Exercise of enforcement powers

- Does the law define the grounds and threshold for the application of coercive powers (for example, the concept of 'reasonable grounds', 'reasonable belief' or 'probable cause')?
- Is the application of enforcement powers limited to the use of minimum or reasonable force (or similar), such that officers should apply only the level of force necessary to achieve their lawful purpose?
- What enforcement actions require the issue of a warrant? Who issues these?
- What other express and implied limitations for the use of enforcement powers exist?
- What records are required to be made regarding the use of enforcement powers?
- Are independent and functioning grievance mechanisms in place, both for community members (including indigenous peoples) and for enforcement personnel?
- Are codes of conduct in place to guide ethical law enforcement?

Additional resources:
UNODC, Criminal Justice Assessment Toolkit: Policing, Volume 2 The Integrity and Accountability of the Police (2006) 6–7
Universal Ranger Alliance. The International Ranger Foundation (IRF) Ranger Code of Conduct (2021).

4

Part II

Intelligence

Law enforcement is increasingly led by intelligence. This involves, inter alia, the collation, analysis and dissemination of information, and provides a systematic approach to critical thinking which can assist in the prevention and suppression of criminal activities.

Well-managed, intelligence-led investigations can often prove more resource- and cost-effective than speculative or reactive methods. In recent years, criminal intelligence analysis has become a highly specialized field and persons engaged in such work have received extensive training.

In the field of wildlife and forest crime, intelligence relating to perpetrators, logging and poaching patterns, markets, smuggling routes, consumers and so forth is often missing or non-existent. In many countries, the use of intelligence in this field, including its gathering, collation, analysis and dissemination, remains poorly understood, and few countries dedicate staff to this subject. Where intelligence related to wildlife and forest crime is taken into account, it is often in a stand-alone manner so that it is not incorporated into intelligence regarding other types of offences. International sharing and analysis of such intelligence is another issue that is still in its infancy in most countries, if it exists at all. This restricts the ability to coordinate responses to individual cases or to establish strategies, policies or general operational guidance.

4.1 Types of intelligence

Information gathering and the exchange of intelligence among relevant authorities are crucial to the success of activities aimed at curtailing wildlife and forest crime. To be of maximum value, intelligence development activities should focus simultaneously on the strategic, tactical and operational levels.

- **Strategic intelligence** enables an accurate analysis of the levels and patterns of wildlife and forest crime at local, national and international levels. Strategic intelligence typically reviews current and emerging trends to illuminate changes in the crime environment and apparent threats in the area of concern. It draws upon a range of information from both within and beyond the law enforcement universe to identify opportunities for action and likely avenues for change to policies, programmes and legislation. Strategic intelligence facilitates law reform, international cooperation and

the development of prevention strategies, education and awareness campaigns. It identifies longer-term issues in specific crime areas, as well as scope and projections for growth in criminality. Taking such an approach helps to establish law enforcement priorities, determine resource allocations, support business planning and inform senior managers and policymakers.

- **Tactical intelligence** supports the national and local managers of frontline units in planning activities and deploying resources to achieve operational objectives and effectiveness, as well as to reallocate resources and efforts according to changing needs and problems. It also helps operational management in selecting targets, guiding investigations, shaping plans and maintaining supervision.
- **Operational intelligence** is typically of a short-term nature and provides the investigative team with hypotheses and inferences concerning specific elements of criminal operations, criminal networks and individuals and groups involved in unlawful activities. Operational intelligence also concerns itself with determining specific criminal methodologies and techniques as well as capabilities, vulnerabilities, limitations and intentions. It can help identify criminals, give advance information about their activities and help plan proactive, disruptive and further intelligence-led investigations. In the context of wildlife and forest crime, and dependent on the nature of the task, it can involve issues such as methods of sourcing wildlife, timber and plants, methods of transportation, methods of document fraud, means of communication, financial transactions, motives, markets and prices.

Although operational, tactical and strategic intelligence analyses have different aims, they are mutually dependent and cannot be carried out in isolation. Attempts to separate them, or to foster one at the expense of the other, will result in a fundamentally flawed intelligence programme and a failure to generate meaningful assessments of criminal activity. Furthermore, evidence collected during investigations, seizures and arrests can often have intelligence value and as such should not be overlooked or ignored.

4.2 Intelligence development

Development of intelligence and actions that arise from that intelligence need to have an ultimate goal, be it on a strategic level to change policy or on an operational/tactical level where specific criminals are targeted. As such, the task has to be clearly understood by all concerned. That is why careful planning and direction are essential to begin the intelligence process. Analytical tasks may begin with a single piece of information that gives rise to concern or as a result of senior management wanting to have a broader understanding of a problem focusing on a subject or a range of subjects of concern. Whatever the task, those undertaking the work must be objective and not be influenced by preconceived ideas.

4.2.1 Data Collection

Wildlife and forest crime frequently takes place away from public view; therefore, in general, law enforcement agencies cannot rely only on receiving information provided by the public. This is why it is important to establish a variety of sources for the collection of information based upon the clearly defined planning and direction phase of the process.

Traditionally, the gathering of information and the development of intelligence related to wildlife and forest crime is assigned to law enforcement officials. Sources are, for instance, park

rangers who are in constant contact with local communities, individuals from the communities themselves, border patrol officers, and non-governmental organizations (NGOs) working in areas where illegal wildlife activities are prevalent. As wildlife and forest offenders expand their use of technology, an important area of forensic work is the examination of such technology, including the analysis of mobile telephones, computers and data storage devices. These can reveal valuable links among individuals, financial transactions, locations and web-browsing history. Land clearance and compliance with — or transgression of — logging restrictions, for example, can be subjected to aerial surveillance and satellite remote sensing.

Since corruption frequently facilitates wildlife and forest crime, gathering information and developing intelligence on corruption-related offences may be useful to enable law enforcement officers to detect where wildlife and forest crime might be occurring. One example may be where reports that officers are being bribed to issue permits or licenses may point to other wildlife and forest crime.

Data collection should be as wide and varied as possible, allowing for the development of a well-balanced and more credible intelligence product. While intelligence development is a specialist area of law enforcement, it should be emphasized that the eyes and ears of all members of an organization should be used to maximum effect in recording and passing on information they acquire or observe in their daily work. It is therefore incumbent on all staff to have an understanding of how intelligence works, and the contributions they can make to developing an accurate and reliable intelligence picture.

More sophisticated data collection can also be undertaken. This includes the use of covert surveillance, informants and undercover investigators. These techniques do require a significant amount of training and will need to follow legal guidelines.[58] If information is obtained by non-law enforcement sources or their own intelligence product is disseminated to law enforcement, then caution needs to be exercised if this is to be used, especially in prosecutions and trials.

It is also important to note that the collection, analysis and dissemination of information for the purposes of producing intelligence can pose a number of risks, including risks of human rights abuse. For example, information-gathering may cause harm to the trust between community members and law enforcement agents, pose risks to the human sources and those to whom the information is, knowingly or unknowingly, provided, and possibly even threaten wildlife itself.

Apart from human sources, intelligence can be acquired by using a range of electronic devices, such as trap cameras to identify poachers, or through artificial intelligence. Such devices should have their use regulated, however, and be non-invasive and non-detrimental. Social media analysis is also an important area of intelligence development because criminal organizations trading in wildlife and forest contraband frequently use social media sites to advertise and sell their goods. If wildlife and forest crime follows trends observed in the context of other organized crime types, many transactions will increasingly take place in the darknet, often involving crypto-currencies for payments.

These developments are a threat but they are also an opportunity for investigators to gather information, develop intelligence and detect instances of wildlife and forest crime. Law enforcement can scan and search websites, become involved in online communications and covertly engage in conversations with traffickers and others involved in this illicit trade. Furthermore, automated digital surveillance systems have been developed that use natural language processing and machine-learning algorithms to combine unofficial and official reports of wildlife trade events obtained from the internet in an effort to establish an automated web crawling surveillance system of the wildlife trade. Whatever methodology is

58 See further Part II, Sections 5.1 and 5.2 of this Toolkit.

used to obtain information, it can help identify new trends and methods. Such activities can also lead to the acquisition of evidence leading to prosecutions, seizures, arrests and disruption of networks and can go well beyond intelligence-gathering.

4.2.2 Evaluation

Data evaluation is a key element of the intelligence cycle. While it is important to gather information from a wide range of sources, it is likely that the sources will vary in reliability and motivation and that the information will vary in quality. Evaluation should be conducted simultaneously with or immediately after its acquisition, to ensure that it takes place within the context in which information had been acquired as it is difficult to correctly evaluate information that has not been submitted within a local environment. Evaluation requires a separate assessment of the reliability and credibility of the source (the provider of the information) and each part of the information has to be evaluated for its validity and accuracy. One source may provide many pieces of information at the same time, but each piece has to undergo a separate evaluation. In the context of wildlife and forest crime this process is unlikely to have been undertaken and therefore each piece of information must be treated with care. Once data collectors and analysts become proficient in evaluating data, any analytical product will have greater credibility when disseminated.

Intelligence analysis is a highly specialised field and persons who carry out such work have received extensive training. Given that the source and information must be evaluated independently of each other, the person completing the report must have a sound knowledge of the evaluation system. In well-developed intelligence units/agencies there exist safeguards in respect of handling data. These include protecting the source from identification, particularly where very sensitive data has been obtained, and using a system of handling codes indicating when and to whom data and/or an analytical product can be disseminated.

4.2.3 Collation

Collation is the bringing together of collected information (raw data) obtained during a specific task into a centralized storage system (be it a filing cabinet or a computerized database), in a structured format (indexed, cross-referenced) that permits rapid and accurate access as part of the analysis phase.

Collation is an intensive and time-consuming procedure that generally requires human action in order to input data into a (relational) database. Data inputters need to be methodical and accurate as the database will be the primary tool used to create the analytical/intelligence product.

4.2.4 Reassessment of task

While the process of developing intelligence is frequently described as a cycle, each element can be ongoing at the same time. Information gathering can be routine or targeted, premises can be created, inferences developed and hypotheses can be tested as the project evolves. As such the whole process is under assessment and reassessment until an intelligence/analytical product is ready for dissemination.

Intelligence development

- Is there legislation and/or are there other (written) frameworks or standards on the gathering and storage of criminal information or intelligence in relation to wildlife and forest crime?
- Do such frameworks and standards provide a link between wildlife and forest crime and related offences such as corruption and money laundering?
- What do laws and frameworks allow in terms of information gathering; what are the constraints and limitations?
- Who gathers information in relation to wildlife and forest crime? How is it gathered? Does this process involve identifying and gathering information on related offences such as corruption and money laundering?
- What technology is used to gather information and collate it?
- What non-human sources of information can be/are used (i.e. are satellite images of illegal logging and land clearance activities available?) If so, who uses them and how?
- Who oversees how information is gathered?
- What systems are used to evaluate and collate information?
- Where and how is intelligence and information stored? Are specific national or regional databases and analysis tools used? Is information recorded manually or electronically?
- Are officers encouraged to collect information, write reports and file them in a central location? If not, why not?

Additional resources:
UNODC, Criminal Justice Assessment Toolkit: Policing, Volume 4 Police Information and Intelligence Systems (2006) 11–12

4.3 Intelligence analysis

Analysis is the most vital part of the intelligence cycle, as its product will form the basis of many of the actions undertaken within a proactive investigation. Analysis also identifies information gaps, determines whether additional work needs to be undertaken and highlights erroneous or contradictory information. For this reason, it is essential that all information be subjected to some form of analysis and processing before it is disseminated or used as intelligence.

The analytical process is aimed at the development and use of intelligence to direct law enforcement objectives, be it for short-term operational aims or for long-term strategic purposes. The scope of analysis and its overall credibility depends on the level and accuracy of acquired information, combined with the skills of the analyst. Analysis is a cyclical process, which can be performed to assist with all types of law enforcement objectives. Different types of crimes and criminal operations require different scenarios, but in all cases the information used should not be pre-filtered through an artificially and arbitrarily imposed selective grid.

Data integration is the first phase of the analytical process. It involves combining information from different sources in preparation for the formulation of inferences. Various techniques may be used to display this information, the most common being the use of charting techniques. Such charts should not stand alone and must always be accompanied by an oral briefing or written report.

Over recent years, analytical software has greatly enhanced the ability to detect patterns and gaps in collected data. This has allowed law enforcement officers and prosecutors to more easily identify networks of poachers, sellers, buyers and facilitators (such as corrupt officials), to recognize patterns, characteristics and locations of criminal behaviour, and to take action

before a criminal act occurs. In addition, the emergence and rapid development of artificial intelligence (AI) and machine learning tools have allowed law enforcement to autonomously detect patterns of criminal behaviour by 'teaching' the software through the information gathered in previous investigations. The use of software in the analytical process has greatly enhanced the user's ability to find previously hidden connections and patterns in data and has made possible the mapping of criminal networks. However, software and hardware is expensive and therefore it may be cost-effective for agencies to share analytical resources, databases and computer software. Furthermore, many law enforcement and intelligence services may not have the materials, training or internet connectivity to support this.

The next step in the analytical process is interpretation or logical reasoning, which often requires going beyond the facts and requires the maximum amount of information to be assessed at the time of integration to determine its relevance. Excluding information at the beginning of the process can easily lead to the significance of a vital piece of information being overlooked. This can lead to incorrect analysis, which can ultimately jeopardize an inquiry.

Analysis often identifies additional projects that are tangential to the original one. In the past, it was usual to undertake these projects simultaneously and in conjunction with the main task. However, this approach can lead to dispersal of resources, delays, a lack of cohesion and lower quality final products. Through experience, it has now become accepted that most analytical projects should be undertaken sequentially, one at a time, or by independent teams of analysts.

TOOL
II.21

Intelligence analysis

- Is there legislation and/or are there other (written) frameworks or standards on the analysis of criminal information or intelligence in relation to wildlife and forest crime?
- Do such frameworks and standards provide a link between wildlife and forest crime and related offences such as corruption and money laundering?
- What do laws and frameworks allow in terms of intelligence analysis? What are the constraints and limitations?
- Who analyses information in relation to wildlife and forest crime?
- Who analyses information in relation to corruption and money laundering?
- What methods and technology is used to analyse information and produce intelligence?
- Who oversees how intelligence is produced?
- Where and how is intelligence and information stored? Are specific national or regional databases and analysis tools used? Is information recorded manually or electronically?

Additional resources:
UNODC, Criminal Justice Assessment Toolkit: Policing, Volume 4 Police Information and Intelligence Systems (2006) 13–15
World Bank, Tools and Resources to Combat Illegal Wildlife Trade (2018) 4.

4.4 Dissemination

A vital factor in any intelligence task is the expeditious and effective dissemination of the product to relevant agencies or investigators who are in a position to use it. Furthermore, where appropriate, the receiving agency should be encouraged to respond, whether with additional information or intelligence, or by providing details on how the product was used. In the arena of wildlife and forest crime, this is critical as there are wide gaps in knowledge in respect to this area of criminality.

Historically, dissemination of intelligence tended to be guided by the 'need-to-know' principle. This could lead to intelligence being wasted when too few people were deemed as needing to know. While dissemination will lead to a loss of control on how the intelligence is used, certain safeguards can be added to ensure protection of the data. Furthermore, agencies and units need to have trust in each other; this is where building personal relationships with colleagues, particularly through networking and seminars, should be encouraged. In addition, it is not uncommon for agencies, or officials within them, to misunderstand data protection legislation, regulations and policies and to interpret this as preventing the sharing of information and intelligence, although the vast majority of such laws specifically allow sharing for the purpose of detecting and deterring crime.

Apart from sharing intelligence with relevant agencies, outcomes of intelligence analysis can be disseminated to wider audiences, such as NGOs or the general public, through the use of sanitized analytical reports. When intelligence cannot be shared easily for reasons of operational sensitivity, secure communication systems may need to be used or created.

The dissemination phase is crucial as it forms the basis for further action. The intelligence product may form part of an ongoing investigation, whereby other products will also be disseminated, or it may be a final report at the end of an investigation which is then closed.

Intelligence dissemination

- Is there legislation and/or are there other (written) frameworks on the exchange and dissemination of criminal information or intelligence in relation to wildlife and forest crime?
- Do such frameworks provide a link between wildlife and forest crime and related offences such as corruption and money laundering?
- What do laws and frameworks allow in terms of intelligence exchange; what are the constraints and limitations?
- How is wildlife and forest crime-related information and intelligence exchanged?
- Who oversees how information and intelligence are exchanged?
- Are agencies allowed or required to exchange information and intelligence with other countries? Is there an agency responsible for systematic sharing of intelligence between countries?
- Are there multi-agency enforcement and inter-agency committees that support intelligence exchange?

Additional resources:
UUNODC, Criminal Justice Assessment Toolkit: Policing, Volume 4 Police Information and Intelligence Systems (2006) 15–16

4.5 Proactive investigations

Proactive investigations seek to target prominent and emerging crime threats to reduce the harm they cause, rather than respond to crimes after they have been committed (reactive investigations). Through proactive investigations, law enforcement may detect criminal activities at their own initiative, rather than react to crimes that have been reported or observed by others.[59] Consequently, in proactive investigations law enforcement exercises much greater control over the start and direction of the investigation. Such investigations are also a method used in response to intelligence regarding ongoing or planned criminal activity.

The techniques used in proactive investigations are largely the same as those used for other forms of investigation[60] but the criminal activities are identified through research and intelligence gathering. Proactive investigations are particularly useful to disrupt criminal networks and organized criminal groups and may be of great assistance in curtailing, deterring, preventing and disrupting wildlife and forest crime.

Proactive investigations

- How and in what contexts are proactive investigations used in the context of wildlife and forest crime?
- Are (teams of) investigators deployed to investigate pre-identified targets (i.e. prominent criminals) rather than in response to crime reports?
- Are analysts and profiling used to build a case against the target? If yes, how are targets chosen?

Additional resources:
UNODC, Criminal Justice Assessment Toolkit: Policing, Volume 3 Crime Investigation (2006) 10

4.6 Risk and threat assessments

Risk and threat assessments serve to identify and analyse potential hazards. In relation to wildlife and forest crime, risk and threat assessment tools may be used to identify and evaluate the chance of crimes being committed. Thorough research of the risks affecting wildlife and forest crime can help assess the likelihood of future criminal behaviour; for example, the risk of known perpetrators reoffending or the threat of organized criminal groups entering certain markets. Understanding the forces that affect the risks, these tools can also be used to assess how interventions can best be applied. Combined with proactive investigations, discussed in the previous Section of this Toolkit, risk and threat assessment can play an important role in deterring and preventing wildlife and forest crime.

The factors (or forces) that increase or reduce the risk of wildlife and forest crime occurring may relate to the perpetrator or criminal group, their criminal record, access to equipment and weapons, their opportunities to corrupt officials, or to broader social and environmental risks concerning local communities, demand, species protection and poverty.

One type of risk assessment tool is a so-called actuarial risk assessment instrument. These instruments take a statistical approach to predict the probability of a crime being committed. For individual offenders, this can include numeric values in relation to factors such as criminal history, mental illness and substance abuse problems. Algorithmic tools to predict the risk of reoffending are presently under development but remain highly controversial. A second risk

59 On 'reporting offences' see further Part II, Section 6.1, of this Toolkit.

60 See further Part II, Section 5, of this Toolkit.

assessment tool involves structured professional judgement: this tool does not produce an automatic risk score but rather the evaluator determines the final risk estimate and makes suggestions about how that risk might be managed. This also serves to avoid bias, which usually contributes to the inaccurate prediction of risks. For example, research shows that many investigators tend to ignore evidence such as witness statements, photo or DNA evidence if this evidence contradicts their view about the guilt of the suspect. Outcome research relates to how risk scores are used by criminal justice actors to make their decisions.

Risk and threat assessments

TOOL
II.24

- What tools are used to identify and assess the risks of wildlife and forest crime occurring? Do such tools assess corruption risks linked to wildlife and forest crime?
- What risk factors relating to individuals are taken into consideration? What social and environmental factors are considered?
- Who/which law enforcement unit conducts risks and threat assessment in relation to wildlife and forest crime? How do they operate, how are they trained, and what outputs have they produced? What measures are in place to avoid bias and discrimination?

Additional resources:
UUNODC, Criminal Justice Assessment Toolkit: Policing, Volume 4 Police Information and Intelligence Systems (2006) 15–16

5 Investigative techniques

In the investigation of wildlife and forest offences, which are often very sophisticated and frequently involve a large number of criminals or criminal organizations, special investigative techniques may be extremely useful; in some cases, they may offer the only effective method of investigation.

5.1 Special investigative techniques

'Special investigative techniques' (as distinct from routine investigation methods) is the term used to refer to law enforcement measures designed to collect information for the purpose of detecting and investigating crimes and their perpetrators in a manner that does not alert the persons or groups that are the target of the investigation. They may involve, for instance, the controlled delivery of prohibited plants or animal material, the use of false company identities, or the use of technical, photographic and video surveillance. Internet surveillance is a further, increasingly indispensable, method to uncover wildlife and forest crime. This may involve an examination of online websites and advertisements for fauna and flora, including animal and plant parts and material.

Special investigative techniques should not be investigation tools of first resort. Instead, their use should be considered when other less intrusive means have proven ineffective or when there is no reasonable alternative to obtain crucial information or evidence. Even when the use of special investigative techniques is appropriate, they will generally need to be used in conjunction with other investigation methods in order to be most effective.

The United Nations Convention against Transnational Organized Crime and the United Nations Convention against Corruption encourage, insofar as is possible and permissible under domestic law, the appropriate use of special investigative techniques, such as electronic or other forms of surveillance and undercover operations by competent authorities, for the purpose of effectively combating organized crime and corruption.[61]

Some special investigative techniques can be particularly intrusive and thus require a careful balancing of a suspect's right to privacy against the need to investigate serious criminality. The right to protection from arbitrary invasion of privacy is a fundamental human right, laid down in Article 17 of the International Covenant on Civil and Political Rights (ICCPR). A further point to consider is the admissibility and use of evidence collected through special investigative techniques in subsequent criminal proceedings. The United Nations Convention against Transnational Organized Crime and the United Nations Convention against Corruption are

61 United Nations Convention against Corruption, Art. 50; United Nations Convention against Transnational Organized Crime, Art. 20.

silent on these issues and decisions about the requirements to use such evidence in court are left to the laws and discretion of State Parties concerned.

The appropriate safeguards for special investigative techniques may vary depending on the technique in question. Special investigative techniques will typically require a legislative basis, without which they may not be authorized by law. Some techniques raise specific concerns about privacy and human rights and thus must fully take into account the rights of the suspect and third parties. For these reasons, most jurisdictions require a number of strict safeguards against abuse, including the requirement that the offence be serious, that the use of the technique be vital to the case, that essential evidence cannot be secured by less intrusive means, and that the authorizing authority be satisfied on reasonable grounds that the nature and extent of the criminal activity justify the use of special investigative techniques. This requires the authorizing authority to consider the necessity and proportionality of the use of a special investigative technique. In most jurisdictions, the use of such techniques requires authorization by senior officials of enforcement agencies, prosecutors or the judiciary (sometimes by the issuance of warrants). Evidence collected without such authorization is likely to subsequently be ruled inadmissible in court and may prompt litigation against the agency and individual officers. In some jurisdictions, the use of such techniques is restricted to specific law enforcement agencies and to specific types of crime. The latter aspect is another good reason to not focus solely on wildlife or forest legislation when responding to, and investigating, such criminality.

Special investigative techniques

TOOL II.25

- What special investigative techniques are permissible to be used in the investigation of wildlife and forest offences? This may include, inter alia, the use of:
  - Interception of telecommunications, email traffic and post/mail;
  - Listening devices, and tracking and positioning devices;
  - Static or mobile surveillance, and photographic and video surveillance;
  - Assumed identities;
  - Covert search of premises, letters, packages, containers and vehicles;
  - Controlled deliveries;
  - Simulated or test-purchases of an item;
  - Internet surveillance;
  - Simulation of a corruption offence or 'integrity test';
  - Covert real time monitoring of financial transactions;
- Do investigators of wildlife and forest crime use special investigative techniques in practice? If so, which ones, how frequently and in what circumstances?
- How are investigators of wildlife and forest crime trained in the use of special investigative techniques?
- What are the preconditions for the use of covert investigation techniques? Does their use require authorization from a judicial or other independent source? What are the limits and conditions on orders for covert surveillance?
- Who oversees the use of special investigative techniques? Are efforts to prevent and address human rights violations undertaken? If so, how?

Additional resources:
UN Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Working Group on International Cooperation, International cooperation involving special investigative techniques, UN Doc CTOC/COP/WG.3/2020/3 (12 May 2020) UUNODC, Criminal Justice Assessment Toolkit: Policing, Volume 4 Police Information and Intelligence Systems (2006) 15–16

5.1.1 Controlled delivery

When law enforcement authorities physically detect or gather intelligence on wildlife or plants that are being smuggled, it is not unreasonable for their first reaction to be to intercept and seize such a shipment in order to ensure that the contraband cannot enter into trade. In the case of cross-border trafficking, such action would often frustrate the identification of suspects and would certainly make it significantly harder to gather sufficient evidence to prosecute such persons and their associates.

A controlled delivery is a covert investigation technique used by law enforcement to track the route of a commodity in order to identify persons connected with criminal activities and to gather evidence against them. This method has been employed extensively in relation to drug trafficking, but it can be used equally with regard to wildlife and forest crime. Whilst controlled deliveries commonly involve allowing a shipment, baggage or cargo to continue its journey, there may be occasions (if very carefully managed) when a courier or mule may be allowed to continue his or her journey.

In some countries, legislation covers the use or prohibition of controlled deliveries, although it may not relate specifically to wildlife and forest offences. It may also be possible to obtain the agreement of prosecution authorities to use such a technique.

The United Nations Convention against Transnational Organized Crime and the United Nations Convention against Corruption also encourage, insofar as possible and permissible under domestic law, the appropriate use of controlled delivery by competent authorities for the purpose of effectively combating organized crime and corruption.[62]

As with other special investigative techniques, particular responsibilities are required of agencies that engage in controlled delivery operations. These responsibilities differ depending on the stage at which an agency is involved. For example, a controlled delivery operation may have to be sanctioned or authorized by an officer of a certain rank, or approval may be first sought from a prosecutor or a judge. Controlled deliveries require careful coordination and cooperation particularly when several agencies and countries are involved.

TOOL II.26

Controlled delivery

- What is the legal basis to conduct controlled delivery operations? Is this law specific to investigations of wildlife and forest offences?
- Are investigators of wildlife and forest offences permitted under domestic law to conduct controlled deliveries?
- Are investigators of wildlife and forest offences undertaking controlled deliveries in practice? If yes, how and in what circumstances?
- In the absence of a legal basis, is it possible to conduct controlled delivery operations with the agreement of prosecution authorities?
- Does national legislation or regulations allow substituting the detected contraband before an actual controlled delivery is conducted? If so, can the records be accepted for the purpose of evidence in court?
- Which agency should take the lead with regard to controlled delivery?
- What are the preconditions for the use of controlled delivery? Is authorization from a judicial or other independent source required? What are the limits and conditions for orders for a controlled delivery?
- Have standard operating procedures been developed to support speedy and efficient controlled deliveries?

Additional resources:
INTERPOL and CITES, Controlled Deliveries: A Technique for Investigating Wildlife Crime (2007)

62 United Nations Convention against Corruption, Art. 50; United Nations Convention against Transnational Organized Crime, Art. 20.

5.1.2 Physical surveillance

Physical surveillance involves the observation of persons or places for the purpose of investigating an offence that has been or is being committed. In its simplest form, physical surveillance means that if law enforcement authorities suspect someone is engaging in illicit activities, they follow them. It may also involve the surveillance of specific places or premises, vehicles or other objects.

Physical surveillance is a widely used investigative tool that can be used within certain limits. If physical surveillance involves covert methods, it can be a particularly intrusive method of collecting evidence, requiring a careful balancing between a person's right to privacy and the need to investigate serious criminality. For these reasons, approval procedures, control mechanisms and other safeguards will be needed to ensure the use of physical surveillance is reasonable and necessary in the circumstances and to prevent abuse. A right to privacy in one's own home, for example, has near universal recognition, so jurisdictions place restrictions on such intrusion. The threshold on when authorities can enter private spaces depends on the jurisdiction and may include reference to probable cause, reasonable suspicion, and reasonable and probable grounds. Such an entry generally requires prior judicial authorization.

Physical surveillance, whether that be static, on foot or mobile, may require the use of teams of officers with relevant communication equipment., Such staff need specialist training: following someone whilst remaining unnoticed is not easy and is highly resource- and time-intensive. Organized criminal groups and individual criminals who are surveillance-conscious are extremely difficult to surveil covertly. Allowing targets to become aware of surveillance is likely to ruin any current investigation and hamper any future investigations, while also posing security risks to law enforcement personnel. For these reasons, entering this realm of investigation technique should be very carefully and cautiously planned. Several jurisdictions have specific units and departments whose only function is to handle surveillance. Where such units exist, it may be much more effective to brief and engage them on the wildlife- or forest-related aspects of an investigation, rather than a wildlife or forest agency attempting such techniques.

Physical surveillance

- What is the legal basis for the physical surveillance of persons or places? Does this law apply to investigations of wildlife and forest offences?
- Are investigators of wildlife and forest offences permitted under domestic law to conduct physical surveillance? What devices are available and permitted to be used for the purpose of physical surveillance?
- Are there designated units to conduct physical surveillance? If yes, have they engaged in physical surveillance in relation to wildlife and forest crime?
- In the absence of a legal basis, is it possible to engage in physical surveillance with the agreement of prosecution authorities?
- What are the preconditions for the use of physical surveillance? Is authorization from a judicial or other independent source required? What are the limits and conditions for physical surveillance?
- Have standard operating procedures been developed to support speedy and efficient physical surveillance?

TOOL
II.27

5.1.3 Electronic surveillance

Electronic surveillance involves the monitoring, interception, copying or manipulation of messages or signals transmitted by electronic means, or the monitoring or recording of activities by electronic means for the purposes of investigating an offence. This includes electronic surveillance in the form of listening devices or the interception of telephone and online communication and emails. This latter is particularly useful where a close-knit group of suspects cannot be penetrated by an outsider or where physical infiltration or surveillance would represent an unacceptable risk to the investigation or the safety of investigators.

Electronic surveillance further includes audio surveillance, visual surveillance, tracking, and data surveillance. Newer tools include remote sensing devices, drones, satellites that can be used to monitor logging and other forest activities, and automatic identification systems (AIS) tracking that is widely used for maritime purposes.

Given its intrusiveness, electronic surveillance is generally subject to strict judicial control and numerous statutory safeguards to prevent abuse. The attainment of authorization to deploy electronic surveillance in advance ensures that the evidence is obtained lawfully, which may have implications for the admissibility of that evidence. In some jurisdictions authority to conduct surveillance is issued by the court in accordance with legislation. In other countries, the courts have a primarily regulatory role. That is, a judge may permit surveillance to occur on the merits of the case without any legislative restrictions.

When surveillance is conducted in a situation where the subject of surveillance would hold a reasonable expectation of privacy, a warrant will usually be required. For a warrant to be issued, it is generally required that there be reasonable grounds to believe that a relevant offence has been, is being or will be committed. Where a warrant to conduct surveillance is not required, there are usually other factors limiting its use. These include consideration of the subject's reasonable expectation of privacy, the attainment of some other permission (albeit non-judicial), and the requirement of notice for overt surveillance.

Electronic surveillance conducted by law enforcement in a public place will not always require a warrant. This will usually include, for example, visual surveillance such as in-car video systems, body-worn video devices and police-monitored CCTV. These forms of surveillance are typically regulated by codes of practice and guidelines, if at all.

As with other special investigative techniques, electronic surveillance is time- and resource-intensive and requires staff that have been adequately trained. Its use should be very carefully and cautiously planned and, as with physical surveillance, the use of specialist surveillance personnel, where available, is preferable.

Electronic surveillance

- What is the legal basis to conduct electronic surveillance operations? Does this law apply to investigations of wildlife and forest offences?
- Are investigators of wildlife and forest offences permitted under domestic law to conduct electronic surveillance? What devices are available and permitted to be used for the purpose of electronic surveillance?
- In the absence of a legal basis, is it possible to conduct electronic surveillance operations with the agreement of prosecution authorities?
- Which agency should take the lead with regard to electronic surveillance?
- Are there designated units to conduct electronic surveillance? If yes, have they engaged in electronic surveillance in relation to wildlife and forest crime?
- What are the preconditions for the use of electronic surveillance? Is authorization from a judicial or other independent source required? What are the limits and conditions for orders of electronic surveillance?
- Who oversees electronic surveillance operations?
- Have standard operating procedures been developed to support speedy and efficient electronic surveillance?

Additional resources:
UN Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Working Group on International Cooperation, International cooperation involving special investigative techniques, UN Doc CTOC/COP/WG.3/2020/3 (12 May 2020) 3 [9]–[12]
UNODC, Current practices in electronic surveillance in the investigation of serious and organized crime (2009)

5.1.4 Internet surveillance and social media monitoring

The internet is an important platform for trading wildlife and forest products and a convenient medium to advertise and sell anonymously. Using the internet and social media platforms allows users to hide and/or fake their identities to avoid detection anywhere in the world. Recognizing sales of illicit goods on the internet can be particularly challenging, because looking at images or popular names used on website advertisements is often not enough to identify the specimen or to determine if the specimen is CITES-listed or a national protected species. Furthermore, the internet enables direct sales to the buyer, thereby eliminating the need for intermediaries, along with the associated costs and risks of detection. As with physical markets, legal and illegal online sales and other transactions are often intermingled. Legitimate companies may provide cover for illegal trade, legitimate traders may expand into criminal opportunities to sell their products online or to launder proceeds. Despite increased awareness and vigilance by some online companies, the proliferation of illegal wildlife products on the internet continues.

The internet has become a prime outlet to advertise and arrange sales, including of wildlife specimens, both legally and illegally. Various digital platforms, such as social media and the darknet, can enable direct contact between buyers and sellers without the publicity associated with online websites or physical markets. To further conceal transactions, key words are often substituted such that products like ivory, rhino horn and tropical timber are usually not referred to by their actual names. Instead of typed text, images of text are another way to obstruct detection and filtering efforts by law enforcement agencies. To date, the darknet has been used sparingly to trade wildlife, but governments should remain vigilant and be ready to adapt and respond to new trends.

As much as the internet and online communication pose a challenge for law enforcement, it also presents opportunities for detection and intervention. Routine surveillance of the internet is an indispensable method to uncover wildlife and forest crime. This involves an examination of online websites and advertisements for fauna and flora, including animal and plant parts and material, as well as regular monitoring of social media. Furthermore, research into online markets has the potential to uncover other trends, such as shifts in consumer preferences and market reactions to special events (e.g. new legislation and uplisting of species on endangered lists).

Undertaking internet-related investigations, monitoring and surveillance will invariably require specialist knowledge and use should be made (where possible) of existing enforcement cyber-crime units and departments. Cyber-related enforcement work is specialized and resource- and time-intensive, and thus needs to be carefully targeted to where it will be truly beneficial and productive. Persuading cyber-crime enforcement units to work on wildlife and forest crime may be difficult, given their priorities with other crime-types. It is vital to target only truly commercial and criminal internet-based activities, especially as jurisdictional difficulties may be encountered, as will hurdles with regard to the identification of those responsible.

At the request of the CITES Secretariat, the INTERPOL Environmental Security Programme produced the 'Wildlife Linked to the Internet – Guidelines for Law Enforcement Practitioners'. The first section of this Guide provides an overview of basic technology such as hardware and software, the internet, browsers, clouds, backup and search engines, and how to utilize them during an online investigation. The second section "introduces the distinctive characteristics of the Internet and how to recognize wildlife crimes linked to the Internet". A third section focuses on the collection of evidence in the investigation of online wildlife trafficking, including how to request, handle, and analyze such evidence, bearing in mind that each country has different legislation and regulations in order to ensure that any collected evidence is admissible in court.[63]

TOOL
II.29

Internet surveillance and social media monitoring

- Is there a legal basis to conduct internet surveillance and social media monitoring? If so, is this law specific to investigations of wildlife and forest offences? Are investigators of wildlife and forest offences permitted under domestic law to conduct internet surveillance and social media monitoring?
- In the absence of a legal basis, is it possible to conduct internet surveillance and monitoring operations with the agreement of prosecution authorities?
- Which agency should take the lead with regard to internet surveillance and monitoring?
- What are the preconditions for the use of internet surveillance and monitoring? Is authorization from a judicial or other independent source required? What are the limits and conditions?
- Have standard operating procedures been developed to support speedy and efficient internet surveillance and social media monitoring?
- Have investigators of wildlife and forest offences undertaken internet surveillance and social media monitoring? What has been the experience and outcome?

Additional resources:
INTERPOL, Wildlife Linked to the Internet – Guidelines for Law Enforcement Practitioners (2021)

63 See further Part IV, Section 3.2 of this Toolkit.

5.1.5 Undercover operations

Undercover investigations involve the use of law enforcement officials or of other persons authorized by law enforcement authorities who, for the purpose of investigating an offence, neither disclose nor reveal their official position or their mandate. Undercover operations are used in particular where it is possible for a law enforcement agent or other person to infiltrate an organized criminal group to gather evidence. The evidence provided by an 'insider', whether an undercover police officer or a co-conspirator, can be critical to a successful prosecution. Furthermore, the effect of such conclusive evidence often brings offers of cooperation and pleas of guilt from defendants.

Due to the length of time required to gain access to criminal and organized criminal groups, the danger to the undercover officer if his or her identity is discovered, and the associated costs, undercover operations are not used very frequently. They may nevertheless be a useful and, in some cases, necessary investigative technique to detect and disrupt criminal networks and their activities.

Given the many dangers and risks associated with undercover investigations, including the intrusiveness and the risks of abuse, most jurisdictions impose strict requirements and limitations on the use of this technique. In particular, in most jurisdictions, undercover officers are not permitted to encourage suspects to commit crimes they would not ordinarily commit, either as an agent provocateur or through entrapment. Entrapment refers to a situation in which an agent or official originated the idea of the crime and induced the accused to engage in it; in some jurisdictions, entrapment is used as a defence to criminal charges).

As with surveillance, this is a specialized field and undercover officers need to be very carefully selected, trained and managed. Any agency which has no past experience in this field should seek expert guidance.

TOOL
II.30

Undercover operations

- Is there a legal basis to use undercover operations? If so, is this law specific to investigations of wildlife and forest offences?
- Are investigators of wildlife and forest offences permitted under domestic law to engage in undercover operations?
- Have investigators of wildlife and forest offences undertaken undercover operations?
- In the absence of a legal basis, is it possible to conduct undercover operations with the agreement of prosecution authorities?
- Which agency should take the lead with regard to undercover operations?
- What are the preconditions for the use of undercover operations? Is authorization from a judicial or other independent source required? What are the limits and conditions?
- Have guidelines or standard operating procedures been developed to support speedy and efficient undercover operations?

Additional resources:
UN Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Working Group on International Cooperation, International cooperation involving special investigative techniques, UN Doc CTOC/COP/WG.3/2020/3 (12 May 2020) 4 [16]–[18]

5.1.6 Assumed identities

'Assumed identity' refers to a false or altered identity created, acquired and/or used by law enforcement authorities in order to investigate an offence, establish contact and build a relationship of trust with another person or infiltrate a criminal network. The assumed identity can be that of a person or that of a company.

As with undercover operations, the creation and use of assumed identities are time-consuming and expensive, and there are dangers to the person using the assumed identity. For these reasons, and given the intrusiveness of this measure, there are strict safeguards on the creation and use of assumed identities.

Assumed identities

- Is there a legal basis to establish and use assumed identities? If so, is this law specific to investigations of wildlife and forest offences?
- Are investigators of wildlife and forest offences permitted under domestic law to use assumed identities?
- Have investigators of wildlife and forest offences used assumed identities in their work?
- In the absence of a legal basis, is it possible to use assumed identities with the agreement of prosecution authorities?
- Which agency should take the lead with regard to establishing and monitoring the use of assumed identities?
- What are the preconditions for the use of assumed identities? Is authorization from a judicial or other independent source required? What are the limits and conditions?
- Have guidelines or standard operating procedures been developed to support speedy and efficient use of assumed identities?

5.2 Use of informants

An informant is a person who establishes or maintains a personal or other relationship with another person for the purpose of facilitating action that covertly uses such a relationship to obtain information or evidence or to provide access to any information or evidence to a third person; or covertly discloses information or evidence obtained by the use of such a relationship, or as a consequence of the existence of such a relationship. The information provided by informants can be vital and is sometimes the only way to prevent or solve a crime. Their role is different from that of witnesses, as they are not called to testify in court and, in some countries, it is not necessary to disclose the assistance that they provide.

The use of informants may be the most effective criminal investigation technique, particularly when combating serious and organized crime. However, it may also be the most commonly misunderstood, potentially hazardous and sensitive such technique, and the one most mismanaged by the law enforcement community. For instance, a widespread misconception is that all informants require payment. In fact, some of the most effective informants seek no payment whatsoever. An extensive range of factors influence potential informants.

Understanding what motivates each informant is essential to recruiting, tasking, directing and managing them. The effective recruitment and handling of informants can prove significantly more resource- and cost-effective compared with other covert methods of investigation. The development of a network of informants can be facilitated by means of reward schemes and confidential information hotlines to allow the supply of information.

It needs to be remembered that informants may themselves be criminals with a variety of motivations for providing information. For this reason, informants require careful selection and management. The systems employed for using and supervising informants, their safety, and any payments made to them, need to be established and maintained thoroughly.

As with other techniques, the use and management of informants requires specialization, training and, vitally, efficient oversight and management. Every agency seeking to use informants must establish clear guidance with regard to such use and a basic understanding of this field should be provided to every level of officer, but especially during basic training. Informants need a handler and at least one manager to avoid improper activity and to ensure proper direction and monitoring of the informant. Whilst only carefully selected officers should be designated to become informant 'handlers', each and every officer has the opportunity, through their everyday work, to identify potential informants. It is vital that all agencies have an appreciation of modern approaches to this field, understand the risks, including of serious human rights abuses, that using informants can pose to law enforcement personnel, informants themselves, potential suspects and third parties. Agencies must carefully reflect upon their capacity to recruit and use informants effectively, legally and acceptably in terms of their audiences. When establishing policies with regard to informants, and offering subsequent general guidance and specialist training, expert assistance and support should be sought.

Use of informants

TOOL II.32

- » To what extent are informants used by authorities in the investigation of wildlife and forest offences?
- » Are there standard operating procedures on the handling of informants?
- » How are informants managed? In particular, what procedures are in place for contacting informants and recording information?
- » Are investigators trained in the management of informants?
- » Is the identity of informants protected throughout the criminal justice system? If so, how?
- » What systems exist to manage the payment of informants? Are such payments subject to external auditing by another government agency?
- » What are the rules regarding payments to informants? For example: Who authorizes the payment? How is the amount determined (fee or percentage)? How are funds paid? Which audit procedures are used? Is there any relationship between informant payments and rewards to informants?
- » Do rules, procedures and supervisory guidelines establish a difference between the handling of witnesses and informants, and how to cooperate with them?

Additional resources:
UNODC, Criminal Justice Assessment Toolkit: Policing, Volume 2 The Integrity and Accountability of the Police (2006) 17
UNODC, Criminal Justice Assessment Toolkit: Policing, Volume 3 Crime Investigation (2006) 14–15

5.3 Patrols, monitoring and checkpoints

Forests and wildlife habitats are often remote, large and inaccessible areas that are difficult to patrol regularly and comprehensively. Forest officials, game wardens, park rangers, police and other law enforcement officials can usually only inspect a small number of locations in person, though through the use of drones and other technology they can monitor much larger areas. Illegal logging and other forms of illegal land clearance, including felling protected trees, can sometimes be monitored through satellite technology

Risk management, crime analysis and systematic patrols with routes set out to optimize the coverage of key areas are basic methods to improve information gathering and detection. In addition, checkpoints along main roads, rivers, trade routes and interchanges, and at seaports, airports, and key entry points to national parks and other protected areas, can assist in detecting and preventing wildlife and forest offences. Random vehicle checks and searches and similar measures usually require a legal basis, which not all law enforcement agencies have. Officials conducting such checks and searches also need to be adequately trained and furnished with adequate equipment.

Patrols, monitoring and checkpoints

- How and how frequently are wildlife habitats and forests patrolled?
- Who patrols these areas (forestry officials, game wardens, police or others)?
- What system is used to determine patrol routes and the frequency of patrols? What technology and equipment is used to support patrols?
- Are random vehicle checks or specific checkpoints along main trade routes, roads, rivers, ports, natural sites or others used? What is the legal basis for conducting such checks and searches?
- How are these checkpoints staffed and what inspections are carried out at these checkpoints? How is the staff trained? Are human rights laws and standards related to patrols and monitoring at checkpoints, included in the training?

Additional resources:
UNODC, Criminal Justice Assessment Toolkit: Policing, Volume I Public Safety and Police Service Delivery (2006) 13

5.4 Wildlife and forest crime scene work

Proper crime scene work is essential, especially in the context of wildlife and forest crime. It provides an important starting point for the development of investigative leads and facilitates the admissibility of evidence in court. Crime scene work involves proper preparation for and rapid preservation of the wildlife and forest crime scene.

Wildlife and forest crime scene work requires special equipment, such as metal detectors to locate potential evidence such as bullets and casings, specimen containers to preserve evidence, and protective clothing and cameras to record the scene. Proper crime scene work further requires personnel who are adequately trained in crime scene management and record keeping.

In wildlife and forest crime scene work, as in other forms of forensic endeavours, it is vital that the investigations be meticulous, detailed records are kept and a proper chain of custody (the continuity of evidence) is maintained for each item of evidence.[64] Such a chain minimizes the chance of loss, contamination or substitution of material and helps to prove the origin and veracity of specimens or exhibits. Complicating the work further is the fact that wildlife and forest crime scenes are often disturbed prior to being located and that offences take place away from urban centres, where enforcement agencies are usually based and where laboratory and scientific expertise are most likely to be found.

64 See further Part III, Section 1.3.1 of this Toolkit.

Wildlife and forest crime scene work

- What special laws or operating procedures are in place for wildlife and forest crime scene work?
- Is there specialist personnel for wildlife and forest crime scene management?
- What specialist and general training on wildlife and crime scene work is offered and to whom?
- Are all staff aware of the importance of securing and preserving a crime scene in order to facilitate a thorough examination of it?
- Do investigators preserve crime scenes so that they remain suitable for forensic examination?
- Are the relevant staff properly trained in establishing a crime scene, record keeping, electronic data collection, the use of equipment, photography and so forth?
- Are the relevant staff aware of potential cross-contamination issues? Do they know how to bag, label and record evidence and exhibits?
- What equipment is available to examine a crime scene and preserve evidence?

Additional resources:
UNODC, Criminal Justice Assessment Toolkit: Policing, Volume 5 Forensic Services and Infrastructure (2006) 13–16
UNODC, Wildlife Crime Scene Guide for First Responders (2019)

TOOL
II.34

5.5 Forensics

In the context of wildlife and forest crime, the use of forensics can be broadly divided into two areas: forensic techniques used to assist in the identification or origin of species and forensic techniques used to link suspects or physical objects to a crime.

Species determination

The type of forensic examination employed in an investigation varies depending on the nature of the alleged offence. Wildlife poaching and illegal logging, for instance, can be tracked through the use of DNA testing at points of origin, transit and final sale. DNA parentage testing can be used to investigate whether an animal was taken from the wild or from captive breeding facilities. Identification and morphological studies can be used to determine the species of a particular animal by using bones, hair, feathers, scales, and other tissues or organs. This can help to establish whether a protected species has been taken illegally. Microscopy or elemental analysis can be used, for example, to identify ivory. Pathological studies involving the examination of carcasses, organs, tissues and other samples from dead animals assist in establishing the cause of an animal's death. DNA testing has also linked multiple ivory shipments to the same network of dealers operating out of a handful of ports. This method identified tusk pairs that had been separated and shipped in different consignments to different destinations with high overlap in the geographic origins of tusks in the matching shipments. Some forensic procedures, such as isotopic examinations, can help determine time of death and geographical origin. This can be vital in establishing or disproving claims of legal possession and legal origin. Other forensic procedures include the study of wood anatomy (the structure of timber), tree growth increments and age determination. Careful use of such procedures and the resulting data allows more accurate intelligence packages to be developed and leads to greater success against organized crime. For this reason, forensic examinations should be applied to far more seizures and interceptions of contraband than is the case at present.

Suspects and objects

A number of techniques can be used to link suspects or physical items to a crime. For example, ballistics can link bullets recovered from carcasses to firearms seized from suspects. Bullet marks

can determine whether an elephant was shot from the ground or air. The hands, fingernails, hair and clothing of suspects may contain debris or blood from animals or plants, or firearms residue. Minute traces of a suspect's DNA or fingerprints can be left at the scene of a crime, or on items connected to it, including seized wildlife. Vehicles and premises may contain remnants of material from a scene. Documents can reveal a suspect's handwriting, fingerprints or DNA. Carved or cut items can reveal physical marks that may be linked to tools and other instruments used by perpetrators.

Facilities and equipment

The types of examinations that can be conducted depend on the capability of the forensic scientist involved and the available laboratory facilities and equipment. Equally, if the laboratory is not staffed by someone competent in, for example, microscopy, then, notwithstanding the availability of the necessary equipment, the relevant examination cannot be conducted. In places where requisite forensic experts forensic equipment or facilities are temporarily or permanently unavailable, mechanisms to obtain or gain access to such expertise or equipment should be developed. In some jurisdictions, customs laboratories have started to support frontline enforcement with their forensic examinations. Several organizations and wildlife forensic laboratories offer to provide forensic science support. These opportunities are further discussed in Part IV, Section 2.5 of this Toolkit.

Forensic procedures further need to be supported by appropriate plans and processes. This includes, for instance, protocols to take, test, store and ship samples and other measures to ensure that a sample can be tracked throughout the analysis process. It further requires safety measures to ensure that samples are not spoiled or destroyed and that they are secure from access by unauthorized persons. Certification and other quality assurance are measures to guarantee that laboratories work to a high standard and that the findings are reliable and hold up as evidence.

TOOL
II.35

Forensics

- What forensic examination capacities, facilities and equipment are available in the jurisdiction? Can they be used for wildlife and forest crime investigations? Are they used in practice?
- Is forensic evidence admissible in court? If so, what is the legislative basis and what types of forensic evidence are admissible?
- Are investigators trained in what to look for and are they aware of the potential of forensic examinations and evidence? Are investigators familiar with forensic evidence gathering procedures?
- Are there facilities and personnel to collect and analyse DNA evidence? Do wildlife and forest enforcement officers, customs, and the police have access to DNA testing?
- What other forensic support is available (for example, microscopy, ballistics, isotopic profiling, morphology, pathology and toxicology)?
- Which agency conducts forensic analyses? Is there laboratory certification by appropriate experts? Are there outside reviews and audits of scientific work in order to ensure proper techniques?
- Are there national databases for forensic data from wildlife and forest offences?
- Are forensic staff trained in the mechanisms of prosecutions and the presentation of forensic evidence in court?
- If adequate forensic support, personnel and/or equipment are not (readily) available, can support be obtained from other laboratories, including from abroad?

Additional resources:
World Bank, Tools and Resources to Combat Illegal Wildlife Trade (2018) 6–7
UNODC, Criminal Justice Assessment Toolkit: Policing, Volume 5 Forensic Services and Infrastructure (2006) 17–32
UNODC, Best Practice Guide for Forensic Timber Identification (2016)
UNODC, Guidelines on Methods and Procedures for Ivory Sampling and Laboratory Analysis (2014)

5.6 Corruption investigation methods

Although corruption frequently facilitates wildlife and forest crime (as discussed in Part I, Section 5.3 of this Toolkit), to date, the majority of wildlife and forest crime investigations have not extended to investigations into corruption. A key advantage of undertaking corruption-related investigations is that such corruption offences can result in the accused receiving higher penalties than those that may be available for wildlife and forest offences. Investigation of corruption practices linked to wildlife and forest crime may unearth other crimes that the corrupt official/s and the criminal organizations are involved in. This may provide additional evidence to prove wildlife and forest crime as a predicate[65] offence(s). In addition, corruption linked to wildlife and forest crimes can translate into the disruption of illegal flows of proceeds of crime and protect States against loss of revenue.

Investigators need to be aware of how corrupt practices manifest themselves in relation to facilitating wildlife and forest crime in order to enable them to undertake corruption investigations parallel to or in addition to wildlife and forest crime investigations. The same techniques used to gather evidence to support a wildlife and forest crime case may be used to obtain evidence to support a corruption case. For example, when interviewing a suspected poacher on how they accessed a protected area, the investigator can also obtain evidence as to whether the poacher bribed an officer to be allowed into the area or to obtain information on the location of a certain species. When law enforcement officers arrest poachers, in addition to confiscating tools used for poaching, they may come across financial records that could be key in supporting corruption investigations, such as records of payments made that may include payments to corrupt officials. When applying special investigation techniques (as discussed in Part II, Section 5.1 of this Toolkit) to investigate wildlife and forest offences, investigators may use the same techniques to gather evidence relating to corrupt practices.

Since corruption practices may vary in their complexity, it may be necessary to have a mechanism through which investigators of wildlife and forest crime can work with, or refer cases to, anti-corruption experts/units/agencies and other relevant authorities that have received specialized training and have specialized equipment to undertake corruption investigations. Work with anti-corruption authorities may enable investigators of wildlife and forest crime to obtain necessary records, data and financial information relating to the accused.

65 Article 2(h) of the United Nations Convention against Transnational Organized Crime states: "'Predicate offence' shall mean any offence as a result of which proceeds have been generated that may become the subject of an offence as defined in article 6 of this Convention". See further Part I, Section 5.2

TOOL
II.36

Corruption investigation methods

- Do investigators of wildlife and forest crime have authority or are permitted to investigate corrupt practices linked to wildlife and forest crime? If not, who do they need to seek authority from? What has been the experience?
- Do investigations of wildlife and forest crime include investigations on corrupt practices linked to wildlife and forest crime? If so, how frequently and in what circumstances?
- Are investigators of wildlife and forest crime trained in what to look for in relation to corrupt practices linked to wildlife and forest crime?
- Are investigators of wildlife and forest crime familiar with corruption investigation techniques? Do they receive specialist and/or general training on these techniques?
- Do investigators of wildlife and forest crime involve anti-corruption agencies and other relevant agencies when there is evidence of corruption being linked to these crimes? Are there clear guidelines on when and how to involve or collaborate with the anti-corruption agencies and other relevant agencies? In such circumstances, which agency takes the lead in such an investigation?
- If wildlife and forest crime investigators are empowered to undertake corruption investigations, what equipment is available to support them?
- Have standard operating procedures been developed to guide investigators of wildlife and forest crime to investigate corrupt practices linked to these crimes?

6

Part II

Investigation procedures

The creation and management of investigations into wildlife and forest crime and the management of investigations can be complex tasks that require a variety of methods and approaches.

The following Section sets out some core elements of investigation procedures, ranging from the reporting of offences and evidence gathering to the protection of witnesses and victims. This list is by no means exhaustive.

6.1 Reporting offences

Wildlife and forest crime can come to the attention of the police, customs or other law enforcement agencies in a number of ways. For example, cases may be reported by victims or witnesses, may be referred by another agency or may be detected during routine patrols or inquiries. Complicating the reporting process is the fact that in some countries different agencies have some form of responsibility in relation to the wildlife and forestry sectors and it may take time for reports to get to the relevant investigation unit.

Some jurisdictions have instituted reward schemes as an incentive for individuals to furnish information about wildlife and forest crime, sometimes referred to as 'whistle blower schemes.' Such systems have received mixed support, with many critics arguing that rewards only increase the quantity and not the quality of crime reporting, as well as create the danger of false allegations.

Some jurisdictions and some local communities have established 'watch groups' as an alternative avenue to improve and increase the reporting of wildlife and forest crime. These systems, which are modelled after the 'Neighbourhood Watch' schemes operating in many places, are tools for a community to work together in order to reduce crime and enhance community safety. They encourage residents and businesses to join together in small informal groups for the purpose of improving the safety of their local area and creating a shared sense of responsibility among community members for preventing, reporting and reducing wildlife and forest offences. Elsewhere, special hotlines and programmes such as 'Crime Stoppers' have been set up to encourage the public to report crime in a timely and unbureaucratic way.

Detection of corruption is an important element in investigating these crimes. Tips have been found to be the most common way corruption is discovered, with three times as many cases being reported through such mechanisms than the second-most common means of detection (management reviews and audits).[66] Tips on corrupt practices may come from: employees of wildlife and forest agencies; entities/persons that are required to have licenses and permits in order to access wildlife and forest resources; communities that border protected areas; other government agencies and the general public. This increases the importance of wildlife, forest, anti-corruption, and other relevant agencies establishing some form of corruption reporting mechanism. For such mechanisms to be effective, these agencies need to ensure they have clear policies and sensitize key stakeholders on how the corruption reporting mechanism works, including: how and where internal and external stakeholders can report; the maintenance of confidentiality of the information received; the protection of the whistle-blower; the process of handling complaints once received; and the provision of feedback on how the agency has resolved the complaint.

As with other criminal offences, it is essential that any reports about wildlife and forest offences are recorded accurately and comprehensively. As soon as a wildlife or forest offence is reported, a supervisor should review the allegation together with any supporting facts and then allocate sufficient and appropriate resources to deal with it. This decision can be made more difficult when there are competing priorities and only limited resources to deal with them.

TOOL
II.37

Reporting offences

- How do wildlife and forest offences come to the attention of authorities?
- Is contact information (such as telephone numbers, websites and email addresses) available to the public to enable them to report crime?
- Which steps are taken when a wildlife or forest offence is reported? Who records it? Are procedures in place for processing such reports?
- How and where are reports recorded? Are they recorded on paper or electronically? How are reports stored and filed?
- Is there a set format for recording initial crime reports? If so, does the format include information about the date, species involved, type of event or offence, and suspect?
- How is immediate action identified and managed? Who has to be notified about the offence?
- Have dedicated hotlines been set up to report crime, including wildlife and forest offences?
- Is the person who reported the offence kept up to date regarding the progress of the investigation?
- Is there a reward scheme for persons who report wildlife and forest offences?
- Are there local 'watch groups' comprised of individuals and businesses who collaborate to prevent, report and reduce wildlife and forest offences?

Additional resources:
UNODC, Criminal Justice Assessment Toolkit: Policing, Volume 3 Crime Investigation (2006) 10

66 ACFE, 2020, Report to the Nations, 2020 Global Study on Occupational Fraud and Abuse, 18

6.2 Instigation and management of investigations

There are significant variations in the ways in which criminal or administrative investigations can be instigated. In some systems, only prosecutors or investigating judges can launch, manage and oversee investigations, while in other systems police officers or other enforcement authorities have the power to do so. For wildlife and forest offences, agencies outside the traditional criminal justice sphere may have special investigative authority. In some jurisdictions, these stipulated duties may not exist or may not be endorsed by the government, depending on the political and social context of the country.

Instigation and management of investigations

- Who is responsible for managing a criminal investigation involving wildlife and forest offences: a prosecutor, investigating judge, police officer, wildlife or forestry agency, or a border control or customs agency?
- Who is responsible for managing investigations involving customs, import/export and border control offences?
- Who is responsible for managing investigations of CITES offences?
- Is the responsibility for managing an investigation clear and concise so as to ensure a coordinated investigation and avoid the loss of evidence?
- Are the results of investigations, prosecutions and court decisions shared among the relevant enforcement agencies, in particular the agencies that referred or handed over the case in question?

Additional resources:
UNODC, Criminal Justice Assessment Toolkit: Policing, Volume I Public Safety and Police Service Delivery (2006) 13–14

6.3 Evidence gathering and handling

The outcome of a criminal investigation depends on the quality of the evidence. The decision regarding what information or material should be collected or recorded needs to be made by someone competent in evidence gathering. This will ensure that no evidence is compromised or lost, thus preventing the jeopardization of further investigations and prosecution. Accordingly, it is important that evidence be collected and recorded thoroughly and systematically.

In the wildlife and forest crime context in particular, there may be circumstances where specialist crime scene investigators are not readily available and evidence needs to be collected in a timely manner due to, for instance, deteriorating weather conditions threatening to remove or destroy evidence items. For this reason, law enforcement officials first responding to wildlife and forest crime ideally need to have at least basic evidence gathering training and corresponding equipment to ensure that no evidence is accidentally contaminated, damaged or destroyed during collection. Adequate evidence gathering training and equipment, including personal protective equipment, can also be crucial for the safety of law enforcement officials, as collecting evidence from firearms or dead animals can be hazardous.

Additional information and tools concerning evidence management, storage and admissibility can be found in Part III, Section 1.3 of this Toolkit.

TOOL II.39

Evidence gathering and handling

- Are all the relevant wildlife and forest crime enforcement officers (not only police and investigators) trained in the rules of evidence? Are they trained in what to look for and how to protect evidence?
- For major cases, is an officer designated to ensure continuity and preserve the integrity of evidence and exhibits?
- Is progress in an investigation recorded electronically or on paper? Who maintains these records? Are they updated regularly?
- Is there adequate evidence gathering equipment, both to ensure the integrity of evidence collection and the safety of the collectors?

Additional resources:
UNODC, Criminal Justice Assessment Toolkit: Policing, Volume 2 The Integrity and Accountability of the Police (2006) 15–16
UNODC, Criminal Justice Assessment Toolkit: Policing, Volume 3 Crime Investigation (2006) 11–12
UNODC, Wildlife Crime Scene Guide For First Responders (available upon request), p.39–40

6.4 Identification of suspects

The investigation process is aimed at identifying the perpetrator of a crime. A case will be greatly strengthened by strong identification evidence but the procedures by which a suspect can be identified have to be strictly controlled to prevent a miscarriage of justice. Poor identification procedures can lead to unacceptable bias, to the violation of the suspect's rights, and to all resulting evidence being ruled inadmissible.

TOOL II.40

Identification of suspects

- Which laws, regulations and procedures are in place to enable and facilitate the identification of suspects?
- How are human rights, including the right to due process, taken into consideration?
- Do investigators have the means to take fingerprints and DNA from suspects of a crime for the purposes of identification?
- Do investigators have ledgers, files or databases containing photographs, fingerprints or other biometrical information of known criminals? How is this information stored and organized? Is it updated regularly?
- Do investigators have access to identification facilities and equipment, such as 'identification suites' and cameras?

Additional resources:
UNODC, Criminal Justice Assessment Toolkit: Policing, Volume 3 Crime Investigation (2006) 12–13

6.5 Interviewing

Interviewing is a cornerstone of any investigation. There are two basic types of interviews conducted by investigators: interviews with victims and witnesses, and interviews with suspects. Investigators often record the recollections of a witness or victim (assuming they are cooperative). Suspects, on the other hand, usually try to avoid giving truthful answers to investigators' questions and such interviews can be more adversarial and may require skilful techniques.

International law and standards, along with many domestic laws, limit the use of coercive interviewing techniques and strictly prohibit the use of torture. It is therefore important that investigators have a clear understanding about the boundaries of permissible interviewing techniques, and of interviewees' rights.

Whilst the vast majority of judicial systems worldwide allow an accused to decline to answer questions, this does not prohibit an investigator from asking questions. To halt an interview after the first response of 'no comment' is wasteful. Research has shown that many accused, if interviewed lawfully and effectively, will offer some responses or explanations.

Many jurisdictions now require that all criminal investigation interviews are audio and/or video recorded. If wildlife and forest crime suspects, or suspects of facilitating crimes such as corruption, are detained or arrested far from suitably equipped interview facilities, relevant guidelines need to be established to address such scenarios, especially if interviewing at the scene can generate real-time information that can be acted upon immediately. The use of mobile recording equipment can be one simple way to address this point.

Additional problems arise if private sector or military personnel encounter potential suspects.[67] While they may be tempted to question suspects, they usually have no legal basis to do so, and anything said to such personnel may be inadmissible in court. Such questioning also risks hampering or interfering with any subsequent interviews conducted by appropriate and legally authorized investigators. Private sector and military personnel should be briefed regarding these aspects.

Interviewing

TOOL II.41

- What are the rules for the interviewing of witnesses? Does the interviewer inform the witnesses of their rights (i.e. to freedom from self-incrimination during the interview, to have a lawyer present during the interview)?
- Who takes a witness's statement? Do witnesses have the opportunity to read their statements and certify that each page is accurate?
- Are there guidelines or codes of practice for interviewing suspects? Do these guidelines reflect international standards?
- Do investigators of wildlife and forest crime receive training in interviewing techniques? If so, what does the training involve?
- Are investigators aware of the risk of interviewing vulnerable persons? Are special provisions made for such persons?
- Do investigators adhere to international (and national) standards, including for human rights laws and standards?
- Is there evidence that inappropriate interviewing techniques are being used? Are there mechanisms through which interviewees can safely report alleged violations of their rights?

Additional resources:
INTERPOL, CITES Secretariat, and World Customs Organization (2010). Questioning wildlife smugglers: A technique for investigating wildlife crime. Lyon, France. (Requests for access should be addressed to INTERPOL).
UNODC, Criminal Justice Assessment Toolkit: Policing, Volume 3 Crime Investigation (2006) 17–18

67 See further Part II, Sections 1.5 and 1.8 of this Toolkit.

6.6 Witness and victim protection

Many witnesses and victims of wildlife and forest crime fear intimidation and retaliation if they cooperate with law enforcement agencies or testify in court. These fears are particularly acute when there is a close relationship between the witness and the offender (for example, the witness is an employee of the offender), when the offender is part of an organized criminal group, or where corruption is present within the law enforcement agency. In the case of victims of corruption or abuse of power, the fear of intimidation or retaliation is often linked to a distrust of government officials, law enforcement and the judiciary.

It is thus important that effective measures are taken to protect the safety of victims, witnesses and their families. Ensuring the protection of the privacy of victims and witnesses is another concern. It has to be noted that effective witness protection schemes are complex and often very expensive. Many jurisdictions may simply not have the corresponding budgets available, especially not in relation to wildlife and forest crime. If witness protection schemes are not in place, investigators must never indicate or promise that a witness will be protected, unless they truly can be.

The United Nations Convention against Transnational Organized Crime includes a number of provisions requiring States Parties to take measures to protect witnesses, to assist and protect victims, and to cooperate with other enforcement authorities to offer protection to victims and witnesses.[68] These provisions extend only to those offences involving organized criminal groups, which may or may not extend to general wildlife and forest offences. The United Nations Convention against Corruption contains similar provisions concerning the protection of victims and witnesses of corruption.[69]

TOOL
II.42

Witness and victim protection

- Is the intimidation of witnesses and victims criminalized? Do these offences extend to the intimidation of witnesses and victims of wildlife and forest offences?
- What measures are available to protect witnesses and victims of wildlife and forest offences (such as protective orders, no-contact orders, conditions of bail, escorts for victims and witnesses, and testimonial aid)? Do such measures cover crimes linked to or enabling wildlife and forest offences (such as. corruption, money laundering, and tax and fees evasion)?
- What capacity is there to offer effective physical protection to victims and witnesses?
- What kind of physical protection is available for a witness? For example, do witnesses stay at police stations, or are they offered protection or safe accommodation elsewhere? Is protection available for police officers, prosecutors and judges?
- Does national law allow the use of alternative methods of providing evidence?
- Does national law establish limitations on the disclosure of information concerning the identity or whereabouts of victims and witnesses and, in exceptional circumstances, protect the anonymity of the person giving evidence?

Additional resources:
UNODC, Criminal Justice Assessment Toolkit: Policing, Volume 3 Crime Investigation (2006) 13

68 United Nations Convention against Transnational Organized Crime, Arts. 24-26.

69 United Nations Convention against Corruption, Art. 32.

6.7 Confiscation and seizure

Effective action against wildlife and forest crime must include measures to deprive perpetrators of the proceeds of crime, especially if the specimens involved have a high market value. The ability of law enforcement, judicial and prosecutorial authorities to identify, investigate, seize and confiscate assets derived from wildlife and forest offences, and facilitating offences such as corruption, sends a message to criminals that this activity is not highly profitable.

For these reasons, most jurisdictions have mechanisms to enable the tracing, freezing, seizing and confiscation of assets and proceeds of crime. As a general rule, relevant officers should be authorized to exercise the power to confiscate whenever they have reason to suspect that wildlife or forest material, dead or alive, is being obtained, traded, imported or exported in contravention of the law. Furthermore, it is important that seized items are stored securely to ensure that they are available as evidence in prosecutions and other proceedings and that they do not re-enter the illegal market.

In addition, when and where these items are no longer of value as evidence, disposal methods need to ensure that seized goods are not used for future criminal activities. The costs incurred for the custody of seized specimens, for transporting and disposing of them, or for maintaining live animals or plants during the time of seizure, should be recoverable from the person who was in possession at the time, or from the owner, transporter, importer or exporter.

Closely connected to the issue of seizing and storing wildlife and forest contraband is the debate about the destruction of seized animal and plant product stockpiles. While there are differing views on whether stockpile destruction can potentially generate further demand for wildlife and forest products, it does clear stockpiles and reduces the chance of leaks to illegal trade. Stockpile destruction also presents a unique opportunity to draw public attention to the scale, nature and impacts of the serious crimes that lie behind these confiscations, and to act as a deterrent to illegal trade.

There are considerable differences among national laws as to which authorities, whether administrative or judicial, can order the seizure of assets or the confiscation of proceeds of crime, the respective powers of these authorities, and the procedures they must follow. In some jurisdictions, for instance, confiscation may only be imposed by a judgement rendered by a court of law. Confiscation by court order may be either mandatory under the law or left to the discretion of the court itself. Elsewhere, confiscation can be ordered by administrative authorities.

TOOL
II.43

Confiscation and seizure

- Do relevant forfeiture provisions authorize the confiscation of all illegally imported, exported, transported, sold, received, acquired or purchased fauna and flora?
- Is the seizure of specimens mandatory whenever there are reasonable grounds to believe a transaction is in violation of CITES?
- Do forfeiture laws also extend to the vessels, vehicles, aircraft and other equipment used to facilitate wildlife and forest offences?
- How do relevant laws define 'proceeds of crime' and do these definitions include any property derived from or obtained, directly or indirectly, through wildlife and forest offences?
- Can the costs for the custody, transporting, disposing and maintaining of the seized items be recovered from the owner or transporter?
- What mechanisms exist to identify, trace, seize or freeze property and other assets, including bank, financial or commercial records, as well as the equipment and other instrumentalities used in, or destined to be used in, the commission of crimes?
- What national law(s) provide for criminal and non-criminal asset recovery, confiscation and forfeiture? Are there special provisions in relation to wildlife and forest offences?
- Are the existing frameworks concerning identification, tracing, freezing and seizing of assets and the confiscation of proceeds of crime adequate? Are they used in the context of wildlife and forest offences; if yes, how and in what circumstances?
- Is there any data on the confiscation of assets related to wildlife and forest offences? Is there data on the value of assets seized or recovered?
- Where are seized items kept? Are they stored securely? Are there allegations that illegal assets re-enter the market?
- Who pays for the handling, storage and feeding of live wildlife? Is there a special government budget for this purpose?
- How are seized assets disposed of, distributed or returned?

Additional resources:
UNODC, Implementation of the United Nations Convention against Transnational Crime: Needs Assessment Tools (2016) 40–45
UNODC, Criminal Justice Assessment Toolkit: Policing, Volume 2 The Integrity and Accountability of the Police (2006) 16–17
UNODC, Criminal Justice Assessment Toolkit, Volume 4: International Cooperation (2006) 15–16

6.8 Investigation outcomes and performance indicators

Every criminal justice agency, including those operating in the wildlife and forestry sectors, should be encouraged to identify approved performance targets for each of its functions, adopt performance-based indicators, and set in place the necessary data gathering mechanisms to monitor them. A good performance accountability system should focus on outcomes; a few selected indicators for measuring performance, generating data consistently over time, can provide invaluable information for both policy and programme management decisions, and for reporting outcomes regularly and publicly. Numerical indicators cannot, however, constitute an end unto themselves. The performance of law enforcement agencies should not be considered in isolation, but rather within the broader context of available data on the judicial process as a whole. Prosecution and courts data and outcomes are covered in Part III Sections 2.3 and 3.4 respectively.

In law enforcement, the most frequently used indicator is perhaps the percentage of crimes solved by the police out of the total criminal incidents that come to their attention (reported crime). The total case burden, defined as the number of criminal offences (excluding traffic) per authorized police strength, is also used as a general measure of workload, and the percentage of crimes solved (by category of crimes) as a performance indicator.

This indicator is not always based on very robust data because of changes in crime reporting behaviour and variation in how the police define a 'solved crime'. Different standards for this latter include the points at which charges have been laid, the offender has been identified, enough evidence has been accumulated to obtain a conviction or there has been a confession. A further consideration is whether all types of crimes may be included or only certain types (for example, only violent crimes). Another indicator that can be used is the percentage of crimes resulting in charges being instigated.

With respect to patrolling, the performance indicators that are most commonly used include the number of calls received and responded to (by priority), the response time to different types of calls, and officer utilization time. Sometimes, the 'blackout' indicator is used. This refers to the number of times there were no available officers to respond to a call. Each community is unique, and comparisons therefore have very limited value without further assessments of crime types, agency reporting practices, response and investigative policies, and solvability factors.

Some reservations need to be expressed, however, regarding the use of and reliance on performance indicators and data on investigation outcomes. Such information and data are notoriously unreliable and can be inappropriate in the context of wildlife and forest crime, not least because so many crimes go unreported, and victims are unlikely to bring such crime to the attention of the authorities. So long as a true sense of how much crime is being committed is lacking, judging enforcement efforts on the basis of investigation outcomes and performance indicators may be meaningless. It is also critical to note that there are many ways to measure 'success' in enforcement, and not all of them will have meaningful impact on the overall state of wildlife and forest crime, due to, for example, shortcomings in the other steps of the criminal justice process, types of arrests and offenders and failures to uphold due process. For example, high arrest or conviction rates may not result in a decrease in wildlife and forest crime, but if they are the result of the criminal justice system's failure to respect the right to a fair trial of the suspect, this could generate resentment against the establishment and jeopardize the reputation of judicial institutions.

Furthermore, the effectiveness of wildlife law enforcement units needs to be judged not only in terms of whether poaching is being reduced and/or environmental conservation enhanced but also in terms of all outcomes from law enforcement activities. For instance, if

a high percentage of investigations are unsuccessful, it is important to understand why and not just concentrate on the percentage of successes, as many factors such as lack of resources, corruption/undue influence, lack of evidence can interfere with outcomes. In addition, the effectiveness of law enforcement needs to be examined in terms of their human rights record, their relationships with local communities, and how they affect human security.

TOOL
II.44

Investigation outcomes and performance indicators

- What performance targets, if any, have been identified for those government agencies operating in the wildlife and forestry sectors? What are the specific targets for enforcement, prosecutorial and judicial agencies?
- What performance indicators are used to measure the activities of the relevant agencies?
- Who conducts the performance measurements based on these indicators? How are the results reported back to individual agencies?
- Are bonuses or rewards provided, and if so, on what basis?
- Are the performance indicators regularly reviewed and updated?
- What number and types of wildlife and forest offences have been reported? What proportion of these cases include elements of enabling/supporting crimes like corruption, money laundering, tax and fees evasion?
- What number and types of wildlife and forest offences have been investigated? What proportion of these cases have resulted in investigations of enabling/supporting crimes like corruption, money laundering, tax and fees evasion?
- What number and types of corruption offences linked to wildlife and forest crime have been reported and/or investigated?
- How many suspects have been investigated? How many have been detained?
- How much and what type of property and other assets are seized annually in relation to wildlife and forest offences?
- Have any politically exposed persons (PEPs) been investigated in relation to wildlife and forest offences?
- How many investigations proceeded to prosecution or otherwise resulted in criminal charges being laid? How many persons have been charged?
- What proportion of reported and discovered wildlife and forest offences do authorities claim to have solved (that is, what is the 'clear-up' rate)?
- Of the investigations that were unsuccessful, what were the contributing factors that affected the outcome?

Additional resources:
UNODC, Criminal Justice Assessment Toolkit: Policing, Volume I Public Safety and Police Service Delivery (2006) 3
UNODC, Criminal Justice Assessment Toolkit: Policing, Volume 3 Crime Investigation (2006) 3–4
UNODC, Criminal Justice Assessment Toolkit: Cross-cutting Issues, Volume 1 Criminal Justice Information (2006) 6–7, 10–11

7

Part II

Financial aspects of wildlife and forest crime investigations

Wildlife and forest crime is accompanied by financial flows to make payments and to transfer proceeds of these crimes.

7.1 Financial investigations: contexts and conditions

Wildlife and forest crime is accompanied by financial flows to make payments and to transfer proceeds of these crimes. In addition to the initial investment necessary to commit the offence, the ongoing management of the proceeds of the crime and the laundering and movement of profits are essential parts of wildlife and forest crime.

Against this background, financial investigations play a crucial role in detecting and combating wildlife and forest crime, and in shifting focus from low level to higher level criminal actors. In 'following-the-money', it is vital to pursue inquiries in every direction and not to limit investigations to profits and assets. Sudden, unexplained wealth may be one indicator of criminal activities. Furthermore, proceeds gained from wildlife and forest crime may be reinvested or used to buy equipment, pay associates, cover transportation costs, buy weapons, pay bribes or even fund political campaigns. If committed regularly, wildlife and forest crime can become a 'lifestyle crime' and provide an ongoing source to fund lifestyle pursuits such as travel, luxury items (for example, cars and jewellery), and leisure activities (for example, restaurants and casinos).

Investigative techniques, such as asking questions about the source and whereabouts of cash and other funds in the interview of suspects, analysis of shipping and travel cost payments, and inquiries with Financial Intelligence Units (FIUs), financial institutions, customs and asset recovery networks can substantially enhance investigations by:

- ¬ Providing additional information that can be the basis for the allocation of surveillance resources, and can often help to identify further members of criminal networks;
- ¬ Identifying the profit from wildlife and forest crime, understanding payment methods, allowing seizure and confiscation of the criminal proceeds and related assets; and
- ¬ Providing additional evidence to prove the predicate wildlife and forest offence.

In some cases, the use of financial investigations and anti-money laundering tools can be a better deterrent than other measures since they target the flow of funds and deprive perpetrators of their assets. If financial investigations result in charges for offences relating to corruption or money laundering, they can result in higher penalties than those available for wildlife and forest offences.[70]

Regrettably, in some jurisdictions adequate laws to conduct thorough financial investigations are lacking or are underutilized. All too frequently, investigations of individual cases begin and end with the seizure of wildlife or forest contraband. They are not followed by further investigations of the criminals or criminal organizations beyond the poachers or couriers, and into the financial transactions made to pay for equipment, to purchase the wildlife and forest commodities, or to launder the proceeds of crime.

Financial investigations are an important tool to explore and understand wider criminal networks and to mitigate the risks of wildlife and forest crime and associated money laundering. High-level financial investigations into organized criminal groups may be complex and costly, but in many cases financial investigations can involve simple tasks. In this context, it is worth noting that a lot of criminal activities associated with wildlife and forest crime, especially at the local level, are cash-based with no money flowing to financial institutions. In these cases, complex techniques may not be necessary, but it is nevertheless important to investigate the source (and destination) of cash found in the possession of suspects.

Where relevant laws and other measures to conduct financial investigations exist, in order to apply them to wildlife and forest crime is it critical that these crimes are considered sufficiently serious or are otherwise classified in a manner that permits law enforcement to use these tools. In some jurisdictions, anti-money laundering measures can be used in relation to all crimes; elsewhere, they require a predicate[71] offence and sometimes wildlife and forest offences are not so qualified. It is thus desirable that relevant wildlife and forest offences are classified as predicate offences in order to employ the full range of anti-money laundering measures available. Where wildlife and forest offences do not qualify for the use of anti-money laundering measures and financial investigation techniques, it may be possible to use other offences relating to organized crime, corruption, fraud or taxation in order to make use of these tools. In many jurisdictions, laws relating to financial investigations are complemented by unexplained wealth or illicit enrichment laws that serve as an additional tool to trace proceeds from wildlife and forest crime.

One precondition of financial investigations is that law enforcement, customs and other officials are made aware of the methods used by criminals to conceal transactions and hide proceeds of their crimes, and that these officials are equipped with the skills and resources to conduct financial investigations and work with expert units and other relevant authorities.

The United Nations Convention against Transnational Organized Crime and the United Nations Convention against Corruption, discussed in Part I, Sections 2.1 and 2.2 of this Toolkit, assist States Parties in creating the legal framework and setting up other tools to prevent and suppress money laundering and conduct financial investigations.

70 See further Part I, Section 5.2 of this Toolkit.

71 Article 2(h) of the United Nations Convention against Transnational Organized Crime states: "'Predicate offence' shall mean any offence as a result of which proceeds have been generated that may become the subject of an offence as defined in article 6 of this Convention". See further Part I, Section 5.2.

Financial investigations: contexts and conditions

TOOL II.45

- Are financial investigation techniques and measures used in the context of investigations into wildlife and forest offences? What other offences are they used for?
- Are financial investigations routinely conducted after a major wildlife or timber seizure?
- Which wildlife and forest crime offences are predicate offences in relation to money laundering?
- Are laws relating to unexplained wealth and illicit enrichment in place? Have they been used in the context of wildlife and forest crime?
- Are law enforcement officers, including those working in wildlife and forest crime, aware of the benefits of financial investigations? Are investigators authorized, trained and equipped to conduct financial investigations? Do they cooperate with FIUs? If the officers are not trained, do they cooperate with other agencies that are trained and equipped to conduct financial investigations?
- Are any private or non-governmental organizations supporting law enforcement to undertake financial investigations? If so, which ones? How do the arrangements work?

Additional resources:
TRAFFIC. Case Digest: Financial flows and payment mechanisms behind wildlife crime (2021). https://www.traffic.org/publications/reports/case-digest-an-initial-analysis-of-the-financial-flows-and-payment-mechanisms-behind-wildlife-and-forest-crime/
ECOFEL, Financial Investigations into Wildlife Crime (2021) 34–36

7.2 Financial Intelligence Unit (FIU)

Financial Intelligence Units (FIUs) serve as focal points for the receipt and analysis of suspicious transaction reports and other relevant information related to money laundering and associated predicate offences. FIUs are skilled in anti-money laundering measures and have the legal mandate to support law enforcement authorities in identifying and combating crime, including wildlife and forest offences. They can play a crucial role through tracking the financial flows associated with seized and confiscated goods, expanding perpetrator profiles, identifying criminal networks and shell companies involved in wildlife and forest crime, identifying payment mechanisms and money laundering techniques, analysing the flow of wildlife and forest crime proceeds, and detecting illicit wildlife and forest activities by analysing the relevant suspicious transaction reports.

FIUs obtain their information from reporting entities, which include financial institutions and other government authorities. To exercise their functions properly, FIUs need to receive, access and analyze relevant information in a timely manner and disseminate the results of their analyses to relevant agencies that can act on that information. FIUs will commonly need to be briefed by other appropriate agencies to raise their awareness of wildlife and forest crime and help them understand the nature of the financial aspects associated with such crime. Not all FIUs undertake criminal investigations: in some jurisdictions they have a more intelligence-gathering emphasis and pass along information suggesting that crimes have been committed to the police, customs or a specialized financial crime investigation unit or other agency.

In some jurisdictions, there may be more than one agency with a mandate and the capability to conduct financial investigations. FIUs and their financial investigators and analysts need to work closely with wildlife and forest crime investigators, and vice versa. Because wildlife and forest crime often converges with fraud, corruption, tax evasion, customs offences, money laundering and other crime types, multi-agency cooperation is essential and should be a common practice, both nationally and internationally. Good multi-agency cooperation should involve all actors of the criminal justice system, including police, customs, prosecutors, and judicial authorities, as well as FIUs and financial regulators, anti-corruption authorities, environmental authorities, and relevant civil society entities such as specialist wildlife and

forest crime NGOs. FIUs should also cooperate, where possible, at the international level, including through the Egmont Group, which facilitates the exchange of information, knowledge and cooperation amongst member FIUs.[72] Where cooperation mechanisms exist, it must be assured that they are mirrored by corresponding practices on the ground.

Financial Intelligence Unit

- What is the mandate of the Financial Intelligence Unit (FIU) in the jurisdiction? What are its resources? How does it gather, receive, and analyze information? To which agencies does it disseminate information?
- Do other law enforcement agencies have the competence and capacity to undertake financial investigations?
- Is the FIU providing support to financial investigations relating to wildlife and forest offences? Does the FIU consider combating wildlife and forest crime as part of its mission?
- Are wildlife and forest crime investigators cooperating with FIUs, and vice versa?
- Does the FIU regularly receive suspicious transaction reports relating to wildlife and forest crime?
- Are there any formalized multi-agency cooperation mechanisms in place between financial investigations authorities and the agencies investigating wildlife and forest crime?
- Have measures (such as a compulsory declaration of cash or other bearer negotiable instruments exceeding a threshold amount) been implemented to ensure that the authorities dedicated to combating money-laundering have the ability to cooperate and exchange information at both the national and international levels?
- Is the FIU a member of the Egmont Group of Financial Intelligence Units or another formal or informal network of FIUs to enhance international cooperation?

Additional resources:
ECOFEL, Financial investigations into wildlife crime (2021) 7 [7], 9 [2], 42–43
APG and UNODC, Enhancing the Detection, Investigation and Disruption of Illicit Financial Flows from Wildlife Crime, Research Report (2017) 24
FATF, Money Laundering and the Illegal Wildlife Trade (2020) 31–34, 41–48
UNODC, Wildlife Crime: Key actors, organizational structures and business models (2021), https://www.unodc.org/documents/Wildlife/Business_Models.pdf

7.3 Financial investigation methods

Wherever relevant and feasible, financial investigations should be conducted alongside those into the predicate wildlife and forest offence. Parallel financial investigations can assist in identifying the wider criminal network and additional participants in organized criminal groups, in revealing additional evidence in support of the prosecution of the predicate offence and in locating proceeds of crime enabling seizure and confiscation. Freezing of assets, seizure and confiscation are important tools that are discussed further in Part II, Section 6.7 of this Toolkit.

In cases in which proceeds of crime and other assets are not easily located or visible and where more in-depth investigations are needed, relevant authorities need to be furnished with adequate powers to obtain necessary records, data and other financial information. This should include, but is not limited to, powers to use compulsory measures for the production of records held by financial institutions, designated non-financial businesses, professions and other natural or legal persons, for the search of persons and premises, for taking witness statements, and for the seizure and obtaining of evidence. Investigation

72 See further Part IV, Section 5.5 of this Toolkit.

techniques such as wiretapping, search warrants, witness interviews, search and seizure orders, production orders and account monitoring orders may be used to examine financial records or access documents, gather business and financial intelligence, identify complex illegal schemes and act quickly to avoid dissipation of assets. The use of special investigative techniques outlined in Part II, Section 5.1 of this Toolkit can also be important in this context.

In addition, legislative and practical mechanisms should be in place to identify in a timely manner whether natural or legal persons hold or control bank accounts linked to wildlife and forest crimes. Law enforcement should also have powers and processes in place to identify assets without prior notification to the owner. Some of these measures can be highly intrusive and violate privacy and data protection laws. Relevant safeguards need to be built and respected.

Financial investigation methods

- What are the powers, methods and tools available to enable financial investigations? Where are these powers set out? What are the limitations? Have these been used in the context of wildlife and forest crime investigations?
- Do investigations of wildlife and forest offences routinely include financial investigations?
- What procedures (i.e. simple requests, or court orders) do investigators have to follow to obtain or access bank account information and financial transactions records? Do specific rules apply to FIUs? Are there any restrictions on FIUs sharing information with law enforcement?
- Can FIUs restrain assets without prior notification of the owner?
- Are specific measures in place to detect and monitor cross-border cash flows linked to wildlife and forest crime?

Additional resources:
APG and UNODC, Enhancing the Detection, Investigation and Disruption of Illicit Financial Flows from Wildlife Crime, Research Report (2017) 20–23
FATF, Money Laundering and the Illegal Wildlife Trade (2020) 27–40

7.4 Record keeping and reporting

Record keeping and reporting requirements placed on financial institutions, especially on banks and several 'designated non-financial businesses and professions' (DNFBPs), are of particular importance in detecting the laundering of proceeds of crime, including assets derived from wildlife and forest offences. International standards (and domestic laws implementing them) mandate that financial institutions exercise care when conducting financial transactions and require the reporting of suspicious transactions to designated government agencies and to the relevant FIUs.

Article 7, Paragraph 1(a) of the United Nations Convention against Transnational Organized Crime requires that Parties establish a regulatory and supervisory regime within their competence to prevent and detect money-laundering activities. This regime must be comprehensive, but the precise nature and particular elements of the regime are left to the States, provided that they require, at a minimum, banks and non-bank financial institutions to ensure effective customer identification, accurate record-keeping and a mechanism for the reporting of suspicious transactions.

This means that financial institutions doing business with, for instance, forestry or hunting companies, should be aware of the general scale of their client's legitimate operations, and should be properly suspicious when transactions that are inconsistent with the client's normal, customary and legitimate business operations are conducted.

In order to identify suspicious transactions relating to wildlife and forest crime, financial institutions need typology information, risk indicators and intelligence linkages. This helps in the reporting of information to competent authorities to detect laundering of proceeds of wildlife and forest crime. Risk or 'red flag' indicators can relate to, inter alia, 'know your customer' and due diligence information to establish the source of funds and the (types of) natural and legal persons coming into contact with them, the use of 'shell companies' to obscure beneficial ownership and the source of contraband, information about financial transactions and the types of payment system used, and payment method, routes and behaviour.

Financial institutions should be required to maintain, for at least five years, all necessary records on transactions, both domestic and international, to enable them to comply swiftly with information requests from law enforcement authorities. Such records must be sufficient to permit reconstruction of individual transactions (including the amounts and types of currency involved, if any) so as to provide, if necessary, evidence for prosecution of criminal activity. Since most financial institutions will have little, if any, prior knowledge of wildlife and forest crime, they may need to be briefed about the types of financial transactions and assets commonly involved.

Non-compliance with such reporting and record-keeping obligations is punishable in some jurisdictions. States should ensure that there is a range of effective, proportionate and dissuasive sanctions, whether criminal, civil or administrative, available to deal with natural or legal persons who fail to comply with anti-money laundering requirements. Sanctions should be applicable not only to financial institutions and DNFBPs, but also to their directors and senior management.

TOOL
II.48

Record keeping and reporting

- What customer due diligence measures do reporting entities employ to establish customer and beneficial owner identities?
- What reporting entities are covered in the country?
- Are reporting entities, including banks, required to report suspicious transactions? Does such an obligation apply to, inter alia, the following:
- Proceeds of all offences that are required to be included as predicate offences under Recommendation 3 of the FATF Recommendations;
- Funds suspected to be linked or related to terrorism;
- All suspicious transactions, including attempted transactions, regardless of whether the transaction involves tax matters.
- Does the FIU provide the reporting entities with adequate guidance or instructions on reporting a suspicious transaction?
- Does the country have policies and procedures in place to address the risks associated with non-face-to-face business relationships or transactions?
- Are measures in place to detect the physical cross-border transportation of currency and bearer negotiable instruments, including a declaration system or other disclosure obligation?
- Are financial institutions equipped and trained to detect suspicious transactions? Are they sufficiently aware of the type of financial transactions and asset flows commonly associated with the wildlife and forest crime?

Additional resources:
APG and UNODC, Enhancing the Detection, Investigation and Disruption of Illicit Financial Flows from Wildlife Crime, Research Report (2017) Annex 2
ECOFEL, Financial Investigations into Wildlife Crime (2021) 43–46

Part II

8 Border control and customs

The majority of illegal wildlife and forest products are exported from their country of origin, thus land border crossings, seaports and airports play a crucial role in trafficking in fauna and flora. At the same time, border crossings and ports can constitute important points for intervention by customs and other law enforcement agencies.

For this reason, effective border control and customs work is essential. What makes this work particularly challenging is that many borders are porous and archipelagic coastlines or mountainous and/or remote borders that are difficult to patrol, and are thus easily penetrated by international traffickers. Remote border crossing points without routine patrols and control points that are not adequately staffed can be easily exploited by traffickers. Furthermore, customs and border officers may be susceptible to corrupt practices and supervision of officers working in remote areas can be difficult. Training, equipment and its maintenance pose additional challenges, especially if resources are scarce.

Control over and management of the movement of all goods, means of transport, and persons and their luggage across international borders are generally vested in customs. As a government agency, customs is usually empowered by legislation to enforce the regulations of other agencies when the clearance for export or import of goods is required. In jurisdictions where they have the power to investigate and recover goods illegally exported and imported, customs can provide significant value to wildlife and forest crime investigations.

8.1 Border and customs inspections

Customs administrations are tasked with enforcing a large number of national laws covering physical movement across borders. On the one hand, these agencies have to facilitate cross-border trade, including of wildlife and forest products, while on the other they are faced with the rising volume and growing complexities of international trade, human mobility, potential security threats and organized crime.

In many places, the activities of customs centre on inspecting shipments, vehicles, luggage and cargo in order to detect cases in which duties are left unpaid. Indeed, revenue-gathering is the number one priority for many customs authorities and this determines their approaches to risk-assessment, profiling, targeting and any intelligence-gathering and analysis. This focus on revenue-gathering often comes at the expense of law enforcement and border security. It may result in, for example, no control of exports, since taxes may not be imposed on such goods.

It will also dictate how searches and document and declaration examinations are conducted. Physical searches may be conducted and scanning devices used with the aim to uncover misdeclaration and tax/duty avoidance, but not for the purpose of detecting contraband.

Awareness of the basic patterns and methods of trafficking in fauna and flora and basic knowledge of botany and zoology are imperative to intercept illegal wildlife and forest products at the border. Customs officers also need to be familiar with the various types of fraud and irregularities associated with wildlife and forest crime. Furthermore, they require some understanding of whether international standards and CITES requirements on the humane treatment of live specimens during transport are complied with. Accordingly, it is crucial that customs personnel are adequately equipped and trained to detect, intercept and disrupt the cross-border trafficking of fauna and flora. It is also crucial that they cooperate closely with other border control agencies and CITES authorities and, in particular, have access to the practical assistance of experts from CITES Management Authorities. Veterinary, phytosanitary, zoology and academic experts who can support identification or handling of wild specimens, as well as private experts or legal collectors and breeders for certain species, can also provide assistance to customs. Similarly, customs should maintain close partnerships with police and other law enforcement agencies, especially if and when instances of wildlife and forest crime are detected but also in the context of risk profiling and management. [73]

Wildlife crime is becoming more frequently detected with other crime types, such as drug and trafficking in persons. Border and customs officials should be sensitized to understand the links between these crimes, which can offer additional opportunities to disrupt criminal networks involved in these transnational organized crimes.

Detector-dogs, x-rays and other scanning devices are used in many places to inspect incoming cargo; in some places, they are also used for trans-shipments and outbound goods. Where such equipment is available, it must be properly maintained and used by adequately trained personnel. In some places, the use and operation of scanners and subsequent searches are outsourced to private companies. Their staff, too, must be adequately trained and supervised.

Even well-trained and highly resourced customs and border authorities can physically inspect only a small fraction of the enormous volume of shipments and the large number of persons that cross international borders. It is therefore important that customs agencies operate on a targeted risk management basis by acting on information or suspicions that suggest that illegal commodities are being shipped. This approach requires comprehensive data and intelligence systems, and timely information exchange among agencies and with other countries. These aspects are further explored in Part II, Section 4.5 of this Toolkit.

One particular challenge for customs and border controls are free trade zones and free trade warehousing, which are known to be locations for major criminality and illicit trade. All too frequently, such places are used to launder assets, repackage goods, change declarations, or alter the routing of CITES-relevant shipments whilst avoiding the issuance of re-export certificates, which would be needed under the Convention. In many free trade areas, customs agencies' legal basis for inspection, or even entry to the zone, may be restricted or non-existent.

73 See further Part II, Section 4.6 of this Toolkit

Border control and customs inspections

- Are importers and exporters required to declare animals and plants intended for import and export? Are importers and exporters required to present CITES documents?
- Do customs authorities have to be notified in advance regarding, for example, cargo information?
- What specialized staff, technical equipment, detector dogs and facilities are available at land border crossings, seaports and airports?
- Are all customs units (such as goods classification, duty collection, passenger control and cargo control) tasked with the responsibility of enforcing the relevant wildlife and forest laws and regulations?
- Are there formalized cooperation agreements between customs and wildlife and forestry agencies and with law enforcement authorities e.g. anti-corruption, anti-money laundering agencies? What is the daily working relationship between them?
- Are customs officers and other border officers trained in CITES requirements, the identification of specimens and so forth? How do customs authorities cooperate with CITES authorities?
- What percentages of shipments, luggage, cargo and passengers (etc.) are inspected prior to export or import? What and who determines which shipments (etc.) are inspected?
- Are shipments and passengers in transit inspected?
- Are the existence and validity of documents for all imports and exports checked? Is their authenticity always verified? Are documents cross-checked against the actual contents of shipments?
- Have measures been implemented to prevent commercial carriers (airlines, shipping lines, trucking companies) from being used for trafficking purposes?
- Have measures been implemented to establish that cargo is properly documented, including sanctions for non-compliance with such obligations?
- Is a risk assessment technique applied to target high-risk shipments of fauna and flora? Are risk indicators related to fauna and flora developed and integrated into risk assessment systems?
- Are there any free trade zones or free trade warehouses in the jurisdiction? If yes, does the customs agency have authority to enter and inspect these locations? Have there been allegations that these locations are used for criminal activities?

Additional resources:
APG and UNODC, Enhancing the Detection, Investigation and Disruption of Illicit Financial Flows from Wildlife Crime, Research Report (2017) 20–23
FATF, Money Laundering and the Illegal Wildlife Trade (2020) 27–40

8.2 Customs data

Customs data includes information on cross-border trade, including trade volumes and declared values. Data on imports and exports are collected by most customs authorities around the world and are usually organized according to commodity types, often using the "Harmonized Commodity Description and Coding System".[74]

Customs data

- What customs data on imports and exports involving fauna and flora are available?
- Do customs reports contain information on the species, volumes and declared value of fauna and flora imports and exports?

74 See http://www.wcoomd.org/en/topics/nomenclature/overview/what-is-the-harmonized-system.aspx

8.3 Customs performance indicators

Very few customs authorities have adopted indicators that systematically address the issue of customs performance in the area of enforcement. In its SAFE Framework of Standards to Secure and Facilitate Global Trade, the World Customs Organization (WCO) sets out a number of standards for the measurement of customs performance. Some key performance indicators for customs wildlife and forest enforcement include, but are not limited to:

- ¬ Wildlife as part of a national customs strategy;
- ¬ Average time for the release of legitimate trade;
- ¬ Training of customs officers;
- ¬ Quantity and quality of information and intelligence handling;
- ¬ Risk management and risk assessment, including the application of risk indicators in daily operations;
- ¬ Number of specialized units or officers for wildlife enforcement;
- ¬ Number of physical controls based on risk assessment, and the percentage of interceptions following such controls;
- ¬ Number of seizures;
- ¬ Percentage of follow-up investigations into illegal trade;
- ¬ Cooperation with other agencies (for example: MoUs, information exchange, assistance from CITES Management Authorities, handing over of seizures for follow-ups);
- ¬ Cooperation at regional and international levels;
- ¬ Partnership with other stakeholders and assistance to raise public awareness; and
- ¬ Effectiveness of control over border crossing points without regular establishments.

TOOL
II.51

Customs performance indicators

- » What performance targets, if any, have been identified for customs? Is customs primarily a revenue-gathering authority; what priority is given to enforcement and border control?
- » What performance indicators are used to measure the activities of customs?
- » Who conducts the performance measurements based on these indicators? How are the results reported back to individual agencies?
- » Are the performance indicators regularly reviewed and updated?
- » How are CITES Alerts acted upon? Are they received, distributed and read? What obstacles have been encountered in using CITES Alerts?

Additional resources:
Robert Ireland, Thomas Cantens and Tadashi Yasui, An Overview of Performance Measurement in Customs Administrations, WCO Research Paper No. 13 (April 2011) .

9

Part II

Corruption, Integrity and Accountability

Criminals involved in wildlife and forest crime thrive on the existence of corruption as it enables them to commit and conceal their illegal activities.

9.1 Corruption

Criminals involved in wildlife and forest crime thrive on the existence of corruption as it enables them to commit and conceal their illegal activities. Officers working in wildlife and forest law enforcement and other parts of wildlife and forest administrations are responsible for protecting resources of high commercial value. They often work in remote areas, far from public scrutiny and, at times, with minimal supervision. In some systems, unsupervised wildlife and forestry officials have broad discretionary powers and a great deal of latitude. They may be vulnerable to corruption or may otherwise collude with persons and organizations involved in illegal activities. Furthermore, conflicts of interest may arise if an officer's enforcement duties conflict with personal interests; for example, if relatives or friends have interests in the wildlife or forestry sector or if they appear to have committed an offence.

Senior officials may be bribed or influenced (trading of influence) to understaff or under-resource law enforcement, including through limiting equipment, uniforms and funding. Further, they may not provide adequate training or assign inexperienced staff to areas that have a high risk of wildlife and forest crime, thereby reducing the risk of criminals being caught. Since some protected areas are located in remote areas that lack adequate utilities and amenities ('hardship areas'), it would be ideal for staff working in such areas to have regular shifts through which they are rotated in and out of the hardship areas. Senior officers may intentionally not rotate some personnel out of these areas, resulting in demotivation and perhaps even limited effectiveness in undertaking their enforcement duties. Senior officers may intentionally delay remitting hardship allowances to such personnel, further demotivating them. These factors may also increase the risk of such officers becoming at risk of corruption.

Corruption can also be an impediment to investigating wildlife and forest crimes. For example, individual perpetrators or organized criminal groups may bribe wildlife and forest officers working in protected areas not to report a crime to their supervisors or report a crime incorrectly (i.e. report an offence with a lower penalty). Community members who become aware of wildlife and forest crime may be bribed by perpetrators not to report the same to enforcement officers. At times, instead of paying individual community members, local leaders or chiefs are

bribed who then intervene and prevent the crime from being reported. Since some criminals or criminal organizations involved in wildlife and forest crime may also be involved in the legal wildlife and forest trade, they may threaten community members who want to report a crime with loss of employment or lack of opportunity to be employed by the entities in the future.

Once an offence has been reported, criminals may collude with or bribe senior enforcement officers to alter, misplace or destroy the records containing information on the reported crime. There may also be instances where senior government officers influence the reporting of a crime so that it favours the perpetrators. These senior officers may hold positions within wildlife and forest agencies, other enforcement agencies or other government agencies.

Enforcement officers may be bribed to delay commencing an investigation on a reported case. Since some of the evidence may involve wildlife and forest products, which decay over time unless properly preserved (requiring resources which some of the enforcement agencies may not have), this can result in a change of the state of the evidence which may hamper investigations. Such delays may provide an opportunity for the evidence to be replaced, tampered with or destroyed. Such delays may also provide criminals who are yet to be arrested with adequate time to evade capture.

Enforcement officers may further be bribed or influenced by their supervisors to assign less competent officers to undertake the investigations, which may result in an ineffective investigation. During an investigation, the investigating officers may be bribed or influenced by their supervisors to intentionally substitute, contaminate, damage, destroy or not maintain proper chain of evidence.

Investigators may also be bribed or directed by their supervisors to only link the crime to low level staff of the organized criminal group, and leave out the 'big fish' who may be well connected to senior enforcement officers and politicians. Once an investigation of a wildlife and forest crime is completed, the perpetrators may bribe key officers to ensure that the case is not forwarded to the prosecution authority or to delay forwarding the case to the prosecution authorities.

Perpetrators may also bribe investigators or their supervisors to share with them the progress of the investigation and sometimes even confidential information, which may include the names of witnesses and/or informants. This information can then be used to threaten the witnesses/informants against providing further information or appearing in court. Such information may enable the accused to conceal or destroy further evidence that is yet to be discovered, and also seal loopholes in the criminal activities that led to them being detected.

TOOL
II.52

Corruption

- Has the wildlife and forest agency established mechanisms for reporting corruption? If yes, has the agency publicized the reporting mechanism to enable internal and external stakeholders to report corruption?
- Are there any allegations or evidence that officials involved in wildlife and forest law enforcement take or solicit bribes, abuse their office, or are influenced by others (including superiors) to:
  - Ignore wildlife and forest offences?
  - Not to report, inaccurately report, alter, destroy or destroy reports on wildlife and forest offences?
  - Delay the commencement of an investigation?
  - Assign incompetent officers to a case?
  - Intentionally substitute, contaminate, damage, destroy or not maintain proper chain of evidence?
  - Remove key suspects from a case?
  - Leak information on an ongoing investigation?
  - Change the outcome of an investigation?
  - Understaff or assign inexperienced staff to certain areas/duty stations?
  - Under-resource or delay resourcing certain areas/duty stations (which may include remitting allowances)?
  - Limit or delay the rotation of staff posted in hardship areas?
- Are there allegations or evidence of community members:
  - Being bribed by criminals or government officials not to report or inaccurately report wildlife and forest offences?
  - Being threatened by enforcement officers or other government officials (abuse of office) not to report or inaccurately report on wildlife and forest offences?
  - Being threatened by wildlife and forest crime suspects?
- Has the wildlife and forest agency established a system to investigate corruption? What has been the experience of the investigation process? Does the process involve analyzing corruption incidents reported, investigated and concluded?
- Do the relevant wildlife and forest laws contain specific provisions regarding corruption? If so, what are they and how are they enforced? If not, what is the linkage between the wildlife and forest laws and the laws that relate to corruption?
- Has the wildlife and forest agency undertaken a corruption risk assessment to identify corruption risks that may occur? If yes, has the agency established a corruption mitigation plan and what is the status of implementing the plan?
- Is there a mechanism for wildlife and forest agencies to cooperate with the anti-corruption agency? What has been the cooperation experience?
- Is there a national strategy or plan to combat corruption in the wildlife and forestry sectors? If so, what is included in it? When was it written? Is there a comprehensive integrity or anti-corruption action plan for the police force and customs? If so, what is included in it? Who is responsible for its implementation? What evidence is there of it being implemented, both nationally and locally?
- Are there allegations or evidence that enforcement officers receive unofficial payments or gratuities from business people? If so, what reasons are given for this? What are the implied consequences if payments are not made?
- Are public officers permitted to accept personal gifts, benefits or rewards? If so, on what basis is this allowed? Who authorizes the receipt of gifts? Is there a record of gifts received? What happens to gifts that have been received? Are the families of public officers permitted to accept gifts, benefits or rewards related to the work of that staff member? If not, how is this prevented?

9.2 Accountability and integrity of enforcement officers

It is thus important that government officials be accountable for their decisions and that action and clear codes be established to ensure the integrity of officials and their departments.

Enforcement officers may be held accountable in a number of different ways. They may be accountable in management or business terms for their performance and productivity, perhaps against government or community-set targets and objectives. More importantly, they must be accountable for the way in which they exercise the powers entrusted to them. The following tools address the degree to which, and mechanisms with which, enforcement in the wildlife and forestry sectors is monitored, along with the ways in which dishonesty, corruption and a lack of integrity may manifest themselves.

Accountability and integrity

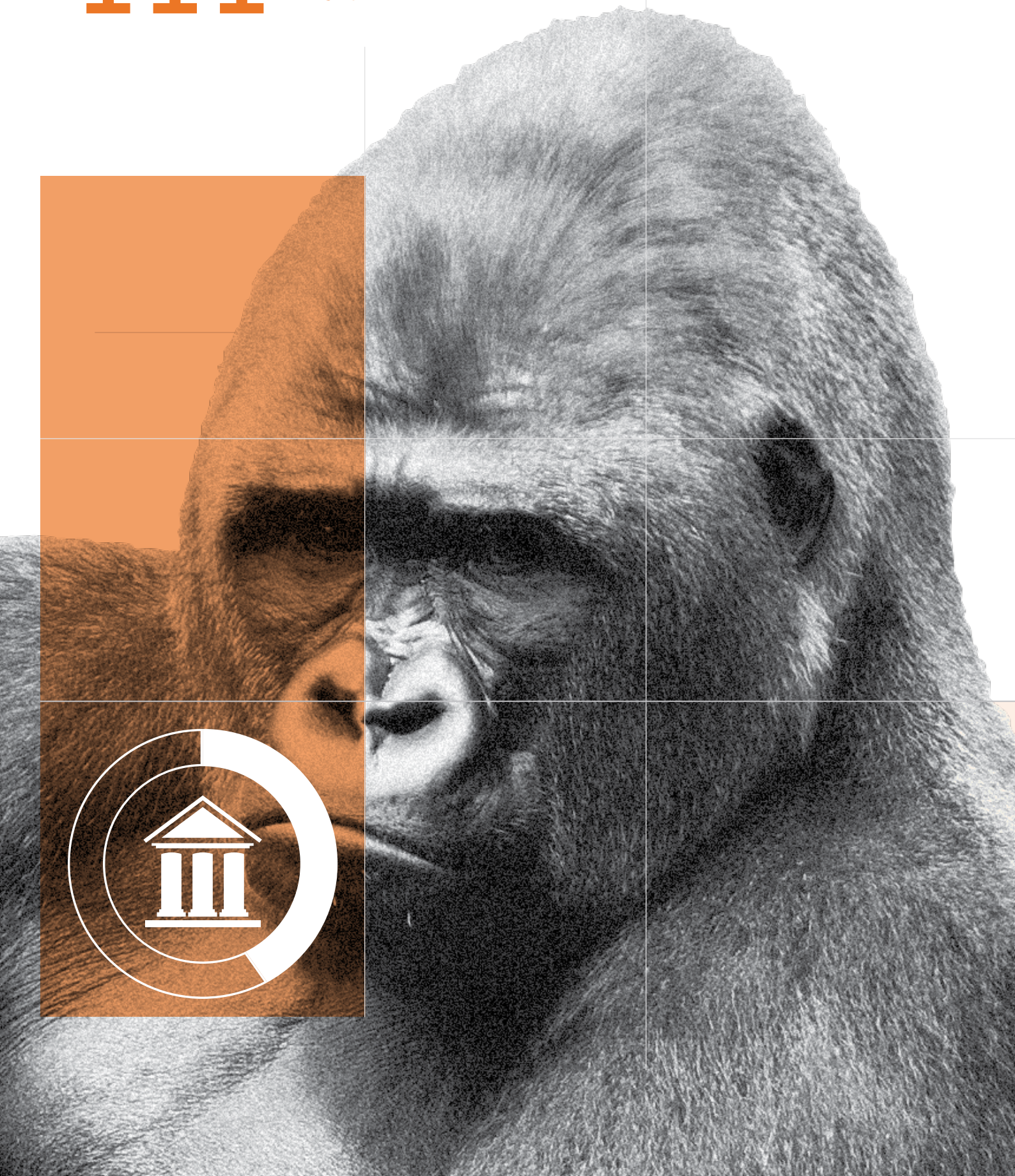
- Does the law establish mechanisms for the monitoring and oversight of the conduct and performance of wildlife and forest law enforcement officers? If so, what are these mechanisms?
- Are there clear codes of conduct for wildlife and forest law enforcement units? If so, what is their content? Have there been cases of violation of their principles? How have these cases been handled?
- Are officers expected and entitled to report colleagues for failures to maintain integrity and professional standards? Are officers who make such reports protected from victimization or harassment by the law and otherwise provided with practical support?
- Are there avenues for civilians to lodge complaints against the police and those involved in wildlife and forest offences? Is there independent oversight of the complaints system?
- How are wildlife and forest law enforcement officers viewed by other agencies and by the general public? Are they trusted and well respected? If not, why not?
- Have there been any corruption risk assessments or management strategies developed or implemented?

Additional resources:
UNODC, Criminal Justice Assessment Toolkit: Policing, Volume 2 The Integrity and Accountability of the Police (2006) 5–20
UNODC, Scaling back corruption: A guide on addressing corruption for wildlife management authorities. https://www.unodc.org/documents/Wildlife/19-08373_Scaling_Back_Corruption_ebook.pdf
World Wide Fund for Nature. Targeting Natural Resource Corruption: https://www.worldwildlife.org/pages/tnrc-knowledge-hub-publications

III

CRIMINAL PROCEDURE AND THE COURTS

Part III



Clear and transparent rules of criminal procedure, along with independent, adequately resourced and efficiently managed and administered prosecution and judicial authorities, are critical to addressing wildlife and forest crime, both to hold offenders accountable for their actions and guarantee their fundamental rights are respected by wildlife and forest law enforcement.

Properly trained and adequately staffed prosecutorial and judicial authorities can make a difference in the outcome of any criminal process, in particular with regards to wildlife and forest crimes given the unique challenges in this field. As with every aspect of a criminal justice system, the integrity and accountability of prosecutors and judges must be ensured, and their independence and impartiality protected. This also requires measures to shield those involved in criminal proceedings from corruption, nepotism, coercion and other forms of undue influence.

It has to be noted that in the context of wildlife and forest crime (and crimes that affect the environment in general) prosecutions and the initiation of judicial proceedings are a last resort. The reasons for this include the human and financial resources required to conduct criminal proceedings, the ultima ratio nature of criminal law, the possibility of severe penalties being imposed, and the fact that it is often more efficient to reach a solution through negotiation and the use of administrative orders where necessary and possible.

Part III of this Toolkit examines selected issues of criminal procedure and the role and operation of prosecution and judicial authorities in relation to wildlife and forest crime. Section 1 outlines the steps that lead from investigation to trial and addresses matters relating to jurisdiction and evidence. Sections 2 and 3 explore measures to ensure the proper functioning, staffing and resourcing of prosecution authorities and the judiciary, and contain tools to protect their independence. Measures relating to sentencing and sanctions are set out in Section 4 and relating to restitution and compensation for victims of wildlife and forest crime are identified in Section 5. Section 6 explores several non-criminal justice disruption measures.

Part III

1 Criminal procedure

Following the completion of a criminal investigation[75] in most jurisdictions, investigators need to report the investigation outcome to the prosecution, whereas in others investigations are assigned to an investigating judge.

1.1 From investigation to trial

The result of a successful investigation will be the appearance of the suspect before the court, once the investigation has reached the evidential thresholds needed to bring the case to court. Some jurisdictions adhere to mandatory prosecutorial rules that oblige prosecutors to bring sufficiently proved cases to the court, whereas other jurisdictions grant prosecutors discretion to decide, based on the facts of the case, whether to charge the suspect for their criminal conduct or to discontinue the prosecution.[76]

Sometimes the court determines that an accused is to be diverted from prosecution to an alternative measure (such as an arbitrated settlement, a restorative justice process, a community service order or appropriate treatment),[77] be released on bail or await his/her trial in detention. At other times, the police and prosecutors have discretion to divert cases from the criminal justice process or to grant bail. Release on bail is particularly sensitive when the suspected offence is above a certain threshold of seriousness or when there are reasonable grounds to believe that the suspect is involved in organized wildlife and forest crime. Bail should not be granted whenever there is danger of suppression of evidence, collusion, flight or re-offending, but when possible and safe, alternatives to detention (pre- and post-trial) should be considered.

Before investigators submit a case to the prosecution, they need to ensure that their case file meets the evidentiary thresholds, is of high quality and contains all relevant information. In preparing the file, they also need to consider what information and evidence will (need to) be disclosed to the accused and defence counsel (for example, details about witnesses and victims) to safeguard the rights of the accused and to protect witnesses (especially if they fear repercussions).[78] It must also be ensured that information potentially exonerating a suspect is not left out. If a case management system is in place, there will be particular ways to structure, categorize and file information that must be followed.

75 Investigation procedures are set out in Part II, Section 6 of this Toolkit.

76 See further Part III, Section 2.1.3 of this Toolkit.

77 See further Part III, Section 6 of this Toolkit.

78 See further Part II, Section 6.6 of this Toolkit.

It is critical that at all stages of the criminal procedure, due process is upheld, specifically rights to a fair trial, the right to be presumed innocent until proven guilty according to law, and the right to have legal assistance.

From investigation to trial

- Pursuant to the law and the procedures of the criminal justice system, how does a criminal case involving wildlife or forest offences proceed from the allegation or suspicion of an offence to advice to investigators, to formal charging, to adjudication and disposition?
- Specifically, what steps need to be followed by investigators to submit a case to the prosecution or judicial authority? What information needs to be provided and in what form to submit a case to the prosecution or judicial authority?
- Are there laws and regulations about bail and bail processes that are relevant (and used in relation) to wildlife and forest crime?
- What information will be/must be disclosed to the defendant and to defence counsel?
- Are witnesses, suspects and accused persons' rights upheld throughout the criminal procedure? Have there been reports or allegations of violations of due process or fair trial rights in cases involving wildlife and forest offences?
- Is a case management system in place to which investigators and prosecutors have access? How does it operate; what information does it require; is it used by investigators and prosecutors of forest and wildlife and crime?

Additional resources:
UNODC, Guide on Drafting Legislation to Combat Wildlife Crime (2018) 55–56
UNODC, Criminal Justice Assessment Toolkit: Policing, Volume 3 Crime Investigation (2006) 20

1.2 Jurisdiction

Jurisdiction refers to the power of a State, through its prosecutors, courts and other institutions, to exercise legal authority over a territory, person or thing. Establishing comprehensive jurisdiction — within and beyond national borders — is particularly important in the context of wildlife and forest crime because many crimes occur across international borders and offenders often move from one State to another specifically to exploit jurisdictional loopholes in laws to avoid apprehension and prosecution.

States may exercise jurisdiction over acts committed within their territories, including their territorial waters (the territoriality principle). International law also recognizes the right of States to exercise extraterritorial jurisdiction in a number of other circumstances. While the precise scope of these circumstances is not fully settled, the international community generally has recognized the jurisdiction of a State over its nationals, even when outside its territory (the active personality principle); the jurisdiction of a State over acts injurious to its nationals (the passive personality principle); and the jurisdiction of a State over acts committed outside the State but intended to have a substantial effect within the territory of the State (the objective territorial principle). These principles are also reflected in the relevant provisions of the United Nations Convention against Transnational Organized Crime (Article 15) and the United Nations Convention against Corruption (Article 42).

Issues of jurisdiction may arise in cases when it is not clear where a crime has been committed. The use of online services by criminals engaged in wildlife and forest crime poses numerous challenges for law enforcement. In relation to wildlife and forest crime committed online, for

instance, there may be a large number of countries that could exercise jurisdiction in respect of a particular case because online intermediaries are simultaneously subject to the laws of multiple jurisdictions in respect of the same conduct. Further jurisdictional issues relate to cross-border access to electronic evidence by law enforcement. Electronic evidence of unlawful activity may often be located on servers outside of the territory of the investigating agency. Law enforcement agencies may need to access basic subscriber information, traffic data and/or content data abroad. They may also need to intercept traffic and/or content data in real-time.

Jurisdiction

» In relation to wildlife and forest offences, does the State have jurisdiction over:
- Offences committed within its territory;
- Offences committed within its territorial waters;
- Offences committed on board vessels flying the flag of that State and aircraft registered under the laws of that State;
- Offences committed by a national or habitual resident of the State in another State; and
- Offences committed outside the State but intended to have a substantial effect within the territory of the State?
- Offences committed in the State with implications for other States?

Additional resources:
UNODC, Guide on Drafting Legislation to Combat Wildlife Crime (2018) 10–11
UNODC, Policymaking and the role of online intermediaries in illicit trafficking (2021) 62–63

1.3 Evidence

1.3.1 Evidence management and storage

From the moment evidence is collected at a crime scene,[79] it is important that it is stored in a way that minimizes any chance of contamination, destruction or the breaking of the chain of evidence, which may result in the item becoming unusable for a prosecution. Evidence can include physical items or digital items such as photographs, records of emails, electronic devices and chat protocols.

Different jurisdictions attach different requirements to written documentation of evidence collection, management and storage. Whenever possible, individual physical pieces of evidence should be stored in evidence bags or another form of 'tamper-evident' packaging with unique identifying numbers. It is common and good practice to record on evidence packaging, at a minimum, the collector's name and signature, the name of the person who found the item on the scene, the unique evidence item number, the date and time of collection, the location of collection at the scene, as well as a brief description of the evidence. Photographic documentation can be extremely useful to support physical items and written records and must be stored with the same care, as traceability and crime scene delimitation can be particularly challenging for wildlife and forest crime.

To ensure that evidence is managed and stored accurately and securely, law enforcement officials should have adequate training in written documentation and be aware of its potential importance further afield in the criminal procedure, as mistakes can jeopardize the validity and admissibility of evidence in court, which could prevent perpetrators from being brought to justice.

79 Wildlife and forest crime scene work is discussed in Part II, Section 5.4 of this Toolkit.

Evidence management and storage

- What laws and regulations govern the handling of evidence?
- What are the specific requirements regarding storage, security, handling and disposal of evidence?
- How is the chain of custody (evidence integrity) recorded, managed and monitored? Is the chain of custody of evidence recorded at all times?
- Are there specific rules concerning the transfer of evidence from the crime scene to the laboratory or other storage facility?
- Is evidence seized from the possession of multiple suspects collected and marked in a way that shows which individual suspect was in possession of what evidence?
- Are the existing rules and requirements followed by relevant law enforcement personnel, especially crime scene investigators?
- Is evidence adequately labelled?
  - Are individual pieces of evidence labelled and stored in separate containers?
  - Is the packaging tamper-evident?
  - Is the labelling number entirely unique and does it provide information on the collector, the collection date and the number of items collected by that person on that day?
- Are there adequate facilities to store evidence (for example, can biological items be kept cold or frozen)?
- For major cases, is an officer designated to ensure continuity and preserve the integrity of evidence and exhibits?

Additional resources:
UNODC, Wildlife Crime Scene Guide for First Responders (2019) 43–51

1.3.2 Admissibility of evidence

The rules of evidence adopted by a criminal justice system may preclude some types of evidence from being considered. Other types of evidence, such as hearsay, may be precluded because they are considered by some systems to be inherently unreliable, with certain exceptions established by law.

What is admissible as evidence and the procedure for having evidence admitted to court vary between jurisdictions. Generally, the admissibility of evidence follows strict safeguards to prevent abuse of authority, protect human rights, and ensure judicial or independent oversight. Special rules may apply (and are needed) for the use of electronic evidence and for evidence sourced outside of the court's jurisdiction.

Admissibility of evidence

- Does the legal framework include any provision on the admissibility of evidence in court proceedings?
- What rules must be adhered to have evidence admitted?
- What types of evidence are precluded?
- Is the use of forensic evidence permissible?

1.3.3 Electronic evidence

Electronic (or digital) evidence is any information stored or transmitted in digital form that can be used as proof in judicial proceedings. The methods of gathering, storage, management, admissibility and use of electronic evidence vary greatly between jurisdictions, as do their laws and regulations on this topic.

Measures to gather and store electronic evidence include, inter alia, the expedited preservation of computer data, orders for access to stored content data, stored traffic data or subscriber information, real-time collection of content or traffic data, search warrants for computer hardware or data, seizure of computer hardware or data, transborder access to a computer system or data, and the use of remote forensic tools. The use of electronic evidence-gathering techniques is usually regulated by legislation and, in most jurisdictions, through the use of a warrant-based system, especially in cases of electronic surveillance in private places. Part II Sections 5.1.3 and 6.3 of this Toolkit contain additional information and tools concerning electronic surveillance and evidence gathering.

The admissibility of electronic evidence requires compliance with established procedures that safeguard human rights. When assessing the admissibility of electronic evidence, emphasis should be placed on the importance of compliance with the proportionality principle when using special investigative techniques, including the use of undercover agents and remote forensics, especially on the darknet.

Electronic evidence

- What laws and regulations are in place concerning the use, storage, management and admissibility of electronic evidence?
- Are there special rules concerning the cross-border use of electronic evidence?

Additional resources:
UN Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Working Group on International Cooperation, International cooperation involving special investigative techniques, UN Doc CTOC/COP/WG.3/2020/3 (12 May 2020) 3–4, 13

1.3.4 Expert testimony

Expert testimony (or expert evidence) is admissible as an exception to the rule that witnesses may only give evidence about facts. Expert testimony is particularly useful when the evidence is not susceptible to interpretation by a layperson, which can often be the case in proceedings involving wildlife and forest offences. Experts are capable of interpretation and explanation of the evidence,and can give an opinion based on their own expertise. The use of expert testimony serves to prevent reliance by the court on unsubstantiated or subjective information, which may prejudice the accused unduly.

The experts' function is to put before the court all the materials, together with the reasons that induced them to reach their particular conclusion. It is from this material and reasons that the court, though not an expert, may form its own judgement by its own observation of those materials. When the court accepts this type of evidence, it has limited scope to assess its quality. It must be kept in mind that experts are not witnesses of fact and as such their evidence is of an advisory character; experts are not judges, jury or assessors. Since judges can only assess objective evidence, it is important that an inquiry is instead made into the scientific rigour of expert testimony on a case-by-case basis.

Expert testimony

- What laws and regulations are in place concerning the use of experts to give evidence in criminal proceedings?
- How are experts who give evidence in proceedings involving wildlife and forest offences selected (i.e. what is their expertise; what are their qualifications; what are their required experience levels)?
- How commonly do experts give evidence in proceedings involving wildlife and forest offences? What has been the experience?

1.4 Trial without delay

The effective enforcement of wildlife and forest offences requires a well-functioning and efficient prosecution service and an independent judiciary, both of which are inextricably linked to the rule of law and adherence thereto. The efficiency of trials is an important factor in bringing perpetrators of wildlife and forest crime to justice and ensuring procedural fairness and transparency.

Long delays in the preparation, commencement and continuation of trials can weaken the prosecution's case, compromise the role and rights of the defendant and undermine the criminal justice process. Furthermore, delays and other disruptions in criminal proceedings increase the risk of witness attrition and expose witnesses to the risk of intimidation and threat (especially if they are repeatedly required to appear in court). Delays increase the opportunity for defendants to try to corrupt the system and undermine public confidence. Unnecessary delays also represent a tremendous waste of public resources. Delays in cases involving live exhibits also increase the costs to maintain the live animal and increase the risk that they may die of a natural cause before the case is settled. Many cases involving wildlife and forest crime flounder due to corruption and/or incompetence manifested in the form of repeated adjournments, lengthy delay, lost exhibits and witness attrition. Lastly, delayed trials can result in a lesser punishment because the delay is seen as a burden for the accused person.

In many places, wildlife and forest crime cases are not considered high priority and are delayed because other cases are perceived to be more urgent. The main reasons for delayed trials are a lack of capacity to prosecute and hear cases involving wildlife and forest offences, limited human resources, long backlogs of cases, insufficient expertise and lack of relevant experience. This may be a result of poor pre-trial planning: although witness requirements, disclosure requirements regarding exhibits and expert evidence, and legal arguments on admissibility are for the most part entirely foreseeable, they are often not addressed until the trial has started and the witnesses are waiting. This can cause long delays to criminal proceedings. In some cases, political meddling and corruption can result in trials being delayed, stalled or discontinued.

Experience shows that early engagement between investigators and prosecutors leads to better charging decisions, better case preparation and better outcomes at court. For example, pre-arrest conferences can ensure that arrests take place at the right stage of an investigation. Post-arrest conferences can ensure that a review (and amendment if necessary) of any earlier decision is made in a timely way, and pre-trial and post-trial engagement ensures better preparation and allows for lessons learned. As an anti-corruption mechanism, these discussions can provide a check and balance on the decisions made on a file and encourage an investment by both agencies through to the conclusion of a trial.

Trial without delay

- What laws, regulations and case and flow management procedures are in place to ensure trial without delay?
- What other practical steps, arrangements and plans have been adopted by the prosecution service and the judiciary?
- How do investigators and prosecutors collaborate in the preparation of trials?
- Do they engage in pre- and post-trial arrest conferences?

1.5 Access to justice

The right to access to justice and fair treatment is a central obligation by governments towards victims of crime. Regrettably, in the context of wildlife and forest crime and environmental matters more generally, there are significant gaps in access to justice and asymmetries and inequalities (in political power, technical equipment, economic power and influence) between enforcement and other authorities on the one hand and stakeholders and users of the system on the other.

Access to a procedural form of justice and fairness of proceedings implies the equitable application of justice procedures to both victims and offenders equally.

This includes:

- the opportunity to be heard;
- that proceedings unfold in an efficient way that respects the victim's need for closure;
- the preservation of dignity and self-respect in interactions with law enforcement officers, prosecutors, judges, attorneys, and court staff;
- an unbiased decision-making process;
- a process that inspires trust of both the victim and the offender;
- enabling the victim and the offender to fully comprehend the case, the process and its outcomes, including any court orders; and
- communicating and implementing the belief that justice system actors have an interest in the needs and personal situation of both the victims and the defendants.

One particularly important procedural right of victims is the right to information. This right implies that the victim should be informed at the earliest stage and throughout the criminal justice process, including on procedures, the victim's role (if any) in these procedures, reports on progress (explaining any delays), and outcomes of criminal proceedings. Victims should be provided with information about where they can get further assistance, including protection, support, legal aid and compensation. It is important to ensure that victims understand the information that is given to them and they should be provided with a contact person with whom to discuss or clarify the information provided.

Procedural justice can be strengthened by specific measures, including for instance:

- ¬ training for criminal justice system stakeholders on trauma-informed practices and cultural competency;
- ¬ creating safe spaces for victims whether at the police office, at the prosecutor's office or at the courthouse;
- ¬ victim's advocates that help victims navigate processes;
- ¬ written materials available in multiple languages, and interpretation services for victims with various language proficiency; and
- ¬ emotional support and referral mechanisms that help victims to access services, including medical assistance, psychological assistance and social support.

TOOL
III.8

Access to justice

- » At what stages of the criminal justice process do victims of wildlife and forest crime have an opportunity to be heard?
- » How can victims and others affected by wildlife and forest crime participate in criminal proceedings?
- » Are victims informed about the instigation and progress of criminal proceedings?
- » Are law enforcement, prosecution and judicial officials sufficiently trained in the rights of and communicating with victims?
- » What other information is available regarding access to justice in wildlife and forest crime proceedings?

Not further discussed in this Part are civil remedies, injunctive relief and other judicial avenues that can be pursued by victims or others affected by wildlife and forest crime to stop an alleged perpetrator. One example of such mechanisms would be to seek an injunction stopping a person or company suspected of illegal logging or hunting.

2

Part III

Prosecution

Public prosecutors play a unique role in criminal cases in that they appear on behalf of the government as the representatives of the people rather than of an individual victim. A prosecutor has the broad obligation to uphold the rule of law, with an attendant ethical and professional duty to ensure that a person accused of an offence receives a fair trial.

Where prosecutors fail to fulfil these obligations, miscarriages of justice ranging from malicious prosecutions to wrongful convictions may result, damaging the integrity of the justice system and violating the public's trust. The inadequate or non-existent prosecution of wildlife and forest offences also sends the message that this type of crime is victimless and less serious than other crimes.

The design and delivery of prosecution services differ greatly among jurisdictions and are frequently influenced by common law, civil law or hybrid traditions. Due to the diversity of prosecution structures, jurisdiction and approaches, it is difficult to address all potential issues in the tools set out in the following Sections. Moreover, many issues do not specifically relate to the prosecution of wildlife and forest offences and are better assessed across all types of crime. UNODC's Criminal Justice Assessment Toolkit contains a specific section on 'The Prosecution Service' which can be used to assess all elements of a prosecution authority comprehensively. Furthermore, the International Association of Prosecutors adopted the 'Standards of professional responsibility and statement of the essential duties and rights of prosecutors', which should be integrated into any comprehensive analysis of prosecution services. The following Sections focus exclusively on the analysis of the principal features of public prosecutions of wildlife and forest offences.

Additional resources:
UNODC, Criminal Justice Assessment Toolkit: Access to Justice, Volume 3 The Prosecution Service (2006)
UNODC, World Wildlife Crime Report, Trafficking in protected species (2020) 22–23
International Association of Prosecutors, "Standards of professional responsibility and statement of the essential duties and rights of prosecutors" (April 1999). available at https://www.iap-association.org/Resources-Documentation/IAP-Standards-(1) (accessed 27 August 2021).

2.1 Source, organization and delegation of the prosecution authority

2.1.1 Legal framework

The first step in assessing the prosecution system involves the identification of the source of prosecutorial authority. In many countries, the national constitution contains provisions delineating the general organization of who is responsible for the prosecution of criminal cases, in what branch of government that authority resides, and the general powers and obligations of the prosecution. In addition, specialized laws and regulations usually contain additional details about the functions and operations of the prosecution authority for environmental, wildlife and forest crimes. In some countries, these are set out in the general administration of justice acts, criminal codes or criminal procedure acts. In other countries, specific acts dealing exclusively with the prosecution or investigation authority exist.

Source of prosecution authority

- In which statutes or laws are the functions and organization of the prosecution authority set out?
- Does the constitution set out the branch of government responsible for prosecutions?
- What are the (statutory) functions of the prosecution authority? How does it relate to other branches of government?
- Does the prosecution have guidelines concerning the prosecution of wildlife and forestry crime?

Additional resources:
UNODC, Criminal Justice Assessment Toolkit: Access to Justice, Volume 3 The Prosecution Service (2006) 5

2.1.2 Organization and delegation of prosecution authority

Once the legal framework for the prosecution of criminal offences, including wildlife and forest offences, has been identified, it is necessary to examine the organization and delegation of authority for prosecutions and associated investigative functions. While some jurisdictions have specialized wildlife and forest crime prosecution units, very few systems have prosecutors that focus solely on these offences. Moreover, it is rare to spell out specific procedures applicable exclusively to the prosecution of wildlife and forest offences. There may be exceptions, and in some instances specific legal provisions, within specialized laws addressing certain aspects of the role of the prosecutor in a given stage of the criminal process. In their absence, the general procedures for the prosecution of criminal offences apply.

Prosecution: organization and delegation

- Where does the prosecution authority reside in the criminal justice system? Is it independent or part of the judiciary? Do the police or other enforcement agencies conduct prosecutions?
- Is the prosecution authority vested in a prosecutor, an investigative judge or both?
- How is the prosecution authority organized? Does the prosecution authority have specialized staff or units for prosecuting wildlife and forest offences?
- Do relevant wildlife and forest agencies have delegated prosecution authority?

Additional resources:
UNODC, Criminal Justice Assessment Toolkit: Access to Justice, Volume 3 The Prosecution Service (2006) 5–6, 14–15

2.1.3 Role of the prosecutor

The role of prosecutors in criminal trials in relation to, inter alia, investigations, accusations and identification of needs regarding expert evidence, varies between jurisdictions. This is especially so in cases involving wildlife and forest crime.

In some jurisdictions, prosecutors are afforded discretion either by law or through administrative procedures as to whether to prosecute offences. The degree of discretion may also differ between jurisdictions. In other jurisdictions, prosecutors do not exercise such discretion. Conditions on the exercise of this discretion may include the community interest in prosecuting or not prosecuting an offence, and the need to bring offenders to justice and deter the commission of like offences.

In some jurisdictions, prosecutors have the power to seize documents, order pre-trial detention or take other measures to prevent the accused from absconding. Prosecutorial discretion may relate not only to the decision to initiate and continue a prosecution, but also to decisions to accept plea bargaining arrangements. Plea bargaining can be a useful tool for prosecutors and can allow prosecutors to bring cases against high-level offenders by securing testimony from lower-level offenders.

Depending on the jurisdiction, prosecutors may exercise discretion to resolve cases through alternatives to trial, such as through deferred prosecution agreements, diversion programmes, and other alternative forms of dispute resolution. In relation to wildlife and forest crime, deferred prosecution agreements may be offered to defendants that agree to fulfil certain conditions such as paying compensation for and repairing environmental damage caused and making payments of veterinary expenses and pre-arranged fees for the maintenance of live animals involved in the offending.

For States that do afford prosecutors discretion as to whether to initiate and continue prosecutions, there is a need to ensure consistency in prosecutorial decision-making as to when to initiate prosecutions, maintain or cease prosecutions, and accept plea bargains.

Role of the prosecutor

- What is the role of the prosecutor in relation to wildlife and forest offences? What is the prosecutor's role at trial, at sentencing and on appeal?
- Do prosecutors (of wildlife and forest offences) undertake or oversee investigations?
- Does the prosecutor have the power to instigate a prosecution? If so, how is this done? If not, who instigates prosecutions? Are prosecutors legally bound by the result of a police (or other agency) investigation?
- Do citizens (or other individuals) have the right to make private requests for a prosecution?
- Are prosecutors authorized to order the seizure of documents, pre-trial detention and other measures in preparation of the trial?
- Does the prosecutor have discretion to pursue charges, decline to proceed, dismiss a charge or divert cases to alternatives to criminal prosecution and so forth?
- Does the prosecutor have the legal authority to negotiate plea agreements?

Additional resources:
UNODC, Criminal Justice Assessment Toolkit: Access to Justice, Volume 3 The Prosecution Service (2006) 7–10

2.1.4 Partnerships between law enforcement and prosecution

In an effort to enhance the prosecution of wildlife and forest offences, some jurisdictions place

prosecutors within wildlife and forest law enforcement units. Even where this is not the case, every effort should be made to establish the closest working relationship possible between the enforcement unit and prosecution authorities. Awareness-raising among such authorities should be given priority, and their support to the unit should be established. The unit may well be able to provide prosecutors with training. Case reporting and evidential requirement standards should be established. Prosecutors can also assist in identifying priorities and targets for the unit.

Partnerships between law enforcement and prosecution

- What working relationship exists between wildlife and forest law enforcement units and prosecution authorities? How do these agencies communicate and exchange information?
- Are one or more prosecutors placed in the wildlife and forest law enforcement unit? If there are none, would such a placement be feasible?
- Can prosecutors lead investigations with the enforcement agencies?

Additional resources:
UNODC, Criminal Justice Assessment Toolkit: Access to Justice, Volume 3 The Prosecution Service (2006) 25

2.2 Resources of the prosecution authority

The effectiveness of the prosecution of wildlife and forest offences depends, to a large degree, on the quality of prosecution services. That quality depends on, inter alia, the available human and material resources, such as prosecution authority staffing levels, staff qualifications and training, and the facilities and equipment available to prosecutors. It must be understood, however, that these elements do not guarantee in and of themselves effectiveness, integrity and accountability.

2.2.1 Staff and salaries

To function properly, prosecution authorities need to be adequately staffed, and prosecutors and their support staff need to be appropriately paid. Salaries and other entitlements of prosecutors need to be reflective of their responsibilities, education and experience. Regrettably, many prosecution units lack the human resources required to fulfil their duties. In some countries, prosecution units suffer from severe staff shortages. Posts remain unfilled for years and salaries and allowances may be months overdue. Inadequate salaries, or the failure to pay salaries regularly, can significantly reduce staff motivation.

Prosecution: staff and salaries

- Has a staff analysis been undertaken to establish the number of prosecutors needed (structure/position and number)? How does the expected caseload compare to the actual workload? What is the gap between the required number and actual staff?
- How many prosecutors and support staff are involved in prosecuting wildlife and forest offences? Is this their sole responsibility or do they also prosecute other types of offences?
- Do prosecution authorities and their specialized units have a full complement of staff? If not, what reason is given for this?
- What types of support staff are involved in the prosecution of wildlife and forest offences (administrative, paralegal or other)? How are they supervised and to whom do they report?

Prosecution: staff and salaries

- What is the salary structure for prosecutors and support staff? What is the average salary, including overtime, for each level? How does this compare with the national average salary?
- Are salary levels commensurate with the responsibilities and risks involved?
- Do prosecutors and their staff receive their pay on time and in full? If there are delays or part-payments, what are the reasons for this?

Additional resources:
UNODC, Criminal Justice Assessment Toolkit: Access to Justice, Volume 3 The Prosecution Service (2006) 19

2.2.2 Recruitment and training

Recruitment procedures for prosecutors need to be fair and transparent in order to ensure professionalism and integrity, and to avoid nepotism and corruption. The selection of staff at all levels must be based on merit, experience and education, and selection criteria need to be clearly articulated. Recruitment policies and procedures should foster inclusiveness and diversity. This can be essential to achieving organizational change, improving public perception and to better responding to institutional and community needs.

As with those involved in investigating wildlife and forest offences, it is crucial that prosecutors are adequately qualified and trained. They require an in-depth understanding of the relevant legal frameworks and case law, and the technical elements of wildlife and forest law, as well as the function and operation of every aspect of the criminal justice system. If offences are prosecuted by persons not sufficiently familiar with the relevant techniques, processes and legal requirements, it is possible that the integrity of prosecutions may be compromised, with potential implications for trials and convictions.

An analysis of prosecution capacities should therefore involve a comprehensive review of training programmes, including their delivery and contents, and the types and depth of the training available to prosecutors. Furthermore, even where comprehensive training programmes exist, it is important that syllabi and curricula are reviewed regularly. This ensures that they remain up-to-date and keep pace with legislative and jurisprudential developments, and with the ever-changing nature of wildlife and forest offences.

Prosecution: recruitment and training

TOOL
III.14

- What are the selection and recruitment procedures for joining the prosecution authority? What type and level of qualification is needed?
- Where specialized units are charged with prosecuting wildlife and forest offences, and how are staff selected for these units?
- What foundation training is given to persons joining the prosecution authority? Is specialized training in wildlife and forest offences offered to new or existing staff members?
- How often do prosecutors receive refresher training? What ongoing and specialized training courses are available? Do ongoing and specialized training courses include modules on wildlife and forest crime? How are training needs assessed? How is training delivered?
- Are there mechanisms in place to provide prosecutors who come across cases of wildlife and forest crime only occasionally with access to relevant expertise?
- Does training involve participants from multiple agencies (domestic and foreign), such as the police, judiciary, wildlife and forest agencies or other?

Additional resources:
UNODC, Criminal Justice Assessment Toolkit: Access to Justice, Volume 3 The Prosecution Service (2006) 20–21

2.2.3 Facilities and equipment

Prosecutors of wildlife and forest offences require certain basic facilities and may also need special equipment to carry out their tasks. Basic facilities include offices, computers and stationery. Access to libraries, legal databases and sufficient funding are also required to carry out day-to-day functions.

Analyses of available and required facilities and equipment vary greatly among jurisdictions and agencies. They must take into account the role, training, responsibility and seniority of prosecutors. An analysis also depends on the local socio-economic conditions, the resources available, and access to financial aid and technical assistance.

Prosecution: facilities and equipment

- Where are prosecutors/where is the prosecution authority located? Are the building facilities of the prosecution authority adequate?
- Is the office equipment (such as furniture, stationery and photocopiers) adequate?
- Do prosecutors have easy access to the investigation agencies and to the courts?
- What communication and word-processing technologies are available (such as computers, the Internet, telephones, mobile telephones and fax machines)?
- Do prosecutors have adequate capacity to securely store files, evidence and electronic information?
- Do prosecutors have access to the relevant legislation, including criminal laws, and wildlife and forest laws?
- Does the prosecution authority have a library, or can prosecutors access law libraries elsewhere nearby? Do prosecutors have access to the relevant electronic databases? Do libraries have adequate collections and other resources to support the prosecution of wildlife and forest crime?

2.3 Prosecution data and outcomes

The collection and analysis of data pertaining to prosecutions of wildlife and forest offences are integral to assess the strengths and weaknesses of the prosecution system, the workload and performance of prosecutors, and to monitor how cases pass through the judicial system.

2.3.1 General prosecution data

Basic data includes the number of prosecutions initiated, of charges laid (in relation to specific wildlife and forest offences) and data linked to prosecution outcomes such as convictions, acquittals and appeals. Other relevant data includes, inter alia, the number and proportion of cases that go to trial, cases in which the offender pleads guilty and cases diverted to alternative measures (such as arbitration or a restorative process of community service). Such data should be recorded continuously and reported in regular intervals (e.g. annually). Efforts should also be made to gather sex-disaggregated data.

Absolute numbers may provide important indications about the approximate scale of wildlife and forest crime and its development over time. However, comparing available data at the different stages of the judicial process can reveal crucial information about the structural well-being of the judicial system as well as of the interlinkages of different actors along the way. If there are significant drop-offs from the number of reported to investigated offences, from the number of investigated offences and charges laid as well as subsequently from charges to

convictions, this may suggest, inter alia, regulatory/legislative weaknesses, understaffing and more serious frailties of the judicial system, and a disconnect between relevant actors along the judicial process. Data collection is never an end unto itself but must instead be harnessed to gain relevant insights and actions be taken as a result.

General prosecution data

- How many prosecutions involving wildlife and forest offences have been initiated?
- How many prosecutions involving wildlife and forest offences resulted in adjudications?
- How many persons involved in wildlife and forest offences have been prosecuted? How many have been convicted? How many have been acquitted? How many cases are pending?
- How many cases involving wildlife and forest offences result in a conviction of guilt to at least one of the charges? How many cases are withdrawn or dismissed? How many cases are diverted to alternative measures?
- How many appeals involving wildlife and forest offences have been initiated by the prosecution service?

Additional resources:
UNODC, Criminal Justice Assessment Toolkit: Access to Justice, Volume 3 The Prosecution Service (2006) 3–4
UNODC, Criminal Justice Assessment Toolkit: Cross-cutting Issues, Volume 1 Criminal Justice Information (2006) 6–7

2.3.2 Operation and workload of the prosecution authority

Prosecution authorities need to be adequately staffed and resourced to function properly. Accordingly, in analysing a prosecution system, it is integral to obtain information, including statistics, on the basic operation of the prosecution authority and the workload of prosecutors. When this information and data are analysed, it is important to understand the terminology used in that jurisdiction as the meaning of terms such as 'criminal case', 'filing', 'resolution' and 'outcome' may vary. Ensuring the safety of prosecutors is another issue in many settings, especially when organized criminal groups are involved.

Operation and workload of prosecutors

- In jurisdictions where the police file the original charging documents, how many criminal cases involving wildlife or forest offences are received annually by the prosecutor's office?
- In jurisdictions where the prosecutor is responsible for the filing of charges in court, how many such cases are filed annually? Where are these cases filed?
- How many criminal cases involving wildlife and forest offences are resolved annually by the prosecutor's office? Are they resolved, for example, via trial or guilty pleas?
- Are cases involving wildlife and forest offences assigned to particular prosecutors? If so, what is their average annual caseload? How many pending cases are the prosecutors handling at any one time?

Operation and workload of prosecutors

- » Is there a case management system for prosecutors to ensure case flow and finalization?
- » Is there a backlog of cases involving wildlife and forest offences? Is it possible to determine how long a case assigned to a prosecutor has been pending without examination?
- » Does the law establish a time frame for each stage of the criminal process or for judicial actions? Are there exceptions?

Additional resources:
UNODC, Criminal Justice Assessment Toolkit: Access to Justice, Volume 3 The Prosecution Service (2006) 3–4
UNODC, Criminal Justice Assessment Toolkit: Cross-cutting Issues, Volume 1 Criminal Justice Information (2006) 6–7

2.3.3 Prosecution performance indicators

Prosecution performance indicators serve to systematically monitor the work and workload of prosecutors and help identify areas in need of attention and improvement. Some of the most relevant indicators in this regard include, inter alia, the number of cases per prosecutor; number of cases completed per year, per prosecutor; number of cases in which a prosecution has been initiated and then abandoned or stayed; and average number of appellate cases per prosecutor. Such data should be recorded continuously and reported in regular intervals (e.g. annually). As has been noted earlier in this Section, such information must be analyzed together with other available data about the judicial process and must be harnessed to induce improvements with that broader context in mind.

TOOL
III.18

Prosecution performance indicators

- » What performance targets, if any, have been identified for those government agencies operating in the wildlife and forestry sectors? What are the specific targets for prosecution authorities?
- » What performance indicators are used to measure the activities of prosecutors, and how are they determined?
- » Who conducts the performance measurements based on these indicators? How are the results reported back to individual agencies?
- » Are the performance indicators regularly reviewed and updated?

Additional resources:
UNODC, Criminal Justice Assessment Toolkit: Access to Justice, Volume 3 The Prosecution Service (2006) 3–4
UNODC, Criminal Justice Assessment Toolkit: Cross-cutting Issues, Volume 1 Criminal Justice Information (2006) 11

3

Part III

Judiciary

The judiciary plays a significant role in protecting fauna and flora in relation to the enforcement of the relevant laws. In some situations, the judiciary can also have an inherent supervisory function to review the decisions of the executive where these threaten wildlife or forests.

Even if the capacity to detect and investigate wildlife and forest offences is high, the potential deterrent effects of prosecutions are minimal if the judicial system is weak and prone to corruption and delays. Accordingly, the management of the courts must be efficient and effective so that the criminal caseload can be adjudicated fairly, appropriately and promptly.

Despite the presence of a well-functioning judicial system, there may be significant barriers to access it, which can prevent effective access to justice. Effective access to justice entails that those seeking relief have knowledge of, or can easily find, the mechanisms available to them; can utilize these mechanisms without undue delay or prohibitive cost; and can access skilled technical assistance necessary to pursue their claims

The following Sections contain general tools to provide a basic analysis of the organization and operation of the judiciary, along with certain specific tools that relate to the particular problem of wildlife and forest offences. An analysis of the judiciary usually involves a much broader approach than what is within the scope of this Toolkit. To that end, UNODC's *Criminal Justice Assessment Toolkit* provides the relevant assessment tools in two Sections – 'The courts' and 'The independence, impartiality and integrity of the judiciary'.

Additional resources:
UNODC, Criminal Justice Assessment Toolkit: Access to Justice, Volume 1 The Courts (2006)
UNODC, Criminal Justice Assessment Toolkit: Access to Justice, Volume 2 The Independence, Impartiality and Integrity of the Judiciary (2006)

3.1 Structure and organization of the judiciary

3.1.1 Legal framework

The starting point for any assessment of the judiciary is the existing legal and regulatory framework that governs the hierarchy, mandate, operation and management of the courts.

The criminal court system is of particular importance in relation to wildlife and forest crime [80], though there may be administrative or specialized courts with particular functions that relate, directly or indirectly, to specific aspects of the wildlife, forestry or criminal justice sector. [81]

In most countries, the national constitution contains provisions delineating the general structure of the courts and the administration of justice. This is usually supplemented by laws and regulations that spell out the specific functions of individual courts and other branches of the judiciary. Furthermore, court rules and government policy documents may provide additional details about the operation of the courts.

Judiciary: legal framework

- » In which statutes are the functions and organization of the judiciary set out? What is written in these statutes?
- » Does the constitution set out the general structure of the court system?
- » What other government documents or policy documents provide information on the organization of the judiciary?

Additional resources:
UNODC, Criminal Justice Assessment Toolkit: Access to Justice, Volume 1 The Courts (2006) 5
UNODC, Criminal Justice Assessment Toolkit: Access to Justice, Volume 2 The Independence, Impartiality and Integrity of the Judiciary (2006) 5–7

3.1.2 Criminal court system

An analysis of the structure and operation of the criminal court system involves identifying and assessing the various levels of the court system charged with hearing primary cases, appeals, and, where applicable, judicial reviews involving wildlife and forest offences.

Criminal court system

- » What levels of hierarchy does the criminal court system have? What powers does each level have?
- » How do appeal and review processes operate across the different levels of the court system?
- » Before which courts are cases involving wildlife and forest offences first heard? Which courts hear appeals?
- » Are there at any level courts, judges and other judicial officers that focus solely on wildlife and forest offences?
- » Does the law make provisions for a jury system in criminal cases? Are charges involving wildlife and forest offences heard by a jury or a single judge? How does the system work in practice?
- » Is there a system of assessors who sit with a judge? If so, are they lay assessors? Do they sit in cases involving wildlife and forest offences?

Additional resources:
UNODC, Criminal Justice Assessment Toolkit: Access to Justice, Volume 1 The Courts (2006) 5–6
UNODC, Criminal Justice Assessment Toolkit: Access to Justice, Volume 2 The Independence, Impartiality and Integrity of the Judiciary (2006) 8

80 See further Part III, Section 3.1.2 of this Toolkit.

81 See further Part III, Section 3.1.3 of this Toolkit

3.1.3 Specialized courts

Some jurisdictions have established designated courts or tribunals with jurisdiction over environmental matters, including wildlife trafficking and other wildlife and forest offences. This is generally seen by experts as a welcome development because some of the main advantages of so-called 'green courts' include greater expertise of the ruling body, lower costs of litigation and uniformity in jurisprudence.

For example, in 2017, Uganda launched a specialized court for cases referred from the Uganda Wildlife Authority (UWA), amongst other offences. This 'Standards, Wildlife and Utilities Court' serves to reduce the large backlog of cases and long delay of court hearings. In 2010, the National Green Tribunal Act of India was passed to set up dedicated environmental courts. India's judiciary played a central role in shaping this legislation and the drafters of the Act were mindful of addressing the specific needs that had been identified by judges and others working in the judicial system. The Court of Environment and Agrarian Issues in the State of Amazonas, Brazil, is another example of a substantially independent environmental court. This Court has one of the widest and most innovative range of remedies available to address crimes that affect the environment.

In some jurisdictions, the idea of specialized courts may be incongruent with the judicial system and judicial traditions, and the creation of such courts has significant resource implications. Where such specialized courts exist, their jurisdiction and their relationship to the regular court system need to be clear. So-called 'green courts' can also reinforce the impression that wildlife and forest crime can be or should be treated differently than other crimes, or potentially even support treating them as less serious than other crimes. 'Green courts' may also not have the authority to impose penalties reflecting the seriousness of wildlife and forest crime and other crimes affecting the environment.

Specialized courts

- Have specialized courts or tribunals been set up to hear environmental matters? If so, do they hear cases involving wildlife and forest offences or other matters relating to wildlife and forest crime?
- If they do not exist, have there been plans or proposals to establish them? Are there obstacles and reservations to establishing them?
- Are there any other specialized courts provided for by statute or via administrative arrangement that bear any relevance for wildlife and forest offences (such as anti-corruption courts)?
- How are such courts and tribunals constituted? What is their jurisdiction? What is their relationship to the regular court hierarchy and the criminal justice system?
- How are such courts and tribunals staffed; what is their workload; what has been the experience with such courts and tribunals)?

TOOL
III.21

Additional resources:
UNODC, Criminal Justice Assessment Toolkit: Access to Justice, Volume 3 The Prosecution Service (2006) 3–4
UNODC, Criminal Justice Assessment Toolkit: Cross-cutting Issues, Volume 1 Criminal Justice Information (2006) 6–7

3.1.4 Independence of the judiciary

It is a prerequisite that judicial functions are separated from the functions of the executive and legislative branches of government. A lack of independence — or the perception thereof — can lead to interference in the affairs of the judiciary and corruption at all levels, including in the wildlife and forestry sectors.

Achieving judicial independence to ensure the impartiality of the judiciary is a complex undertaking. There are various ways in which countries have sought to attain this goal. These include ensuring transparent procedures, clarifying the relationship between the judiciary and the rest of the government, promoting independent organizational and structural arrangements for the judiciary, promoting accountability of the courts to the public, improving the terms and conditions and training of individual judges, and improving institutional arrangements relating to the appointment of judges and their job stability.

TOOL
III.22

Independence of the judiciary

- What is the relationship between the judiciary and the executive and legislative branches of government?
- What constitutional and other legal provisions guarantee and protect the independence of the judiciary?
- Does the organization and structure of the judiciary ensure its independence?
- Are court proceedings and the appointment of judges transparent?
- How is the judiciary accountable to the public?
- What interaction and communication, if any, occurs between wildlife and forest law enforcement units and the judiciary?

The independence of the judiciary means that the relationship between wildlife and forest law enforcement units and a country's judiciary should be maintained at an appropriate distance. It is nevertheless important that such units raise awareness among the judiciary about wildlife and forest crime and promote their participation in the appropriate stages of the criminal justice process. Law enforcement units should also seek information and feedback from the judiciary on relevant decisions and issues that have arisen in criminal, administrative and civil cases pertaining to wildlife and forest crime, as well as any problems with evidence or the manner in which investigations have been conducted.

3.2 Resources of the judiciary

The quality of the court system depends, among other things, on the human and material resources available to judges and their staff, including staffing levels of judicial authorities, staff qualifications and training, and facilities and equipment.

3.2.1 Staff and salaries

To function properly, courts need to be adequately staffed, and the salaries and other entitlements of judges need to be reflective of their responsibilities, qualifications and experience. Regrettably, many courts lack the human resources to fulfil their duties, leading to long delays. Judicial authorities in many jurisdictions suffer from severe staff shortages. In some places, posts remain unfilled for years, and salaries and allowances may be months overdue. Inadequate salaries, or the failure to pay salaries regularly, can significantly reduce staff motivation.[82]

82 See further, Part III, Section 3.4 of this Toolkit.

Judiciary: staff and salaries

- How many judges are currently employed to hear criminal cases?
- Has a staff analysis been undertaken to establish the number of judges needed (structure/position and number)? How does the expected caseload compare to the actual workload? What is the gap between the required number and actual staff?
- To which courts/judges are cases involving wildlife and forest offences referred? On what basis are they referred?
- Do criminal courts have a full complement of staff? If not, what reason is given for this?
- What types of support staff are involved in the preparation of criminal trials (administrative, paralegal or others)? How are they supervised and to whom do they report?
- What is the salary structure for judges and support staff? What is the average salary, including overtime for each level? How does this compare with the national average salary?
- Are salary levels commensurate with the responsibilities and risks involved?
- Do judges and their staff receive their pay? If so, do they receive it on time?

Additional resources:
UNODC, Criminal Justice Assessment Toolkit: Access to Justice, Volume 1 The Courts (2006) 8–9

3.2.2 Recruitment and training

As with others involved in investigating and prosecuting wildlife and forest offences, it is crucial that judges and their staff are adequately qualified and trained. If cases are heard by judges not sufficiently familiar with the relevant background, techniques, processes and legal requirements, it is possible that the integrity of the trials may be compromised.

Court systems that hire qualified applicants through a transparent selection process, that view and compensate staff as professionals, and that develop and strengthen their skills and functions with continuing training can in turn demand integrity and excellence from their staff. Conversely, inefficiency, poor service and corruption are more likely to be issues challenging justice systems and its users if court staffing is not viewed as a priority and if the function of staff as public servants is not communicated by leadership. Recruitment policies and procedures should foster inclusiveness and diversity. This can be essential to achieving organizational change, improving public perception and to better responding to institutional and community needs.

Judiciary: recruitment and training

- What are the selection processes and recruitment procedures for judges? What level of qualification is needed? How are judges selected for higher and specialized courts?
- What foundation training is given to new judges and other employees? Is specialized training on wildlife and forest offences offered to new or existing staff members?
- How often do judges and other employees receive refresher training? What ongoing and specialized training courses are available? Do ongoing and specialized training courses include modules on wildlife and forest crime? How are training needs assessed? How is training delivered?
- Does training involve participants from multiple agencies (domestic and foreign), such as the police, prosecution, wildlife and forest agencies or other?
- Are there mechanisms in place to provide judges who occasionally come across cases of wildlife and forest crime with access to relevant expertise?

Additional resources:
UNODC, Criminal Justice Assessment Toolkit: Access to Justice, Volume 2 The Independence, Impartiality and Integrity of the Judiciary (2006) 10–13

3.2.3 Facilities and equipment

Judges and their support staff require certain basic facilities and need special equipment to carry out their tasks. Basic facilities include offices, stationery and IT equipment. Judges and their staff further require access to libraries and legal databases to carry out day-to-day functions.

Analyses of available and required facilities and equipment vary greatly among jurisdictions. The role, training, responsibility and seniority of judges must be taken into account in this context. An analysis also depends on the local socio-economic conditions, the resources available, and access to financial aid and technical assistance.

Judiciary: facilities and equipment

- What are the facilities of the judiciary? Where are relevant courts located? What is the physical condition of the court buildings?
- What security measures are in place in and around court buildings?
- Is the office equipment (such as furniture, stationery and photocopiers) adequate? Are courtrooms adequately equipped and furnished?
- What communication and word-processing technology is available (such as computers, the Internet, telephones, mobile telephones et cetera)?
- Can files, evidence and electronic information be stored securely?
- Do judges and their staff have access to the relevant legislation, including criminal laws, and wildlife and forest laws?
- Where can judges access current legal material (such as statutes, case reports and other literature)? Are courthouses equipped with libraries? Do judges have access to the relevant electronic databases?

Additional resources:
UNODC, Criminal Justice Assessment Toolkit: Access to Justice, Volume 1 The Courts (2006) 19–22

3.3 Information management

The recording, maintenance and storing of information, including case files and court reports, are essential to the integrity and functioning of the judiciary. Proper and thorough information management also serves an important function for people outside the court system and the public at large, and is not limited to court processes involving wildlife and forest offences. The following tool sets out various basic mechanisms relating to record keeping and court reporting.

Court records and reporting

TOOL III.26

- How are case files created, identified and kept up to date? Can files be tracked as they move about the court?
- Is there a court registry? Are staff trained in record keeping? How is the integrity of the staff responsible for the maintenance of court information ensured?
- Under the current law, which court records are open to the public and which records must be kept confidential?
- For how long are different types of court records kept? Are there clear rules about the keeping and disposal of records? Are records sometimes lost, damaged or stolen?
- Does the current law or court rules provide for the recording of court proceedings and the manner in which this is to be done? Are all court proceedings recorded? How are they recorded? How, where and for how long are court recordings kept?
- Are law reports compiled? If so, who is responsible for the compilation and how often are law reports issued? How are law reports disseminated?

Additional resources:
UNODC, Criminal Justice Assessment Toolkit: Access to Justice, Volume 1 The Courts (2006) 13–16

3.4 Court data and outcomes

3.4.1 General court data

The collection and analysis of data pertaining to judicial proceedings involving wildlife and forest offences are integral to assess the strengths and weaknesses of the judicial system, and the workload and performance of judges, as well as to monitor how cases pass through the court system and to identify a trend in precedents that can inform future cases. Basic data include the number of trials involving wildlife and forest offences, the number of convictions, acquittals and appeals, and the length of court proceedings. Other relevant data includes, inter alia, the number and proportion of cases that go to trial, cases in which the offender pleads guilty, and cases diverted from the criminal justice system.[83] Such data should be recorded continuously and reported in regular intervals, as appropriate, and efforts should be made to ensure it is sex-disaggregated. The official court records which are used by prosecutors and judicial officials to record convictions and sentences must be kept safe, as the intentional destruction thereof can be used by criminal syndicates to delay or frustrate the judicial system.

83 Data and other information concerning prosecutions and sentencing are discussed separately in Part III, Sections 2.4 and 4.1 of this Toolkit.

TOOL III.27

General court data

- How many court proceedings involving wildlife and forest offences have been initiated? How many proceedings involved charges? How many involved appeals?
- How many cases involving wildlife and forest offences resulted in convictions? How many resulted in acquittals?
- How many convictions involving wildlife and forest offences have been overturned on appeal? What are the main reasons for appeal?
- How long do court proceedings involving wildlife and forest offences generally take?

Additional resources:
UNODC, Criminal Justice Assessment Toolkit: Access to Justice, Volume 1 The Courts (2006) 3–4
UNODC, Criminal Justice Assessment Toolkit: Cross-cutting Issues, Volume 1 Criminal Justice Information (2006) 6–7

3.4.2 Court performance indicators

Court performance indicators serve to systematically monitor the work and workload of judges and help identify areas in need of attention and improvement. Some of the most relevant indicators in this regard include the average number of cases per judge, the average length of time needed for the completion of a criminal case, the average number of trials per year, the average number of trials per judge, and the average length of a trial, and the average cost per case.

TOOL III.28

Court performance indicators

- What performance targets, if any, have been identified for those judges and others in the court system working on cases involving wildlife and forest offences? What are the specific targets for judicial authorities?
- What performance indicators are used to measure the activities of the courts?
- Who conducts the performance measurements based on these indicators? How are the results reported back to individual agencies?
- Are the performance indicators regularly reviewed and updated?

Additional resources:
UNODC, Criminal Justice Assessment Toolkit: Access to Justice, Volume 2 The Independence, Impartiality and Integrity of the Judiciary (2006) 3–4
UNODC, Criminal Justice Assessment Toolkit: Cross-cutting Issues, Volume 1 Criminal Justice Information (2006) 11

4

Part III

Sentencing and sanctions

Wildlife and forest crime is often viewed as a high-profit, low-risk activity. One reason for this perception is the fact that statutory penalties for wildlife and forest offences are often seen as too low and sentences as too lenient and difficult to obtain.

Although such views are not always based on accurate facts, they can encourage perpetrators to engage in wildlife and forest crime and they can damage the public's perception of the criminal justice system.

4.1 Penalties and sentencing

In general terms, convictions need to be followed by sentences that adequately punish the offender to an extent or in a way that is justified in the circumstances, provide conditions that will help the offender to be rehabilitated, deter the offender and other persons from committing the same or a similar offence, provide redress for the harm inflicted, and make clear that the community, acting through the court, denounces the sort of conduct in which the offender was involved. Statutory penalties for wildlife and forest offences and sentences for persons found guilty of these offences must adequately reflect the gravity of the offence in relation to the harm done and the blameworthiness of the offender. Accordingly, countries should take the measures necessary to ensure that the relevant offences (set out in Part I, Section 4 of this Toolkit) are punishable by effective and dissuasive penalties. Sentences must also be proportional to the seriousness of the offending.

The harm may be reflected in the damage that is caused or likely to be caused by the offence to the environment or individual species, plants or animals; in the injuries, loss or other harm caused to individuals; and any detriment, loss or damage caused to local communities or the public at large. The culpability of the offender is generally reflected in his or her mental state at the time the offence was committed. Generally, higher penalties are reserved for those acting intentionally, knowingly or recklessly, while lower penalties (or no punishment) are appropriate for offenders acting negligently or with no fault of their own. In addition, when imposing a penalty for a wildlife or forest offence, the court may take into account the practical measures that could have been taken to prevent, control, abate or mitigate the harm, the extent to which the person committing the offence had control over the causes that gave rise to the offence, the extent to which he or she could have reasonably foreseen the harm and whether, in committing the offence, the person was complying with orders from an employer or supervisor.

The severity of the sentence will be further determined by evidence of mitigating or aggravating circumstances presented to the sentencing judge(s) (as long as they are not already elements of the offence: see Part I, Section 4 of this Toolkit). Circumstances which tend to raise the culpability of the offender or otherwise warrant higher sentences are known as aggravating factors. Circumstances which tend to lower the culpability of the offender or otherwise warrant lower sentences are known as mitigating factors. For example, the commission of an offence for financial gain or on behalf of an organized criminal group is a circumstance that may aggravate a sentence.[84] Repeat offenders also often face higher penalties. If the perpetrator is a legal person, this can also be followed by the 'blacklisting' of the company.

In relation to wildlife and forest offences, other aggravating factors may include:

- ¬ where the offence caused a particularly serious impact on a species, environment, ecosystem, biodiversity, heritage, culture, tourism, society or economy;
- ¬ the number or type of specimens or items involved in the offending;
- ¬ where the offence involved the use of a prohibited or restricted weapon, device or method;
- ¬ where the offence took place, in whole or in part, in a protected area;
- ¬ whether any animal involved in the offence was pregnant, gravid, incubating or caring for dependent offspring at the time of the offence;
- ¬ the size of any financial or other material benefit to the offender or any other person as a result of the offence;
- ¬ the size of any financial or other material loss to another person caused by the offence;
- ¬ whether the offender attempted to obstruct the administration of justice during the investigation, prosecution or sentencing of the offence;
- ¬ whether the offender acted as part of an organized criminal group;
- ¬ where the offence was committed by a government official;
- ¬ where the offence was committed by a person in a position of trust or authority, including the holder of a relevant permit or certificate;
- ¬ whether the offender used violence, threats of violence or other harassment towards those investigators, border officials, or those tasked with protecting fauna and flora;
- ¬ the cost of rehabilitation of an area or of animals and costs of investigation and prosecution of the case.

Factors that mitigate the sentence may include:

- ¬ where the offender had a lower or minor role in the offending;
- ¬ where the offender had no prior criminal record;
- ¬ where the offender was otherwise of prior good character;
- ¬ where the offender showed remorse for the offending or sought to remedy the damage caused;

84 See further Part I, Section 5.6 of this Toolkit.

- ¬ where the person voluntarily cooperated by providing information or otherwise assisted competent authorities, including to investigate and prosecute wildlife and forest offences;
- ¬ where the offending involved no or a very minor financial or other material benefit to the offender or any other person, or caused no or did not cause a significant financial or other material loss to another person;
- ¬ the age of the offender at the time of the offending or at the time of sentencing;
- ¬ whether the offender was or is suffering from reduced mental capacity at the time of the offending or the time of sentencing.

As noted above in Part II, Sections 5.6 and 5.7 of this Toolkit, where the perpetrators were involved in facilitating crimes (e.g. corruption, money laundering, tax evasion), higher penalties and sentencing can often be obtained compared to those provided for wildlife and forest offences. Due to lack of investigations of these facilitating crimes as part of/in parallel with wildlife and forest offences, however, the prosecution is often not able to pursue additional charges under money laundering, tax evasion, corruption, non-payment of fees and other relevant laws.

TOOL III.29

Penalties and sentencing

- » What statutory penalties does the current law provide for wildlife and forest offences? What are the maximum terms of imprisonment and maximum fines for the relevant offences? Are there minimum penalties for them?
- » Who determines the sentence (for example, sentencing courts or individual judges)?
- » What are the principles of sentencing? Where are they articulated?
- » Is it possible to impose higher penalties for repeat offenders and for offences involving organized criminal groups?
- » What type of data is available on the penalties and sentences awarded by the courts?
- » What other aggravating factors can be taken into account in sentencing?
- » What mitigating factors must be considered in sentencing?
- » Are there formal or informal sentencing guidelines or criteria for wildlife and forest offences?
- » Do law enforcement units, including wildlife and forest law enforcement units, participate in sentencing hearings? Are victims heard?
- » Are there rulings for wildlife and forest cases that have been used to charge the accused for facilitating crimes like money laundering, tax evasion, corruption or non-fees payment?

Additional resources:
UNODC, Guide on drafting legislation to combat wildlife crime (2018) 36–37

4.2 Sanctions

Most convictions for wildlife and forest offences result in the confiscation of illegally acquired property and assets, and the payment of fines and damages. In serious cases, perpetrators are sentenced to terms of imprisonment. Other types of sanctions include warnings, bans from certain places, the deprivation of civic rights, bans on continuing the trade or the occupation in the course of which the offence was committed, licence or permit revocations, restrictions on being in possession of wildlife or forestry material that is related to the offence or of specific tools and instrumentalities related to the offence, the publication of the offence, remediation and restoration. In practice, a combination of these sanctions may often be appropriate.

Territory bans can be useful, for instance, in denying an offender access to an area or population of species which in turn may prevent illegal harvesting or poaching, and thus also break the illegal trade chain to transit and destination points. Bans on continuing the trade or the occupation in the course of which the offence was committed may equally be an effective means of preventing future violations. The same can be said for the suspension of logging and hunting licences, trade permits and so forth.[85]

In determining the appropriate sentence, it is pertinent that courts consider the whole range of sanctions available under current laws for natural persons and, where the defendant is a corporate entity, those sanctions that can be imposed on legal persons. Administrative penalties (sanctions) are generally imposed by enforcement agencies, with the possibility of judicial review by aggrieved parties. Civil and criminal penalties usually require judicial involvement and depend upon the law and practice of the particular State. Certain penalties, such as fines, can apply to administrative, civil or criminal contexts. Imprisonment should be reserved for the most serious offences. The imposition of sentences involving corporal or capital punishment is strongly discouraged and will be illegal in most States.

In particular, in cases where the offender is at a lower hierarchical level of a criminal network and/or is a local to the area where the crime has been perpetrated, sentencing authorities could explore a range of innovative, alternative sanctions. Alternatives to detention are often more cost-effective than imprisonment and can be more supportive of the rehabilitation and reintegration prospects of offenders. Alternative sanctions such as educational measures (whether specific to the wildlife and forest sector or not), community work (perhaps combined with a perspective of permanent employment), or financing awareness raising campaigns (environmental education signs on buses and environmental education books for local schools) have in some cases significantly reduced the rates of recidivism.

As noted in Part II, Sections 5.6 and 5.7 of this Toolkit, where the perpetrators were involved in facilitating crimes (e.g. corruption, money laundering or tax evasion), more or stronger sanctions can often be obtained, including freezing and confiscation of proceeds and other assets connected to wildlife and forest crime.

TOOL
III.30

Sanctions

- What types of sanctions for wildlife and forest offences are permissible under domestic law (such as imprisonment, fines or community service)?
- What sanctions generally follow convictions for wildlife and forest offences? What data is available on the length and types of sanctions imposed?
- Which authorities have the legal power or discretion to impose sanctions?
- Does the law permit sentencing courts to order territory bans, the revocation and suspension of licensing and trade permits, and to prohibit the offender from engaging in certain types of occupations or trades? What other sanctions may be imposed?
- What penalties may be imposed on legal persons (corporations)?
- Are there laws or regulations to seize and forfeit the instruments of the offence as part of or independent of the sentence (e.g. vehicles, storage facilities or boats)?
- Are there laws or regulations to seize and forfeit the proceeds of the offences, as part of or independent of the sentence (e.g. vehicles, houses or cash)?
- Are sanctions relating to money laundering, corruption, tax evasion, non-payment of fees and other crimes that facilitate wildlife and forest offences pursued? What has been the experience?

85 See also Part III, Section 6 of this Toolkit.

5

Part III

Restitution, compensation and restoration

In the context of wildlife and forest crime, restitution may be irrelevant in cases where property rights of the victim(s) or the State have been infringed or where environmental degradation has caused damage to land, water or property, or reduced or destroyed the victim's legitimate source of income.

Restitution thus should include the return of property. Where this is not possible, victims should be compensated by receiving payment for the harm or loss caused, the reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights.

In many instances of wildlife and forest crime, restitution would be paid to the State and not to a specific victim. In such cases, restitution should also be considered for the time and cost of the clean-up, and for the veterinary care and rehabilitation of wildlife. The housing of confiscated live animals or plants, often over lengthy periods prior to court hearings or trials, can be extremely expensive, and prosecution authorities are encouraged to seek court orders requiring the offenders to pay these costs. Following the disposal of cases, consideration may have to be given to repatriating live animals to their places of origin. In some cases, it may be impractical to return them, and alternative arrangements may need to be found. Both options can be highly costly, and courts should consider imposing orders requiring that the offender cover such expenses.

Courts in a number of jurisdictions require fines and other monetary penalties to be paid into funds that are then used for conservation purposes or to help subsidize enforcement activities. Courts should also consider turning over the items that were forfeited during sentencing to enforcement agencies for their subsequent use. This could include, for example, vehicles, boats or even aircraft.

5.1 Restitution and compensation

Restitution can be implemented in a number of ways and at various points in the system: as a condition of probation, as a sanction in itself or as an additional penalty. It can also be an outcome of a sentence, or an alternative mechanism ordered by the court, such as a victim-offender mediation process or other restorative justice process. Some jurisdictions also enable victims, such as owners or others holding a lawful right to wildlife or forests that have been damaged, injured, killed or stolen, to seek compensation or to commence civil suits against perpetrators of wildlife and forest offences. As with all measures, it is crucial that restitution

orders are effectively enforced and that the offenders face consequences should they not comply with the restitution orders.

In some cases, compensation may not be possible. For example, where a specimen has been killed or destroyed and the offender does not have the financial means to provide restitution, both the return of the specimen and a payment as compensation may be impossible, impracticable or inadequate. To ensure that persons falling victim to wildlife and forest crime are compensated for their losses, some States have adopted alternative methods of restoring the loss or damage or compensating victims, as appropriate in particular cases. Where restitution or other compensation is not fully available from the offender or other sources, States may provide financial compensation. In cases where the offender was an agent of the State or was acting on behalf of the State, the State has the responsibility to compensate victims for the harm that was caused to them. Some States have adopted legislation and established special mechanisms for providing victim compensation.

TOOL III.31

Restitution and compensation

- Do current laws and regulations allow restitution to be ordered as part of a sentence? Does this extend to wildlife and forest offences?
- Are victims able to commence civil suits against perpetrators?
- Are victims aware or made aware of these laws and regulations? Can victims of wildlife and forest offences request restitution?
- How are restitution orders enforced?
- How does the State compensate victims for wildlife and forest-related damage caused by State officials or on behalf of the State?
- Does the State offer financial compensation if the offender or other sources are unable to provide that? What laws and regulations are in place concerning victim compensation? Is there a victim compensation scheme or fund?

Additional resources:
UNODC, Guide on drafting legislation to combat wildlife crime (2018)
UNODC, Criminal Justice Assessment Toolkit: Cross-Cutting Issues, Volume 3: Victims and Witnesses (2006) 16–17

5.2 Restoration and remedial measures

If the harm caused by the offence results in environmental damage to public or private lands, it may also be possible for a court to order restoration or other remedial measures. Whether restoration is desirable or indeed possible depends on a number of factors, including the severity of the damage, the risk posed by that damage, the likely pace of natural regeneration, and the feasibility of artificial restoration and regeneration. In some cases, restitution may not be possible, for example for the felling of trees or killing of endangered animals. Preventive and monitoring activities should therefore be given higher priority.

TOOL III.32

Restoration and remedial measures

- Can a court order restoration and remedial measures in response to wildlife and forest offences?
- What restoration and remedial measures can be ordered? Do they include, for example, the time and costs for clean-ups, or the medical treatment of wildlife?

6

Part III

Other disruption measures

In some circumstances, it may not be possible or useful to prosecute and/or put wildlife and forest crime offenders on trial. In these situations, law enforcement may need to employ measures outside the criminal justice process to stop the specific wildlife or forest crime in question.

Non-criminal justice disruption measures may also be initiated as a routine tactic regardless of any difficulties encountered in the prosecution or trial.

Asset-focussed interventions (AFIs) such as seizures, forfeitures and confiscations are the most common — and often most effective — disruption measures as they have the potential to limit or deny perpetrators access to proceeds of their crimes and to the capital needed to engage in further criminal activity. Many relevant points in this relation are outlined in Part II, Section 5.6 of this Toolkit. In addition, asset denial measures such as Civil Recovery and Tax (CRT) should be considered from the beginning of an investigation in order to identify, freeze and recover assets that cannot be explained by a legitimate source (so-called unexplained wealth).

Other non-criminal justice disruption measures that can considerably reduce the capabilities of criminals and their networks include the removal of licenses to hunt, own and carry weapons; to drive; or to exercise a certain profession or other administrative measures related to an individual's profession or lifestyle (such as land use and planning permits, and compliance orders such as travel restrictions).[86] Measures such as patrols, the installation of CCTV cameras or other the use of surveillance tools can also serve to disrupt criminal activity along specific routes or in certain places and to gather intelligence at the same time.

It must be remembered that such measures may only disrupt or relieve the situation temporarily and merely cause a displacement of the criminal activity or encourage perpetrators to conceal their activities further or use more sophisticated methods and enhanced technology. To address some of these issues, it is crucial that non-criminal justice disruption measures are reviewed frequently and that relevant departments engage broadly in multi-agency cooperation to maximize the disruption efforts and effects.

86 See also Part III, Section 4.2 of this Toolkit.

TOOL
III.33

Other disruption measures

» What non-criminal justice disruption measures are permissible under domestic laws and regulations? Which ones are used in practice?
» Are law enforcement officials investigating wildlife and forest crime permitted to initiate non-criminal justice disruptive measures when they suspect criminal activity?
» Are law enforcement officials routinely considering non-criminal justice disruptive measures when confronted with cases of suspected wildlife and forest crime?
» What are the procedures to initiate non-criminal justice disruptive measures; are they workable in practice?
» Does multi-agency cooperation facilitate non-criminal justice disruptive measures? If so, is it formalized?

7

Part III

Corruption, integrity and accountability of prosecutors and the judiciary

A serious impediment to the success of any effort to combat wildlife and forest crime is a corrupt criminal justice system.

7.1 Corruption of prosecutors and the judiciary

Perpetrators of wildlife and forest crime understand that influencing the decisions made by prosecution and judiciary authorities is key in ensuring that their crimes are not punished or that they receive lenient punishment. In addition to influencing the process and outcome of criminal investigation,[87] perpetrators may also apply corrupt practices to influence the criminal justice system to their favour. If prosecution and judicial authorities are corrupt, the legal and institutional mechanisms designed to curb wildlife and forest crime, as well as any other types of crime, no matter how well targeted, remain crippled.

The prosecution authority may be bribed, influenced or pressured by senior government officials or politicians, and abuse of office may lead prosecutors to not instigate a prosecution, to delay filing the case in court, or to divert the case from the criminal justice system to an alternative resolution system which is less punitive. Another tactic used is to bribe or influence senior officers so that the case is assigned to a prosecutor or judge who has no training and experience on wildlife and forest crime or who has a significant backlog of cases and thus less time to examine the case carefully. The judge overseeing the case may be bribed or influenced, or may abuse their office, to delay starting the case or to ensure it has many/continuous adjournments.

Even after an effective investigation has been undertaken, prosecutors may be bribed or influenced (trading of influence) to contaminate, destroy or remove key information and evidence, thus watering down the case. Prosecutors may be bribed or influenced to proceed with a weak case which may result in the perpetrators not being punished. Prosecutors may also be bribed to intentionally not follow the required steps when filing a wildlife and forest case in court, resulting in the same being declared inadmissible by the court. Prosecutors may be influenced to file a case under a law that provides for more lenient penalties and sentences. For example, in Kenya, a case on the harvesting of sandalwood may be prosecuted under either the Forest Conservation and Management Act or the Wildlife Conservation and Management Act; the penalties under the Forest Act are less punitive than those in the Wildlife Act.

Where special courts have been established to hear wildlife and forest cases, the prosecuting authorities may be influenced to file a case in the wrong court, thus delaying the case being heard in the correct court. The prosecutor may be bribed or influenced to file a case in a court

87 See Part II, Section 8 of this Toolkit.

that is not easily accessible to the witnesses or even the investigating officers (e.g. in a court that would require the witnesses and investigating officers to travel far from their homes or offices), thus making it difficult for them to attend court sessions. The prosecution authority may even embezzle some of the wildlife and forest products that are part of the case exhibits, since only a sample of the exhibit may be required to be produced in court during pre-trial.

Judges may be bribed, be influenced or abuse their office to dismiss a case, acquit all or some of the persons accused or give lenient penalties and sentences (i.e. not proportionate to the crime committed). In some jurisdictions where there is no access to the judicial proceedings and/or court rulings, the perpetrators of the wildlife and forest crimes may bribe or influence the judicial officers to delay submitting the ruling to the enforcement officers or even alter the ruling.

Senior prosecution authority or judiciary officials may be bribed or influenced (trading of influence) to understaff and under-resource wildlife and forest cases (in terms of equipment, uniform, funds and other resources), or to not provide adequate training or assign inexperienced staff to handle them.

TOOL
III.34

Corruption of prosecutors and the judiciary

» Are there allegations or evidence of officers in the prosecution and judicial authorities taking or soliciting bribes or are influenced by others (including superiors), or abusing their office to:
  - Intentionally substitute, contaminate, damage, destroy or not maintain proper chain of custody of the evidence?
  - Delay commencement of court cases? Are these delays attributable to the investigating officers, prosecution authorities or the courts?
  - Ignore relevant offences?
  - Divert serious criminal cases from the criminal justice system to alternative resolution mechanisms that are less punitive?
  - To assign cases to prosecuting officers or judges that don't have prior experience and/or training on wildlife and forest crime?
  - To assign cases to prosecuting officers or judges that have significant backlogs?
  - Intentionally prosecute a weak case or not follow the required steps during the prosecution process resulting in the case being declared unprocedural?
  - Intentionally filing a case in the wrong court, in a court that is not easily accessible/reachable by the witness or the officers who investigated the case, or under a law that is less punitive?
  - Continuously adjourn cases?
  - Intentionally dismiss a case without allowing for full hearing?
  - Inappropriately acquit all the accused or some of the accused (usually the 'Big Fish')?
  - Delay submitting the ruling to the enforcement officers?
  - Alter the ruling?
  - Understaff or assign inexperienced staff to wildlife and forest cases or certain courts?
  - Under-resource or delay resourcing certain courts /duty stations?
» Are there allegations or evidence of witnesses or officers who investigated the wildlife and forest cases being bribed, threatened or influenced by others not to appear during the court proceedings to give evidence?
» Where wildlife and forest cases include evidence that the suspects were also involved in corruption, how is the corruption crime prosecuted?

7.2 Accountability and integrity of prosecutors and the judiciary

As demonstrated in the previous Section, the integrity of the criminal justice system is severely compromised if prosecutors, judges and judicial officers collude with individuals or organizations involved in illegal activities such as wildlife and forest crime. The same is true if their duties conflict with personal interests, such as situations where relatives or friends are involved in the wildlife or forestry sectors or if they are accused of an offence. It is thus important that prosecutors, judges and judicial officers, just like all government officials, are accountable for their decisions and their actions, and that clear codes are established to ensure the integrity of the prosecution and judicial authorities and their staff.

Prosecutors, judges and judiciary officers may be held accountable in a number of different ways. They may be accountable in management or business terms for their performance and productivity, perhaps against government- or community-set targets and objectives. More importantly, they must be accountable for the way in which they exercise the powers and discretion entrusted to them. The International Association of Prosecutors' 'Standards of professional responsibility and statement of the essential duties and rights of prosecutors' and the 'Strengthening Judicial Integrity and Capacity'[88] guide contain further guidelines pertaining to the accountability and integrity of prosecutors.

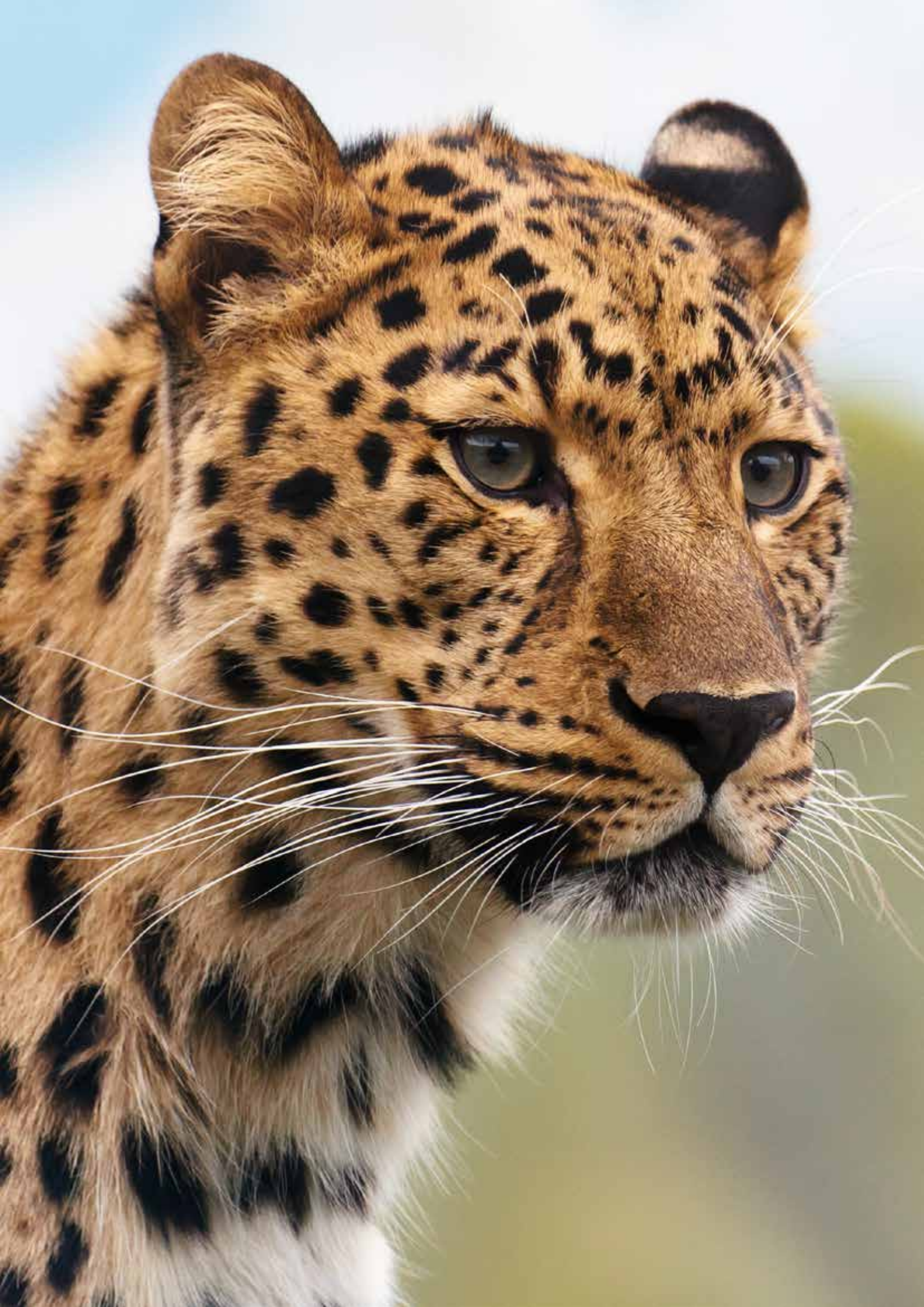
Accountability and integrity of prosecutors and the judiciary

TOOL III.35

- Does the current law establish mechanisms for the monitoring and oversight of the conduct and performance of prosecutors, judges and judiciary? If so, what are these mechanisms? How is the performance of prosecutors evaluated?
- Are there clear codes of conduct and ethical guidelines for prosecutors, judges and judicial officers? If so, what do they say? How do they work? How are they enforced and implemented?
- Do prosecutors, judges and judicial officers receive training on codes of conduct and ethical guidelines? If so, when do they receive such training? Is this training required in order to obtain a degree or licence to practice? Are prosecutors, judges and judicial officers required to undergo periodic training on codes of conduct and ethics?
- Can judges be reassigned in cases of possible or alleged bias?
- Are there avenues for civilians to lodge complaints against prosecutors, judges and judicial officers? Is there independent oversight of the complaints system? How are allegations of misconduct handled? Who handles them?
- How are prosecutors, judges and judicial officers viewed by other agencies and by the general public? Are they trusted and well respected? If not, why not?
- Is there a national strategy or plan to combat corruption in the prosecution and judicial authorities? If so, what measures does this strategy contain?

Additional resources:
UNODC, Criminal Justice Assessment Toolkit: Access to Justice, Volume 3 The Prosecution Service (2006) 22–24
UNODC, Criminal Justice Assessment Toolkit: Access to Justice, Volume 2 The Independence, Impartiality and Integrity of the Judiciary (2006) 14–15, 17–18
International Association of Prosecutors, "Standards of professional responsibility".

88 See https://www.unodc.org/documents/treaties/UNCAC/Publications ResourceGuideonStrengtheningJudicialIntegrityandCapacity/11-85709_ebook.pdf



IV INTERNATIONAL COOPERATION

Part IV

Wildlife and forest crime frequently transcends international borders. Contraband is often traded between different countries and transported from the source via one or more transit points to the destination.

Sometimes, circuitous routes are used to conceal the content, origin, or destination of prohibited shipments. Criminal groups and individual offenders can be highly mobile and evade detection, arrest and punishment by operating across multiple countries. They often take advantage of legal loopholes, enforcement weaknesses and the frequent reluctance of government authorities to engage in cross-border investigations which can be complicated, expensive and time consuming.

The weak capacity of any one State to address some of these threats effectively translates into an overall weakness in the international regime of criminal justice cooperation. For these reasons, comprehensive, multi-agency and flexible international cooperation is essential for ensuring the appropriate investigation and prosecution of wildlife and forest offences. The international community recognizes international cooperation in criminal matters as an urgent necessity, especially for trafficking offences that are transnational in nature. This, in turn, requires national efforts to comply with international standards and to encourage the convergence and compatibility of respective national laws.[89] Convergence and compatibility of national laws can be particularly challenging as they relate to many potentially sensitive matters, such as data sharing. Effective international cooperation may also require complex procedural reforms to develop greater investigation and prosecution capacity at the national level. For some States, building capacity for international cooperation within their own criminal justice system can be challenging, especially if they lack the necessary human, technical or financial resources.

A range of formal mechanisms for international law enforcement and judicial cooperation are discussed in this part of this Toolkit. As well as a variety of practical tools adopted to enable and enhance cross-border cooperation, these mechanisms also include the many legal avenues to facilitate international cooperation, information sharing, training and technical assistance that can be found in the *United Nations Convention against Transnational Organized Crime* (UNTOC) and the *United Nations Convention against Corruption* (UNCAC). [90]

International cooperation should be seen as an opportunity rather than an obstacle. If implemented and executed properly, law enforcement cooperation contributes to the effectiveness of international judicial cooperation, enabling States to seek legal assistance, extradition, the transfer of sentenced persons, the transfer of criminal proceedings and cooperation for the purposes of the confiscation and seizure of criminal proceeds and assets. International cooperation opens avenues to obtain additional evidence, access information, recover assets, freeze funds, confiscate property, and arrest and return fugitives who would otherwise be immune from prosecution.

89 Discussed in Part I, Sections 1.3 and 2.7 of this Toolkit.

90 See further Part I, Sections 2.1 and 2.3 of this Toolkit.

Part IV

1 Legal and administrative frameworks for international cooperation

1.1 Legal frameworks for international cooperation

Formal international criminal justice cooperation requires national and international frameworks that provide the legal basis for seeking assistance from another State and set out the ways, requirements and forms in which such assistance may be sought and provided. Most States have national laws that identify the conditions and mechanisms for law enforcement cooperation, mutual legal assistance in criminal matters, extradition, the transfer of sentenced persons and so forth. Bilateral treaties may be in place to make requests to or receive requests from particular States.

While at present there is no specific international treaty to prevent and combat wildlife and forest crime, instruments such as the UNTOC and UNCAC can serve as platforms for international cooperation in matters involving corruption or organized criminal groups. The various international cooperation tools available under these Conventions are explored in more detail throughout the following Sections.

The absence of national and international frameworks for cooperation may encourage some offenders to relocate themselves, their activities or their assets to States that lack such frameworks. This may protect them from prosecution and shelter their assets from confiscation. An analysis of wildlife and forest enforcement measures should therefore not only involve an inquiry into existing cooperation arrangements but also identify those jurisdictions between which no avenues for formal cooperation exist.

TOOL
IV.1

Legal frameworks for international cooperation

- What national laws cover international law enforcement and judicial cooperation in criminal matters? Does this legislation cover wildlife and forest offences? Does it cover corruption, money laundering and other offences associated with wildlife and forest crime?
- Is the State a party to the UNTOC and the UNCAC? If so, in which national laws are the international cooperation provisions of these treaties implemented?
- Is the State a party to other bilateral or multilateral treaties that make it possible to seek law enforcement or judicial cooperation or take requests from another State?
- Is the State a party to any international agreement concerning international police cooperation (for example, a bilateral agreement based on the Model [Bilateral] Police Co-operation Agreement of INTERPOL)?
- With which States relevant to combating wildlife and forest crime are there formal (or informal) avenues for international law enforcement cooperation? With which relevant States are formal (or informal) avenues lacking?

Additional resources:
UNODC, Criminal Justice Assessment Toolkit, Volume 4: International Cooperation (2006) 4

1.2 Procedure and administration

Effective and efficient formal international cooperation requires a consistent and clear operational and administrative system to issue and receive requests for cooperation to and from other jurisdictions. For this reason, most States have set up a designated central authority that serves as a focal point for international cooperation requests and ensures the smooth and speedy provision of assistance. In most States, departments of justice and attorneys-general act as the central authority to manage criminal justice cooperation with other States. Multilateral cooperation is also often conducted via international frameworks such as those of INTERPOL and the WCO.[91]

In some States there may be more than one designated authority, each competent for specified elements or stages of international cooperation. If well established, these authorities are staffed by experienced officials, have developed relationships with their counterparts in other States, and know how to frame requests to meet the requirements of other national legal systems.

The UNTOC and the UNCAC contain provisions requiring States Parties to designate a central authority with responsibility and power to receive requests for mutual legal assistance and either to execute these requests or transmit them to the competent authorities for execution. To ensure that States Parties comply with these provisions, both Conventions require States Parties to notify the UN Secretary-General of the competent authority designated to deal with such requests. The Conventions further encourage States Parties to transmit all relevant information directly to and through the competent authorities, rather than through lengthy diplomatic channels, which is, however, also noted as an alternative option.[92]

91 See further, Part IV, Sections 2.1 and 4.3 of this Toolkit.

92 *United Nations Convention against Transnational Organized Crime*, Art. 18(13); *United Nations Convention against Corruption*, Art. 46(13).

Below the central level of government, individual agencies should have mechanisms to prepare and manage cases involving international cooperation. Larger agencies may have designated staff to prepare international requests before transferring them to the central authority. For these mechanisms to function properly, investigators and other front-line staff need to be aware of the possibilities and benefits that can be gained through international cooperation.

Procedure and administrative framework for international cooperation

- Has the State designated a central authority with the power to receive and execute or transmit requests for international cooperation? If yes, what is the authority, where is it situated, how does it operate, and how is it staffed and resourced?
- Has the central authority received, executed or transmitted requests for international cooperation involving wildlife and forest offences? If yes, what has been the experience: in what circumstances/cases were the requests made or received?
- Has the central authority received, executed or transmitted requests for international cooperation involving corruption, money laundering and other offences associated with wildlife and forest crime? If yes, what has been the experience: in what circumstances/cases were the requests made or received?
- How do CITES Management Authorities and relevant wildlife and forestry enforcement units and departments engage in international cooperation? How can they obtain and share information with other agencies abroad?

Additional resources:
UNODC, Criminal Justice Assessment Toolkit, Cross-Cutting Issues, Volume 4: International Cooperation (2006)
UNODC, Criminal Justice Assessment Toolkit, Policing, Volume 3: Crime Investigation (2006).

1.3 Informal international cooperation

International cooperation serves to establish and use cross-border relationships and to maximize opportunities to engage with counterparts in other countries. In order to quickly obtain information in the wildlife and forestry sectors, it is important that the relevant ministries, government departments, specialized agencies, law enforcement or prosecution authorities can contact counterparts or partner agencies abroad that can support the investigation. Informal cooperation usually involves an agency-to-agency contact, for example between national CITES Management Authorities.[93] The shared information must, of course, be lawfully gathered in both jurisdictions.

Informal cooperation mechanisms can be extremely useful for verifying facts or obtaining background information, or for obtaining information before formal channels are employed. It is an effective tool to facilitate the fast transfer of information. However, the information obtained through such channels is not considered evidence and cannot be introduced in court. Furthermore, it may be difficult to identify contacts and information cannot always be disclosed without restrictions. Informal cooperation between law enforcement agencies may find its limits when it comes to the use of coercive powers. Nevertheless, informal sharing of information can increase the chance of effective international cooperation and is extremely useful to determine the direction of an investigation.

93 See further Part I, Section 1.5 and Part II, Section 1.3.1 of this Toolkit.

Cooperation can be expedited through the use of alternatives to formal requests, such as informal police channels and communication mechanisms, in situations when evidence is voluntarily given or publicly available, or through the use of joint investigation teams with a capacity to directly transmit and satisfy informal requests for assistance. The prior use of such informal channels can support a formal request for evidence. Informal channels are further used to obtain certain types of information which do not require coercive measures. INTERPOL and, in particular, its databases can serve as a communication hub and help disseminate informal information between states.[94] For example, INTERPOL's Wildlife Crime Working Group and the CITES Task Forces have promoted informal networking, as well as the UNODC Wildlife Inter-Regional Enforcement (WIRE) meetings, which can play an important role in creating informal connections amongst criminal justice practitioners.

Informal international cooperation

- Can there be informal (and not formally requested) exchanges of information between the country and other jurisdictions?
- Are such channels used in the context of wildlife and forest crime, or facilitating crimes such as corruption, money laundering or tax evasion?
- Which agencies and departments are involved?

1.4 Patterns and practice of international cooperation

To identify the strengths and weaknesses of existing international cooperation measures, it can be helpful to review the patterns of international cooperation for individual States. Some jurisdictions may have close and smooth working relationships with other jurisdictions, allowing for requests to be submitted and dealt with swiftly, while cooperating with other jurisdictions may be more difficult. An analysis of current case flows and the relevant data can assist in identifying best practices and in overcoming obstacles. It should be noted that international cooperation is frequently influenced by geographical, historical and political factors that may be beyond the scope of the analysis.

Patterns and practice of international cooperation

- Have national agencies been involved in seeking cooperation from or providing cooperation to another State in cases involving wildlife and forest offences (and associated offences such as corruption and money laundering)? If so, in which circumstances?
- What were the results of these requests? What delays and difficulties have agencies typically encountered in trying to seek the assistance of other States?
- From which States has international cooperation most frequently been requested? Which other States have requested international cooperation most frequently?
- Have relevant personnel and professionals received training on international cooperation? If yes, how recently? Does the training cover the modalities of extradition, mutual legal assistance, transfer of criminal proceedings, transfer of sentenced persons, and international cooperation in the confiscation of assets?

Additional resources:
UNODC, Implementation of the United Nations Convention against Transnational Crime: Needs Assessment Tools (2016) 76–78
UNODC, Criminal Justice Assessment Toolkit, Volume 4: International Cooperation (2006) 3–4

94 See further Part IV, Section 2.4 of this Toolkit.

2

Part IV

International law enforcement cooperation

International law enforcement cooperation can be enhanced through the development of more effective systems of information sharing at the bilateral, regional and international levels.

2.1 Law enforcement cooperation and information sharing

The UNTOC[95] and the UNCAC[96] contain specific provisions to facilitate law enforcement cooperation for the offences which these Conventions cover.

In many instances, international cooperation is hindered by the absence of clear channels of communication. In other cases, these channels exist but their inefficiency prevents the timely exchange of both operational information (data useful in responding to specific offences, offenders or criminal groups) and general information (data on criminal networks, on trends and patterns of trafficking, the extent of known criminal activity in a particular sector and typical modi operandi). One important obstacle may be the strict limitation to information exchange with other countries due to issues around privacy protection, or that of commercial interest.

To address these challenges, many States have law enforcement officials such as customs officers, drug enforcement officers, police liaison officers or legal attachés stationed in their embassies and high commissions around the world. Law enforcement liaison officers provide direct contact with the law enforcement and government authorities of the host State. They can develop professional relationships, build confidence and trust and generally facilitate communication and cooperation among law enforcement agencies in the States involved. It is also worth pointing out that there may well be limitations on the use of the intelligence or information obtained. When the legal traditions and systems of the States concerned are very different, liaison officers can advise law enforcement and prosecutorial authorities, both in their own State and in the host State, on how to formulate a request for assistance. The role of such liaison officers can be enhanced by ensuring that the officers have access, in accordance with the law of the host State, to all agencies in that State with the relevant responsibilities.

With regard to the cooperation between customs authorities specifically,[97] most mutual assistance is administrative in nature, under the framework of, or in line with the principles of, the

95 *United Nations Convention against Transnational Organized Crime*, Arts. 26 and 27.

96 *United Nations Convention against Corruption*, Art. 48.

97 See further, Part IV, Section 4.3 of this Toolkit.

International Convention on Mutual Administrative Assistance for the Prevention, Investigation and Repression of Customs Offences (Nairobi Convention).[98] Furthermore, multilateral administrative assistance may cover a number of areas such as control, surveillance and analysis of duties, witness interviews on behalf of another party, information exchange, the presence of officers before the court of another party and participation in investigations abroad.

Law enforcement cooperation and information sharing

- Is the State a Party to any bilateral or multilateral agreements on law enforcement cooperation and sharing of information and intelligence?
- Do the national police cooperate (formally and informally) with police agencies in other States in the collection, exchange and analysis of criminal intelligence information?
- How do specialized wildlife and forest law enforcement units cooperate at the bilateral, regional and international levels?
- Do the police, customs and other relevant law enforcement agencies exchange information and intelligence relating to wildlife and forest crime with other States? If yes, how does this occur, how often and in what circumstances?
- Where wildlife and forest offences are linked to corruption, money laundering or organized crime, how do the relevant law enforcement units cooperate at the bilateral, regional and international levels?
- Does the State have arrangements with other States for the posting or exchange of police liaison officers? Does the State have law enforcement liaison officers posted in other States? What support have the States received from liaison officers and other attachés?
- Are there foreign police liaison officers posted in the State? If so, from which States? Have these liaison officers worked on cases involving wildlife and forest crime?

Additional resources:
UNODC, Implementation of the United Nations Convention against Transnational Crime: Needs Assessment Tools (2016) 74–76
UNODC, Criminal Justice Assessment Toolkit, Cross-Cutting Issues, Volume 4: International Cooperation (2006) 18–19
UNODC, Guide on Drafting Legislation to Combat Wildlife Crime (2018) 50–51

2.2 Joint investigations

Joint investigations, in which law enforcement officials from two or more States work together, can be a useful tool to investigate and prosecute complex transnational cases and can complement other types of international cooperation. As wildlife and forest crime often involves cross-border offending, joint investigations can be particularly effective in dismantling criminal networks. They maximize direct personal contacts and address the practical problem that law enforcement officials cannot usually work across borders or, if they do, may violate national law that may permit only national officials to investigate crime.

Joint investigations involve a greater degree of cooperation than the individual measures of law enforcement cooperation outlined in Part III, Section 2.2 of this Toolkit. There are legal issues, issues of approach and trust among law enforcement agencies, and procedural questions that need to be addressed when creating and operating joint investigations teams. In addition, some practical problems exist in the organization of joint investigations, including a lack of common

98 Opened for signature 9 June 1977, 1547 UNTS 444 (entry into force 21 May 1980). The International Convention on Mutual Administrative Assistance in Customs Matters (Johannesburg Convention) was adopted by the WCO Council in June 2003 but has not yet come into force due to poor ratification numbers.

standards and accepted practices, issues regarding the supervision of the investigation and the absence of mechanisms for quickly solving these problems.

Agreements and arrangements enabling joint investigations are one way to address these obstacles insofar as they permit foreign law enforcement officials to work alongside or on behalf of their local counterparts. The creation of joint investigation teams further permits direct transmission of information without the need to use formal mutual legal assistance channels. The UNTOC and the UNCAC also encourage States Parties to conclude bilateral or multilateral agreements to establish cross-jurisdictional joint investigative bodies.[99]

Another effective form of international cooperation is engagement in regional or international joint operations with specific targets, such as wildlife trafficking, for a certain period of time. Apart from increasing the number of seizures, participating agencies may benefit from enhanced mutual understanding, trust, the establishment of effective mechanisms of cooperation and the capacity-building of officers.

Joint investigations

- Does the State have a legal or other framework permitting the creation of and engagement in joint investigations with other States? If yes, is this possible in relation to wildlife and forest offences?
- Is the State a Party to any bilateral or multilateral agreements or arrangements permitting the establishment of joint investigations?
- Has the State participated in regional or international joint operations? If so, what were the results?
- Have law enforcement and wildlife and forest agencies been involved in international joint investigation teams involving wildlife and forest offences (or associated offences such as corruption and money laundering)? If so, what has been the experience?

Additional resources:
UNODC, Implementation of the United Nations Convention against Transnational Crime: Needs Assessment Tools (2016) 73–76
UNODC, Guide on Drafting Legislation to Combat Wildlife Crime (2018) 51–52

2.3 International cooperation for purposes of confiscation

The proceeds of wildlife and forest crime and related offences, as well as the items used in their commission, are frequently located in more than one jurisdiction. For this reason, international cooperation for the purpose of confiscation is an essential tool. International cooperation requests for the purposes of confiscation are essentially mutual legal assistance requests. In these cases, it is important that the States involved agree in advance about how any confiscated assets would be recovered or shared.

A number of international instruments, including the UNTOC[100] and the UNCAC,[101] establish comprehensive regimes that permit asset recovery across borders. Article VIII, Paragraph 1 (b) of CITES also seeks to ensure that endangered species traded illegally are confiscated or, especially in the case of live specimens, returned.

99 United Nations Convention against Corruption, Art. 49; and United Nations Convention against

100 United Nations Convention against Transnational Organized Crime, Art. 13

101 United Nations Convention against Corruption, Arts. 54, 55.

TOOL
IV.7

Confiscation and seizure

- Has the State entered into any multilateral or bilateral treaties that create asset confiscation and forfeiture obligations?
- Has the State entered into bilateral treaties or other agreements in relation to asset sharing among States involved in tracing, freezing and confiscating assets originating from wildlife and forest offences?
- Has the State made, received and executed international requests to trace, freeze and confiscate assets originating from wildlife and forest offences?

Additional resources:
UNODC, Implementation of the United Nations Convention against Transnational Crime: Needs Assessment Tools (2016) 40–45

2.4 The role of INTERPOL

INTERPOL is in a unique position to facilitate cross-border law enforcement because the organization brings countries together in the fight against international crime. All Member States of INTERPOL have an established National Central Bureau to act as a focal point for cooperation with the General Secretariat, INTERPOL Regional Bureaus and other national central bureaus. These bureaus also act as liaison points between national law enforcement authorities and the General Secretariat of INTERPOL.

INTERPOL offers a number of capabilities to its Member States, including a secured channel of communication, access to a wide range of crime-related databases, coordination of global and regional operational and investigative meetings, deployment of operational support teams, organization of training and capacity building activities and development of criminal intelligence analysis.

In relation to wildlife crime, INTERPOL helps to disrupt and dismantle transnational organized criminal networks involved in wildlife and forest crime and assists Member States in enforcing national and international laws and treaties effectively. The Environmental Security Programme, supported by the Environmental Compliance and Enforcement Committee and its working groups, engages with the entire wildlife sector and supply chain to identify modi operandi of perpetrators and issue INTERPOL notices to alert Member States. Within this context, the Wildlife Crime Working Group and the Forestry Crime Working Group are specifically designed to share information and good practices in relation to wildlife crime and forest crime.

In relation to forest crime, INTERPOL supports law enforcement working across the timber supply chain to disrupt international criminal networks and assists Member States by identifying modi operandi and trafficking routes, enhancing intelligence exchange and coordinating cross-border operations and investigations that target networks involved in forest crime. A dedicated team of experts conducts training and capacity building for law enforcement agencies, with regional and national programmes in Africa, Asia and Latin America. It also supports collaboration between law enforcement and the public and private sector in addressing illegal logging and other forest crime.

INTERPOL

TOOL
IV.8

- » Is the State a member of INTERPOL?
- » What experience has the State had with INTERPOL's Environmental Security Programme? What type of cooperation has taken place?
- » Are the State's agencies responsive to requests made through INTERPOL?
- » Does the State participate in INTERPOL's Environmental Compliance and Enforcement Committee, Wildlife Crime Working Group and/or Forestry Crime Working Group?
- » Is the State aware of, or has it been involved in, INTERPOL-led wildlife operations such as the Operation Thunder series, or any Regional Investigative and Analytical Case Meetings (RIACMs)?

3 Customs cooperation

To foster closer collaboration between national customs authorities and CITES Management Authorities, the WCO and the CITES Secretariat encourage their members to set up memoranda of understanding (MOUs) as part of their overall strategy for combating wildlife and forest offences.

3.1 Cooperation between customs and CITES authorities

The *Guidelines on Co-operation between Customs Administrations and CITES Management Authorities Managing the Trade in Animals and Plants* (CITES) were developed specifically for that purpose. [102]

National MOUs between customs and the CITES Management Authority give customs an appropriate framework for obtaining information and technical assistance from the Management Authority to target high-risk consignments and travellers. Such MOUs also enable customs authorities to support Management Authorities by indicating the existence of suspicious circumstances or consignments. In turn, the increased quantity and frequency of information provided by the Management Authority enables customs to distinguish and target high-risk traffic more effectively, while permitting the majority of legitimate traffic to move freely.

In 2014, the WCO established the INAMA Project, which seeks to strengthen the enforcement capabilities of customs authorities in selected Asian, South American and sub-Saharan African States in relation to wildlife trafficking and the enforcement of CITES. INAMA serves to enhance training capacity, improve risk management and case selection, strengthen interagency cooperation, and support the drafting and implementation of MOUs.

Also in 2014, the WCO adopted the *Declaration of the Customs Cooperation Council on the Illegal Wildlife Trade*, demonstrating the commitment of the global customs community to address wildlife trafficking in a timely, coherent and coordinated manner. The Declaration stresses the importance of intelligence exchange and a close cooperation between the national and the international level.

102 See also Part I, Section 1.5 of this Toolkit.

Cooperation between customs and CITES Management Authorities

TOOL IV.9

- What cooperation, if any, exists between customs and the CITES Management Authority?
- Has a national MOU between customs and the CITES Management Authority been established? If so, what is stated in it?
- Does the MOU reflect the Guidelines on Co-operation between Customs Administrations and CITES Management Authorities Managing the Trade in Animals and Plants (CITES)?

Additional resources:
WCO, Guidelines on Co-operation between Customs Administrations and CITES Management Authorities Managing the Trade in Animals and Plants (CITES). WCO reference number Annex IV to Doc. 41.827 (classified, only available to WCO members)

3.2 ENVIRONET

ENVIRONET is one of the Customs Enforcement Network Communication (CENcomm) applications, accessible only to a closed user group. ENVIRONET serves as a global real-time communication tool for the exchange of information on environmental issues for customs officials, other law enforcement authorities and international organizations, as well as their regional networks. It allows users to cooperate with one another and share information for use in the fight against cross-border environment-related offences. Information transmitted through ENVIRONET is encrypted and secured. Information relating to all commodities that have the potential to damage the environment and that are covered by trade-related multilateral environment agreements can be exchanged via ENVIRONET. This includes endangered fauna and flora, and issues such as ozone-depleting substances, hazardous waste and materials, pesticides, chemical weapons and living modified organisms.

CITES has integrated its enforcement forums into ENVIRONET, which therefore now includes copies of CITES notifications on enforcement matters, alerts issued by the CITES Secretariat, CITES sample permits and certificates, and other relevant materials and information.

ENVIRONET

TOOL IV.10

- Do customs, police and other law enforcement agencies have access to ENVIRONET?
- Do customs, police and other law enforcement agencies share information such as new trends and routings, and concealment methods via ENVIRONET?
- What have the outcomes and experiences been?

Additional resources:
World Bank, Tools and Resources to Combat Illegal Wildlife Trade (2018) 11

3.3 Customs Enforcement Network and databases

The WCO have set up the Global Customs and Enforcement Network (CEN) and the National Customs Enforcement Network (nCEN). CEN is a global network for gathering customs-related data and information. It is available for customs authorities around the world and enables them to exchange information on customs-related offences and to share intelligence in a timely, reliable and secure manner. CEN relies on encryption technology to protect communication and data transfers.

The CEN database contains non-nominal seizure information such as date, location, species, quantity, departure, destination, conveyance, concealment methods and CITES documentation. Customs services worldwide report their seizures on a voluntary basis. Regional intelligence liaison offices analyse the data and publish analytic reports on a regular basis. A communication component facilitates cooperation between users at the regional and international levels, while the linked Enforcement Website gives them the option of consulting various enforcement-related publications such as alerts, analytical reports and information bulletins.

The national Customs Enforcement Network (nCEN) is a system developed by the WCO to assist customs authorities with the collection and storage of law-enforcement information at the national level, with the additional capability to exchange this information at regional and international levels. By installing the nCEN, administrations have the ability to manage information on all aspects of their law enforcement functions (including seizures, offences and suspected persons or business entities). The Information Communication Interface (Icomm), included in the nCEN application, allows authorities to exchange data with other nCEN users provided a legal basis exists, or to transfer non-nominal components of the data directly to the global WCO CEN database.

TOOL
IV.11

WCO Customs Enforcement Network and databases

- Do customs, police and other law enforcement authorities have access to CEN?
- Are wildlife seizures regularly reported to CEN?
- Is the available seizure information analysed? If so, by whom?
- Do customs administrations use the CEN application to collect and store information on seizures/suspected persons/offending business entities?

Additional resources:
World Bank, Tools and Resources to Combat Illegal Wildlife Trade (2018) 11

4

Part IV

Judicial cooperation

This Section explores modalities of international judicial cooperation in criminal matters, namely extradition, mutual legal assistance, the transfer of criminal proceedings and the transfer of sentenced persons.

These modalities are defined in international treaties such as the UNTOC and the UNCAC. For each State, the involvement of administrative authorities in the procedures described in this Section may vary.[103] Law enforcement agencies are frequently involved in the execution of judicial orders following requests by competent authorities.

4.1 Mutual legal assistance

Mutual legal assistance is a mechanism that enables one State to provide another State with assistance during an investigation, prosecution or other judicial proceeding. To allow law enforcement and judicial authorities to collaborate internationally, States have enacted laws permitting them to provide such cooperation. In the past, mutual legal assistance was mostly carried out through the diplomatic system of letters rogatory; nowadays it is mostly enshrined in bilateral and multilateral treaties. Such treaties commonly list the kind of assistance to be provided, the rights of the requesting and requested States relative to the scope and manner of cooperation, the rights of alleged offenders and the procedures to be followed in making and executing requests. Information sharing and agency-to-agency communication are also important to facilitate mutual legal assistance and may make it possible to provide assistance without a formal request.[104]

4.1.1 Requirements and procedures

Mutual legal assistance may be conducted on the basis of multilateral or bilateral agreements, as well as national laws that either give full effect to the relevant treaties or enable mutual assistance in the absence of such treaties. International instruments such as the UNTOC and the UNCAC include detailed provisions concerning mutual legal assistance.[105] Tool IV.12 in this Toolkit reflects the principal requirements under these treaties.

103 See Further Part IV, Section 1.2 of this Toolkit

104 See Part IV, Section 1.3 of this Toolkit .

105 United Nations Convention against Transnational Organized Crime, Art. 18; United Nations Convention against Corruption, Art. 46

Under these provisions assistance may be requested for taking evidence or statements, effecting service of judicial documents, executing searches and seizures, examining objects and sites, providing information, evidence and expert evaluations, documents and records, tracing proceeds of crime, facilitating the appearance of witnesses, and any other kind of assistance not barred by domestic law. They further apply to international cooperation in the identification, tracing, and seizure of proceeds of crime, property and instrumentalities for the purpose of confiscation.

Some of these provisions complement other existing treaties and provide the legal basis to afford mutual legal assistance in relation to offences under the Conventions. Some other provisions apply if the Parties are not bound by another treaty (or, if they are bound, if the Parties agree to the procedures where it is easier to do so).

The UNTOC and the UNCAC allow States Parties to refuse mutual legal assistance under certain conditions but also ensure that assistance cannot be refused on the ground of bank secrecy or for offences considered to involve fiscal matters. States are required to provide reasons for any refusal to assist. Otherwise, States must execute requests expeditiously and take into account possible deadlines facing the requesting authorities.

Mutual legal assistance may be hindered by the fact that the procedural laws of cooperating States can vary considerably. To facilitate these efforts, the United Nations General Assembly has adopted the *Model Treaty on Mutual Assistance in Criminal Matters. A Model Law on Mutual Assistance in Criminal Matters* has also been prepared by UNODC.

TOOL
IV.12

Mutual legal assistance: requirements and procedures

- Which national law(s) provide for mutual legal assistance?
- For which offences can mutual legal assistance be provided? Does this include wildlife and forest offences?
- To which multilateral treaties covering mutual legal assistance is the State a Party?
- What bilateral treaties on mutual legal assistance does the State have with other States? Are there States with which there are no treaties but with which a treaty would be important?
- Do existing mutual legal assistance treaties cover wildlife and forest offences, as well as offences described in the UNTOC and the UNCAC (if the State is a State Party to these Conventions)?
- Pursuant to national law, does the State require a treaty for mutual legal assistance in criminal matters? Is assistance possible without a treaty? If so, what mechanisms are used to submit and receive requests for mutual legal assistance?
- What are the State's main requirements for granting a request for assistance? Is there a dual criminality requirement under national law and bilateral treaties?
- Pursuant to national law, on what grounds can mutual legal assistance be refused?
- Has the State designated a central authority with the responsibility and power to draft and receive mutual legal assistance requests and either to execute or transmit them?
- What, if any, other agencies deal with mutual legal assistance?
- How are these processes coordinated? Has the relevant personnel been trained in the legal requirements of mutual legal assistance?

Mutual legal assistance: requirements and procedures

- » Has the State submitted and received requests for mutual legal assistance relating to wildlife and forest crime? If yes, what kind of cases did this involve and what has been the experience with these requests?
- » Is the State usually able to ensure that requests for mutual legal assistance are executed within the deadlines specified by the requesting State?

Additional resources:
UN General Assembly, Model Treaty on Mutual Assistance in Criminal Matters, UN Doc A/RES/45/117 (14 December 1990)
UNODC, Implementation of the United Nations Convention against Transnational Crime: Needs Assessment Tools (2016) 68–73
UNODC, Guide on Drafting Legislation to Combat Wildlife Crime (2018) 49–50
UNODC, Model Law on Mutual Assistance in Criminal Matters (2007)
UNODC, Criminal Justice Assessment Toolkit, Volume 4: International Cooperation (2006) 10–12

4.1.2 Letters rogatory

In the absence of a treaty or agreement, or of national laws providing otherwise, some States use letters rogatory as the customary method of obtaining assistance from abroad. A letter rogatory, a century-old practice based on the principle of comity (under which courts recognize and enforce each other's decisions), is a request from a court of one State to the judiciary of another State seeking an action or information. The request may initially pass through channels opened between the respective ministries of foreign affairs, subsequently reaching national law enforcement agencies and/or the judiciary. Letters rogatory may be used in States where multilateral or bilateral treaties on mutual legal assistance are not in force to effect service of process or to obtain evidence if permitted by the laws of the other State.

Letters rogatory

- » Which department deals with letters rogatory for international assistance? Which department/which officer is responsible for receiving and issuing such requests for mutual legal assistance?
- » On average, how long does it take for letters rogatory to be issued and processed?
- » Are letters rogatory used in relation to wildlife and forest offences? If so, how and in which cases? If not, why not?

Additional resources:
UNODC, Criminal Justice Assessment Toolkit, Volume 4: International Cooperation (2006)

4.2 Extradition

Extradition is the process whereby one State (the requested State) surrenders a person to another State (the requesting State) for the purpose of criminal prosecution or for the enforcement of a criminal sentence in relation to an extraditable offence. The extradition of the person is facilitated through a formal judicial process, often requiring an evidentiary basis for the extradition, although the final decision on surrender generally rests with the executive branch, such as the ministry of justice, the ministry of the interior or the department of attorney general.

Multilateral conventions dealing with extradition have been developed within the framework of various regional and other international organizations. The UNTOC[106] and the UNCAC[107] contain extradition provisions that may be used in relation to criminal proceedings involving wildlife and forest offences. Within the scope of the offences they cover, these conventions set basic minimum

106 United Nations Convention against Transnational Organized Crime, Art. 16.

107 United Nations Convention against Corruption, Art. 44.

standards for extradition and also encourage the adoption of a variety of mechanisms designed to streamline the extradition process. In addition, most jurisdictions have bilateral treaties that enable extradition to and from selected States. Domestically, in some States, extradition acts or similar laws set out the requirements for the administration of extradition requests to and from other States.

There are still numerous situations where existing national and international legal instruments are insufficient or do not encompass extradition for wildlife and forest crime offences. Furthermore, even when available, extradition processes can be cumbersome and there remain numerous obstacles to quick and predictable extradition. To address these issues, model treaties such as the *United Nations Model Treaty on Extradition*, which was adopted by the General Assembly, are available to States wishing to enter into new bilateral agreements. *A Model Law on Extradition* has also been developed.[108]

TOOL
IV.14

Extradition

- Which national law(s) provides for extradition?
- What offences are extraditable? Are wildlife and forest offences extraditable? If not, why not? Do existing treaties cover wildlife and forest offences, as well as offences described in the UNTOC and the UNCAC (if the State is a State Party to these Conventions)?
- To which multilateral treaties covering extradition is the State a Party?
- What bilateral treaties on extradition does the State have with other States? Are there States not included but with which a treaty would be important?
- Does the State's national law require a treaty to extradite an individual? Is the lawful extradition of an individual to another State possible without a treaty? If so, what mechanisms are used to submit and receive requests for extradition?
- What are the main requirements of the State for granting an extradition request? Is there a dual criminality requirement under national law and bilateral treaties?
- Does the State recognize the legal value of arrest warrants of other States?
- According to national law, on what grounds can extradition be refused? Are there exceptions based on certain types of offences or punishments, on human rights concerns, on the political nature of the offence or on the prohibition of extraditing nationals?
- Has the State designated a central authority with the responsibility and power to draft and receive extradition requests and either to execute or transmit them? What, if any, other agencies deal with extradition?
- How are these processes coordinated? Has the relevant personnel been trained in the legal requirements of extradition?
- Is the State typically able to ensure that requests for extradition are executed within the deadlines specified by the requesting State?
- Has the State submitted and received requests for extradition relating to wildlife and forest crime? If yes, what kind of cases did this involve and what has been the experience with these requests?

Additional resources:
UN General Assembly, 45/116. Model Treaty on Extradition, UN Doc A/RES/45/116 (14 December 1990)
UN General Assembly, 52/88. International cooperation in criminal matters, UN Doc A/RES/52/88 (4 February 1998), 2–4 and Annex: Complementary provisions for the Model Treaty on Extradition
UNODC, Model Law on Extradition (2004)
UNODC, Implementation of the United Nations Convention against Transnational Crime: Needs Assessment Tools (2016) 63–68.
UNODC, Criminal Justice Assessment Toolkit, Volume 4: International Cooperation (2006) 8–10
UNODC, Guide on Drafting Legislation to Combat Wildlife Crime (2018) 50

108 UNODC, Model Law on Extradition (2004), https://www.unodc.org/pdf/model_law_extradition.pdf

4.3 Transfer of criminal proceedings

In the context of proceedings involving wildlife and forest crime, situations may arise in which it is possible for more than one State to commence or continue an investigation or prosecution. In these circumstances, to make criminal proceedings more efficient, it can be desirable to transfer the case to the jurisdiction best suited to hear the case or consolidate the proceedings involving several jurisdictions in one place. In some cases, this may be the only way to pursue a prosecution.

The possibility of transferring criminal proceedings from one State to another can increase the likelihood of the success of a prosecution, when, for instance, another State may be in a better position to conduct the proceedings. It can also be used to increase the effectiveness of the prosecution in the State that is initiating proceedings in lieu of extradition. In other cases, it may be appropriate to transfer proceedings to a State of which the defendant is a national, habitual resident, or otherwise has close ties.

The UNTOC and the UNCAC contain specific provisions to encourage the transfer of criminal proceedings for the prosecution of offences under the conventions *"in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular where several jurisdictions are involved, with a view to concentrating the prosecution".*[109]

Transfer of criminal proceedings

- Is the transfer of criminal proceedings to another jurisdiction possible and permissible under national law? Which national law(s) provide for transfer of criminal proceedings? What restrictions does national law impose on such transfers?
- For which offences can a transfer of criminal proceedings be provided? Does this include wildlife and forest offences?
- Is the State a party to any multilateral or bilateral treaty that enables the transfer of criminal proceedings in criminal matters to and from another State?
- Does the State receive and make requests for the transfer of criminal proceedings? If so, do any of these requests involve wildlife and forest offences? How were these requests processed? What has been the experience? What difficulties have been encountered?

Additional resources:
UNODC, Criminal Justice Assessment Toolkit, Volume 4: International Cooperation (2006) 13
UNODC, Implementation of the United Nations Convention against Transnational Crime: Needs Assessment Tools (2016) 74–78
UNODC & UNICRI, Technical Guide to the Convention against Corruption (2009) 172
UN Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Working Group on International Cooperation, Practical considerations, good practices and challenges encountered in the area of transfer of criminal proceedings as a separate form of international cooperation in criminal matters, Background paper prepared by the Secretariat, UN Doc CTOC/WG.3/2017/2 (7 August 2017)

TOOL
IV.15

4.4 Transfer of sentenced persons

The transfer of sentenced persons allows for a person who is convicted and sentenced to a term of imprisonment involving deprivation of liberty in one State (the sentencing State) to serve their sentence in another State (the administering State). Such a transfer is frequently driven by human rights considerations; for example, by enabling persons to serve their sentence in an environment where the goals of rehabilitation and reintegration can be best achieved. The transfer is usually made to an administering State in which the person has social ties, especially by virtue of nationality and family ties. The decision to transfer a sentenced person may also be made on the basis of humanitarian or compassionate grounds, including the expenses incurred

109 United Nations Convention against Transnational Organized Crime, Art. 21; United Nations Convention against Corruption, Art. 47.

by family visiting and supporting relatives who are imprisoned abroad, inadequate consular services, medical or mental health needs, complaints of mistreatment, or where the conditions in the institution in which the person was convicted and sentenced fall below minimum international standards.

For correction authorities in the sentencing state, the transfer of sentenced persons provides an avenue to alleviate the burden associated with the detention of foreign nationals convicted by their courts. Difficulties of providing consular services, international relations, and the inability to supervise sentenced persons after their release also play a role in cases involving the transfer of sentenced persons.

The UNTOC and the UNCAC promote the creation of mechanisms that permit and facilitate the transfer of sentenced persons from one State to another. Both Conventions contain specific provisions encouraging States Parties to enter "into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences established in accordance with" these conventions. [110]

TOOL
IV.16

Transfer of sentenced persons

- Is the transfer of sentenced persons to another jurisdiction possible and permissible under national law? Which national law(s) provide for transfer of sentenced persons? What restrictions does national law impose on such transfers?
- For which offences can a transfer of sentenced persons be provided? Does this include wildlife and forest offences?
- Does the State have a designated central authority with the responsibility and power to oversee the transfer of sentenced persons?
- Is the State a party to any multilateral or bilateral treaty that enables the transfer of sentenced persons in criminal matters to and from another State?
- Does the State receive and make requests for the transfer of sentenced persons? If so, do any of these requests involve wildlife and forest offences? How are these requests processed? What difficulties have been encountered?

Additional resources:
UNODC, Implementation of the United Nations Convention against Transnational Crime: Needs Assessment Tools (2016) 74–78
UNODC, Criminal Justice Assessment Toolkit, Volume 4: International Cooperation (2006) 12

110 United Nations Convention against Transnational Organized Crime, Art. 17; United Nations Convention against Corruption, Art. 45.

5

Part IV

Regional and specialized initiatives

In addition to the general international cooperation measures set out in the previous sections of this Toolkit, several specialized initiatives have been created to tackle various aspects of wildlife and forest crime or to focus on particular geographical areas.

5.1 Forest Law Enforcement and Governance

The Forest Law Enforcement and Governance (FLEG) processes are regional initiatives coordinated by the World Bank and organized in cooperation with governments of producer and consumer countries. The objectives of the FLEG processes are to improve governance in the forest sector, to foster international dialogue and cooperation between wood producer and consumer countries, and to fight illegal logging and trade by improving linkages and harmonizing regulations. On the supply side, the FLEG processes address the underlying causes of illegal logging and corruption. On the demand side, the processes recognize the responsibility of consumer countries to place controls on imports and consumption to ensure that only legal timber enters the markets of consumer countries.

The regional FLEG processes are widely recognized for mobilizing political commitment to undertake remedial actions in the countries participating in these processes. They have created partnerships between various donor and development agencies that share a common concern with improving forest governance. The first regional process was launched in Southeast Asia in 2001. The *Bali Declaration* and follow-up discussions have led to agreements on the specific national and regional efforts needed to address threats to forests. The Association of Southeast Asian Nations (ASEAN) has established regional bodies and work programmes to implement the Declaration. In subsequent years, other regional initiatives have been set up by States in Africa, Latin America, Europe and elsewhere in Asia. While progress in the field has sometimes been slow and regional partnerships have had different levels of durability, overall the process demonstrates regional ownership and has regularly led to action at the national or subregional level.

The FLEG Declarations are 'soft law', meaning aspirational policy declarations. Several States have nevertheless introduced national laws to create binding frameworks. In consumer countries, the best known examples are the 2008 amendments to the *Lacey Act*, the main law in the United States against wildlife trafficking. The 2005 European Union's *FLEGT Action Plan* subsequently contributed to passing the EU *Timber Regulation* in 2010, which requires timber traders to exercise "due diligence" when selling timber on the European Union market and also prohibits the sale of illegally harvested timber in the European Union. One further example is the Australian *Illegal Logging Prohibition* Act 2012.

Within the framework of the European Union's FLEGT, a number of Voluntary Partnership Agreements (VPAs) have been signed with producer countries. These binding bilateral trade agreements between the EU and timber-exporting countries outside the EU seek to guarantee that any wood exported from a timber-producing country to the EU comes from legal sources and to help the partner country stop illegal logging by improving forest governance and regulation. Once a VPA has entered into force, it is legally binding on both sides. Where a binding agreement was not yet achieved, the EU sought cooperation through a Bilateral Coordination Mechanism (BCM) under the FLEG umbrella.

A number of States with an important role in the production of forest products and the associated marketing chain are still only marginally committed to addressing this issue. A portion of the industries operating in the countries affected by illegal logging and other forest crime continue to export products to less environmentally sensitive markets or to use products for domestic consumption.

TOOL
IV.17

Regional FLEG processes

- Does the State participate in any of the regional FLEG processes?
- Have declarations and other resolutions by the regional FLEG processes been taken into account in national policies, laws, regulations and so forth?
- Has the State entered into any bilateral or multilateral agreements with timber producer or consumer States to prevent illegal logging and monitor the timber trade? If yes, are these agreements binding? How have they been implemented and what effect do they have?

Additional resources:
EU FLEGT Facility https://www.euflegt.efi.int/home
Kleinschmit et al (eds.), Illegal Logging and Related Timber Trade – Dimensions, Drivers, Impacts and Responses, Chapter 7, IUFRO World Series Volume 35 (2016), 119–132
UNODC, Best practice Guide for Forensic Timber Identification (2016)

5.2 Wildlife enforcement networks

Capacity-building and the sharing of resources can be facilitated by dedicated wildlife enforcement networks (WENs). Several regional wildlife enforcement networks, with varying degrees of formality and organization, have emerged to facilitate cross-border cooperation among agencies involved in preventing and addressing wildlife crime across the world. These networks, along with other wildlife enforcement groups, can coordinate regional responses to illegal trade in protected species. They provide a mechanism by which States can share information and best practices and can help improve coordination and collaboration between law enforcement agencies within regions to combat wildlife crime.

Thus far, WENs have been set up in Asia, Africa and Europe as well as in South, Central and North America. The CITES Secretariat maintains a WEN directory that lists more than a dozen regional WENs.

Wildlife enforcement networks

- Does the State participate in any of the regional wildlife enforcement networks? If yes, what does this participation involve and what results did it produce?
- Have the declarations and best practice guidelines developed by regional wildlife enforcement networks been integrated into national policies, laws, regulations, administrative procedures et cetera?

Additional resources:
CITES, Directory of wildlife enforcement network (WEN) focal points (November 2021): https://cites.org/eng/resources/enforcement_focal_points
ICCWC, ICCWC Guidelines for Wildlife Enforcement Networks: A self-assessment tool for regional use (May 2020)

5.3 TWIX – Trade in Wildlife Information Exchange

The Trade in Wildlife Information Exchange (TWIX) is an online tool developed to facilitate information exchange and international cooperation between law enforcement officials across Europe and Africa. Currently, four TWIX platforms are in operation: EU-TWIX, AFRICAN-TWIX, Southern African Development Community (SADC)-TWIX and Eastern Africa-TWIX.

Each TWIX-platform consists of two main components: a mailing list and a website. The website hosts a database on national and regional wildlife seizures carried out in participating countries. Officials submit the seizure data for access and analysis by fellow officials. For customs data, transfer takes place via the WCO for some of the Member States. Besides a database, the website grants access to various resources such as information to support enforcement officials, identification guides, training materials and directories including listing of rescue centres for seized specimens. Furthermore, the website contains information on forensic institutes as well as common prices of wildlife specimens being traded.

The mailing list allows law enforcement officials (including police, CITES Management Authorities and environmental inspection services) to communicate, seek assistance and alert one another about relevant enforcement actions. It is a tool to trigger seizures, help with identification of seized specimens and/or assist in locating rescue centres.

Access to the TWIX platforms is granted exclusively to designated enforcement and management officials (such as customs, police, wildlife services and national crime units involved in wildlife trade controls) and international organizations (CITES Secretariat, INTERPOL, UNODC and the WCO), responsible for the implementation of CITES. Authorized officials receive an invitation email to activate their access to the platform.

The success of TWIX largely relies on the input information relating to new seizures and offences by national law enforcement agencies. It is not only a tool for strategic analysis but also to support field enquiries. One thing to keep in mind, however, is that the fact that many of the TWIX networks are administered by civil society could have implications for the exchange of highly confidential or sensitive information or intelligence.

Trade in Wildlife Information Exchange (TWIX)

- Do relevant State authorities have access and contribute to the available regional TWIX platform?
- Which agencies use the relevant TWIX-platform?
- How do responsible agencies record and disseminate information on the TWIX-platform?
- What has been the experience in providing, receiving and using information and in giving and seeking assistance?

Additional resources:
World Bank, Tools and Resources to Combat Illegal Wildlife Trade (2018) 11

5.4 Certification and verification schemes; private and voluntary standards

In some industries and among some businesses, voluntary standards are used to demonstrate to consumers that the products on sale are, inter alia, from a legal source, have been obtained in a sustainable way, or were produced according to accepted industry standards. For some products, especially in the timber industry, certification schemes are in place to verify the authenticity of the type of timber and its origin. Certification systems help to identify, document and prove the sustainability of the certified forest management and products. One commonality of these certification and verification schemes is that they are voluntary, market-driven systems that bring transparency to supply chains and aim to direct production and consumption patterns towards more sustainable sources and processes. This, in turn, can also bring change to investment and financial flows.

Some of the better-known voluntary certification systems in the timber industry include those of the Forest Stewardship Council and the Programme for the Endorsement of Forest Certification, which are international umbrella organizations providing independent third-party assessment of sustainable forest management (SFM). SFM standards are aimed at a level higher than what is required by legislation, introducing elements to ensure social and environmental sustainability. While the primary focus is on the forest sector, by preserving biodiversity and natural habitats certified forest management operations also have a positive impact on local wildlife and human populations. Forest certification schemes can further benefit overall conservation efforts by facilitating data collection and reporting, which can be a catalyst for research and policy development.

The World Wide Fund for Nature (WWF) stresses that forest certification is one of the most important initiatives of the last decade to promote better forest management. Certified forests are considered to be sustainably managed not only because of the logging practices used, but also in the context of broader environmental, social and economic factors, such as the well-being of workers and local communities, and the transparency and inclusiveness of decision making. The main stakeholders should participate in governance and standard setting, which has to be based on objective and measurable performance standards that are adapted to local conditions, and balance economic, social and ecological dimensions. For example, certification and accreditation by the World Bank's Program on Forests (PROFOR) requires compliance with established international frameworks, principles, criteria, policies and standards prepared in multi-stakeholder processes that are transparent, democratic and inclusive.

Other standards are used to verify the legality of timber and timber products. Such verification is seen as a first step toward full certification and is granted by independent, third-party

assessors once compliance with relevant laws, regulations, standards and procedures for forest management has been established.

Voluntary legal verification schemes fall into two categories:

- The **Verification of Legal Origin (VLO)** verifies that timber comes from a source that has a documented legal right to be harvested, pursuant to the laws and regulations of the government of the jurisdiction. Legal origin refers to meeting the administrative requirements of harvesting. Suppliers of such timber must follow and maintain documented chain-of-custody systems.
- **Verification of Legal Compliance (VLC)** expands upon the basic component of the Verification of Legal Origin by verifying that timber harvesting complies with a broader range of applicable and relevant laws and regulations related to forestry. Legal compliance encompasses a broader range of laws on environmental protection, wildlife, water and soil conservation, harvesting codes and practices, worker health and safety, and fairness to communities.

Since certification ensures that the sellers access specific markets, certification and verification schemes may be susceptible to corruption and malpractices. Organizations working under these schemes may falsely declare that their wildlife or forest products meet the set standards when they do not. There may be instances, especially within the forestry sector, where forest products that meet the set standards may be mixed with those that do not and the whole consignment may be falsely declared as meeting those standards. The organizations that have registered under the certification and verification schemes may be assessed (usually by a third party) to verify that their processes and products conform to the set standards. In case of non-conformance, officers of such organizations may bribe the assessors not to report the non-conformance or alter their reports to indicate that they are conforming.

Certification systems and schemes; private and voluntary standards

TOOL IV.20

- Does the State have national sustainable forest management standards endorsed by the Forest Stewardship Council or the Programme for the Endorsement of Forest Certification?
- Do all major stakeholder groups participate in governance and standard setting?
- Are certification and verification systems seen as causing unnecessary obstacles to trade? If so, what action has been taken to resolve this?
- Are standards adapted to local conditions? Are they based on objective and measurable performance?
- Are procedures and decision-making processes transparent and reported to the public?
- Have there been allegations of organizations under the certification and verification schemes selling or buying wildlife and forest products that do not meet the set standards? Do complaint mechanisms exist where such allegations can be reported? How are such allegations resolved; does an appeal mechanism exist??
- Is there adequate national certification capacity to implement sustainable forest management certification?
- Are voluntary and private standards known and widely applied?
- Is State funding for the forest sector impacted by certification and verification schemes?

Additional resources:
International Bank for Reconstruction and Development / The World Bank, Certification, Verification and Governance in Forestry in Southeast Asia (2012) 3–9.

5.5 Financial investigation cooperation

To trace proceeds of crime that move across borders, it is important to engage in cooperation for financial investigation that includes all actors of the criminal justice system and the private sector. Multi-agency cooperation is an important and effective response to address fraud, corruption, tax-evasion, money laundering and other financial crimes in connection with wildlife and forest crime at the national and international level.

Financial investigation units (FIUs) are uniquely positioned to cooperate and support national and international efforts for sharing financial information in accordance with global anti-money laundering and counter-financing of terrorism (AML/CFT) standards.[111] FIUs can use a range of established channels to exchange information with each other and help to generate and provide financial intelligence from the private sector. These include, for example, the 'Egmont Secure Web' established by the Egmont Group, an association of Financial Intelligence Units (FIUs). It provides a platform for the secure exchange of expertise and financial intelligence to combat money laundering. Similarly, FIU.Net is a secure computer network established by EUROPOL to facilitate information sharing between FIUs in the European Union. Information exchange and international cooperation between FIUs may also be possible through memoranda of understanding (MoUs) or other arrangements and agreements.

International financial investigation cooperation

- Is the State's FIU part of the Egmont Group of FIUs and does it use the Egmont Secure Web for communication with other FIUs? Is yes, have these avenues been used to exchange information relating to wildlife and forest crime?
- Is the FIU a member or participant in other networks or MoUs enabling information exchange and international cooperation between FIUs?

Additional resources:
ECOFEL, Financial Investigations into Wildlife Crime (2021) 60–61
UNODC, Criminal Justice Assessment Toolkit, Volume 4: International Cooperation (2006) 13–14
WCO and Egmont Group, Customs–FIU Cooperation Handbook (2020)

5.6 Asset recovery cooperation

Asset recovery networks are (often informal) inter-agency networks of law enforcement and judicial practitioners that support the complete asset recovery process. The work from the starting point of the investigation through the tracing of assets, to freezing and seizure, management and the forfeiture/confiscation, including any necessary asset sharing between jurisdictions. Examples of regional Asset Recovery Interagency Networks are: ARINSA (Southern Africa), RRAG (Latin America), ARIN-AP (Asia Pacific), ARIN-EA (Eastern Africa), ARIN-WA (Western Africa), ARIN-CARIB (Caribbean) and the Camden Asset Recovery Inter-Agency Network (CARIN).

The Stolen Asset Recovery Initiative (StAR), a partnership between the World Bank Group and UNODC, supports the implementation of the UNCAC as well as international efforts to end safe havens for corrupt funds. StAR works with developing countries and financial centers to prevent the laundering of the proceeds of corruption and to facilitate more systematic and timely return of stolen assets.

ICCWC also provides a range of operational support services that promote regional and

111 See furthe Part II, Section 5.6.2 of this Toolkit.

international cooperation. These include the Regional Investigative and Analytical Case Meeting (RIACM), the Wildlife Incident Support Team (WIST) and the Wildlife Inter-Regional Enforcement Meeting (WIRE).

Asset recovery cooperation

- » Is the State a member of any of these initiatives (or does it otherwise partake in them)?
- » Has the State made use of any of these initiatives in the context of wildlife and forest crime?

Additional resources:
UNODC, Criminal Justice Assessment Toolkit, Volume 4: International Cooperation (2006) 15–16
UNODC, GLOBE network, https://globenetwork.unodc.org/
World Bank. Stolen Asset Recovery Initiative, https://star.worldbank.org/

5.7 International forensics cooperation

The crucial importance of forensics in wildlife and forest crime investigations is covered in Part II, Section 5.5 of this Toolkit, where it was also noted that in many locations and situations the requisite forensic experts or facilities are not readily available. Relatively few States have the experts, equipment and laboratory facilities to conduct the full breadth of forensic examinations, limitations which are particularly felt in some States that are home to some of the most sought-after species.

To address this problem, some States offer their forensic capabilities to agencies in other States. Sharing forensic service provision across agencies and between countries is one way to assure and enhance the availability of forensic capabilities. To foster international cooperation, the wildlife forensic science community has also been working to set up networks of laboratory practitioners capable of providing international services on a case-by-case basis.

CITES, in collaboration with other ICCWC partner organizations, has compiled an electronic directory of laboratories that conduct wildlife forensic testing, that meet minimum quality assurance standards and that, subject to available resources, are able and willing to carry out wildlife forensic analyses upon request from other countries. The directory is reviewed regularly in order to include relevant laboratories that comply with the criteria so that States Parties know whom to approach.

For example, the Clark R. Bavin Wildlife Forensic Laboratory, operated by the USFWS, is a forensic laboratory dedicated solely to wildlife crime matters. Although its services are primarily reserved for Federal and State enforcement agencies of the United States, it has entered into a memorandum of understanding with the CITES Secretariat whereby it can provide support to any CITES Party.

At the global level, several initiatives have been set up to enable and enhance international forensics cooperation. For example, the Society for Wildlife Forensic Services (SWFS) promotes international cooperation and collaboration between laboratories and has been instrumental in creating common standards for wildlife forensic science practice. The International Forensic Strategic Alliance (IFSA) is a multilateral partnership between the regional networks of operational forensic laboratories set up to create opportunities for strategic collaboration across the global forensic science community.

At a regional level, the African Wildlife Forensics Network (AWFN) has established an international network of wildlife forensic and crime scene practitioners across the continent, with the

overarching aim of ensuring all African states have access to forensic science services to support wildlife law enforcement. The AWFN is largely comprised of government officers, but is actively supported by NGOs, UNODC and international donors.

The TRACE Wildlife Forensics Network is a non-governmental organization set up specifically to promote forensic science in wildlife conservation and law enforcement. It works directly with government agencies responsible for wildlife law enforcement around the world to build capacity for forensic analysis. Among other things, TRACE enables access to laboratory analysis in regions where wildlife forensic techniques are currently limited and promotes a coordinated approach to wildlife forensics at national and international levels.

Countries seeking to establish their own national forensics capabilities can seek assistance from experienced organizations such as SWFS, ITTO/CITES, UNODC and TRACE.

International forensics cooperation

- Do competent authorities make use of facilities of other States such as forensic labs for analysis of evidence and laboratory or other expertise?
- Do relevant authorities and forensic laboratories offer their services and expertise to agencies in other States?
- Are forensic laboratories participating in regional or global networks of laboratories involved in wildlife, timber and plant forensic testing?
- Are there or have there been efforts to establish national forensic capabilities with the aid of international organizations, donor countries or specialized non-governmental organizations?

Additional resources:
UNODC, Best Practice Guide for Forensic Timber Identification (2016) 77, 83, 103–104
UNODC, Criminal Justice Assessment Toolkit: Policing, Volume 5 Forensic Services and Infrastructure (2006) 36–37
African Wildlife Forensics Network, http:/www.africanwildlifeforensics.org
TRACE Wildlife Forensics Network, https://www.tracenetwork.org/about-trace-network/

6

Part IV

Technical assistance and aid

Many States have limited human and financial resources to thoroughly investigate wildlife and forest crime and may not have the technical know-how, expertise or equipment to carry out certain investigative techniques.

6.1 International, regional and bilateral assistance

To assist such States with technical equipment, expert personnel or financial capacity, international and regional organizations, along with individual donor countries, offer avenues through which States can request assistance, training and aid. It is, however, important to note that oftentimes assistance can also be sought from local or national sources, which may include official agencies, dedicated initiatives and non-governmental organizations (NGOs). In some places, research bodies can assist with data, know-how, technical expertise and policy advice. Furthermore, the UNTOC and the UNCAC contain provisions on economic development and technical assistance regarding the offences covered by these treaties.[112]

International, regional and bilateral assistance

- What, if any, type and level of technical assistance and aid has been sought from international and regional organizations to enhance the enforcement of wildlife and forest offences?
- What type and level of technical assistance and aid has been sought from other States (and their agencies) to enhance the enforcement of wildlife and forest laws and regulations?
- How was this assistance and aid requested? Were they successful? If not, why not?
- Are there (or have there been) initiatives funded by international or regional organizations or by other States aimed at developing aspects of policing and law enforcement in the wildlife and forestry sectors? What are the objectives of these projects? Are they being achieved?
- Do (or did) these initiatives offer training? If so, are trainers being trained to deliver cascade training programmes or to train individuals?
- Do (or did) these initiatives provide equipment? If so, was the need for this equipment identified through an independent evaluation or was it determined by a government list?

TOOL IV.24

112 United Nations Convention against Transnational Organized Crime, Arts. 29 and 30; United Nations Convention against Corruption, Arts. 60 and 62.

International, regional and bilateral assistance

- Are there plans for the maintenance and replacement of equipment? Are there examples of the same or similar equipment being provided, and then not being used or being misappropriated?
- What other support do these initiatives provide/have they provided?
- What difficulties have international, regional and other donor agencies typically encountered in trying to offer technical assistance? Are some kinds of assistance more problematic than others?

Additional resources:
UNODC, "Crime investigation", in Criminal Justice Assessment Toolkit.

6.2 Donor coordination

The provision of technical assistance and aid is not always straightforward, as it can sometimes create dependence and long-term reliance on external contributions. Fluctuations in foreign aid can also jeopardize domestic efforts. Furthermore, there can be a duplication of efforts if technical assistance and aid is not properly coordinated and administered. For these reasons, it is important that national authorities plan and coordinate the assistance received from donors and ensure that such aid is invested and used in a sustainable manner. Donor agencies, including individual States, regional and international organizations, and non-governmental organizations should coordinate their efforts to avoid duplication, ensure transparency and conduct post-implementation reviews.

TOOL
IV.25

Donor coordination

- How are the implementation, delivery and receipt of technical assistance and aid coordinated by the receiving State?
- Is there evidence of duplication? Are multiple donors providing the same or similar assistance, aid or equipment?
- Are mechanisms in place to ensure the sustainability of any sponsored activity?
- In terms of any technical assistance and aid received, were there any post-implementation reviews that helped to identify good practices that could be replicated elsewhere? Are the results of such initiatives collated and coordinated to inform future planning?

Additional resources:
UNODC, "Public safety and police service delivery", in Criminal Justice Assessment Toolkit.
World Bank Global Wildlife Program, Analysis of International Funding to Tackle Illegal Wildlife Trade (2016): https://openknowledge.worldbank.org/handle/10986/25340

V DRIVERS AND PREVENTION

Part V

While a robust and well-functioning criminal justice system, appropriate penalties and effective law enforcement are crucial to prevent and address wildlife and forest crime, such crimes cannot be solved by these mechanisms alone.

They must be concurrent with improvements in natural resource management, industrial and economic policy, rural development services and human rights, including interventions aimed at poverty alleviation for communities that rely on wildlife and forests for their livelihoods. A special feature of crimes related to natural resources is that they can arise from underlying problems in resource allocation policy and management as well as a lack of alternative sources of income. For less serious offences, they may best be managed as resource problems rather than purely as matters of criminal law enforcement.

Wildlife and forest crime can be driven by a variety of factors, including economic interests, greed, rural poverty, food insecurity, unequal distribution of available agricultural lands, parallel legal and illegal markets for wildlife and forest products, social upheavals such as war and famine, and increasingly, issues related to climate change. Engagement in wildlife and forest crime can be a regular source of income, a safety net to meet sudden needs or a lucrative opportunity to gain large profits often with little risk of being caught.

Although illegal activities in the wildlife and forest sectors are usually interconnected (for example, poor farmers who are employed as harvesters and suppliers by traffickers), it is still critical to differentiate between activities driven by need and poverty, and those driven by greed and the lure of high profit. Where need and poverty are factors that drive wildlife and forest crime, formal criminalization of activities relating to hunting and gathering of food, or to sales made to generate basic income, can be detrimental for people depending on wildlife and forest resources for their survival, and counterproductive in addressing wildlife and forest crime. Taking this into account, social, political, economic, ecological, developmental and cultural dimensions need to be considered when creating effective strategies to dissuade individuals from engaging in activities associated with wildlife and forest crime. Countries should adopt a holistic approach to preventing wildlife and forest crime, especially by reducing the susceptibility of local populations to engagement with organized criminal groups.

Part V of this Toolkit provides basic tools to assist in identifying the factors that drive wildlife and forest crime. These tools can help to better understand the causes and contexts of a given crime and to identify access points for preventive interventions. Part V also offers tools to assist in the analysis of the existing capacities and effectiveness of natural resource management, particularly of national wildlife and forest resources.

1

Part V

Actors

To prevent and combat wildlife and forest crime effectively, it is important to identify the various actors in the wildlife supply chain and the motivations that drive their activities.

The following tools are meant to assist users of this Toolkit in identifying the main actors and their roles in the wildlife and forest supply chain.

1.1 Perpetrators

1.1.1 Offender profile

Wildlife and forest crime involves a range of actors engaged in poaching, trapping, harvesting, processing, supplying, trading, importing, exporting, selling, possessing and consuming protected wild animals, animal products, and plants, including timber. These individuals and groups include, among others, subsistence users, commercial hunters, forest concession holders on the supply side, and trophy hunters, middlemen and end-users on the demand side. A legitimate commercial hunter or forest concession holder may still engage in criminal activity if they exceed permissions. There are multiple examples of legitimate (or superficially legitimate) businesses engaged in illegal hunting practices or illegal logging, though this may not necessarily be their primary income source. Offenders also include opportunistic criminals that engage in wildlife and forest crime when they see a prospect of achieving high rewards with low risks.

These actors differ not only in the role they play along value chains, but also in their socioeconomic backgrounds, preferences and motivations, in the scales of their operations and the intensity of their activity, the levels of technology and investment, their source of funding, and their skills and knowledge, including that of relevant laws and regulations. Perpetrators can occupy multiple roles, with a wide range of motivations that are both context- and value-dependent, and that can change over time. Some target their activities to specific species, while others operate more broadly. The range and number of individuals involved in wildlife and forest crime depends on a multitude of factors, including the expected end market and anticipated consumers, the unique characteristics of the trafficked item, and the capabilities and limitations of actors already involved in the trade.

Perpetrators of wildlife and forest offences may also be involved in other crimes. These include engaging in corrupt practices to facilitate wildlife and forest crime, engaging in money laundering to fund wildlife and forest crime activities or/and conceal the proceeds of these crimes, perpetrating document fraud to generate fictitious licences, permits (including CITES) and other documents, and tax evasion and avoidance of paying fees. In examining the profile of a perpetrator, it is crucial to establish if they may be involved in other crimes. Establishing if perpetrators of wildlife and forest crimes are involved in other crimes can enable enforcement agencies to identify more actors facilitating wildlife and forest offences.

In examining the profile of perpetrators, gender should also be taken into account, as the roles that women play and their motivations for engaging in wildlife crime may differ from that of men. In addition, the social status of the perpetrator has an impact on the reasons for participating in wildlife and forest crime, which in turn will be relevant when designing measures to deter offenders, and for addressing the root causes of crime. Such information is also important to address stereotypes and to ensure fair and appropriate treatment by law enforcement and other criminal justice agencies.

Offender profile

- What is the profile of persons engaged in different wildlife and forest offences? In relation to separate offences, what information is available on their age, sex, social status, education, background, economic situation, position and profession?
- Does the profiling of persons engaged in wildlife and forest offences involve assessing if they are involved in facilitating crimes such as corruption, money laundering, tax evasion, non-payment of fees?
- Do these perpetrators work independently or do they have informal contracts with middlemen, organized criminal groups, or corporate actors?
- How many perpetrators are repeat offenders? What is their profile and the pattern of their offending?
- Do the perpetrators exploit forest concessions and hunting permits?
- What role do local residents play in logging, hunting and gathering activities at the source? What is known about their motivations for engaging in wildlife and forest crime?
- Are commercial hunters and users involved?

Additional resources:
Seager, Gender and illegal wildlife trade: Overlooked and underestimated (WWF Report, 2021)

1.1.2 Organized criminal groups

After the initial act of poaching or illegal logging or harvesting, subsequent stages often require more organization and the involvement of local, regional and international middlemen, processing centres and so forth. If intermediaries are required to transfer contraband from one place to another, if sophisticated methods are needed to conceal or disguise such goods, and if international borders need to be crossed, it may become necessary for perpetrators to partner with other individuals and entities.

In such circumstances, organized criminal groups may emerge in which multiple offenders collaborate and sometimes set up complex schemes to acquire, move and sell goods illegally, to hide their activities and to launder the proceeds of their crime. Some of these networks concentrate on targeting individual species or certain crime types, while others smuggle a range of different contraband and engage in wildlife and forest crime alongside other offences. Fueled by high profits and the ability to utilize established networks, routes and operatives, established organized criminal groups have become involved in wildlife and forest crime to diversify their source of income.

Debates are ongoing as to the extent and involvement of organized crime groups in wildlife and forest crime. Depending on the species and region of the world, 'organized' can simply mean anything from two or more individuals who are loosely linked to a criminal enterprise that comprises all stages of trafficking (i.e. vertically integrated organizations). More complex criminal structures are likely to arise if access to the market is restricted due to the structure of availability of the resource, transport routes or consumers, which might primarily stem from distant urban or international markets willing to pay higher prices. Other indicators, such as organized structures, sophisticated financing, the use of corruption, fraudulent documentation, and violence may demonstrate the probability that organized criminal groups are involved.

Organized criminal groups

- What evidence and indicators show that organized criminal groups are involved in or associated with wildlife and forest crime?
- Who are these groups; what is their background; how established are they? In what (other) crime types do they engage?
- What is known about the members of these groups, their profile, background, nationality, and recruitment?
- How are these groups structured and organized? Where do they operate? Do they operate nationally and/or across international borders? Do they collaborate with other groups? Do they collude with officials; with industry?
- How are these groups equipped (such as firearms and machinery)? How are they financed?

Additional resources:
UNODC, World Wildlife Crime Report, Trafficking in protected species (2020) 19–20
Wildlife Justice Commission. Convergence of wildlife crime with other forms of organized crime (2021) https://wildlifejustice.org/wp-content/uploads/2021/05/Crime-Convergence-Report-2021.pdf

1.1.3 Armed groups

In order to finance their cause or pursue their agenda, armed groups, such as local militias, rebel groups, or terrorist organizations, may become involved in wildlife and forest crime, exploit weak law enforcement structures and seek to profit from the high prices paid for some wildlife and forest commodities. Revenues from illegal logging and ivory poaching have also been used to finance armed insurgencies or repressive governments. Armed groups may also profit from the control of timber concessions, leasing concessions to corporations in return for money, weapons and equipment, and the taxation of roads and transport through militia-held territory. The involvement of armed groups may also increase the threats to keystone species and the local human population. Local communities can be subject to threats, intimidation, forced labour, child soldier recruitment and trafficking in persons.

Armed groups

- What evidence and indicators show that armed groups are involved in or associated with wildlife and forest crime?
- Who are these groups; what is their background; how established are they? In what (other) crime types do they engage?
- What is known about the members of these groups, their profile, background and recruitment?
- How are these groups structured and organized? Where do they operate? Do they operate nationally and/or across international borders? Do they collaborate with other groups? Do they collude with public officials and/or with the corporate sector?
- How are these groups equipped (such as guns and machinery); how are they financed?

Additional resources:
Seager, Gender and illegal wildlife trade: Overlooked and underestimated (WWF Report, 2021)

1.1.4 Corporate sector involvement

While a lot has been done by legitimate market actors to mitigate the risk of their involvement in wildlife and forest crime without their knowledge, corporate enterprises, wittingly or unwittingly, are frequently involved in illegal activities associated with wildlife and forest crime. Logging companies may engage in corruption (e.g. bribery or trade in influence) to operate without logging permits or illegally encroach on protected areas, harvest protected species, exceed their logging quotas, or be unduly issued with logging concessions. Similarly, businesses involved in the wildlife trade may knowingly or unknowingly purchase animals or animal parts from illegal sources. Wildlife trading companies may collude with government officials to venture unlawfully into protected areas, catch or harvest protected species, exceed set (hunting) quotas, or use prohibited hunting or captive breeding methods.

Corporate sector involvement may also occur at the transit stage, if transportation companies knowingly or recklessly carry, import, export or launder contraband, forge documents, or fail to comply with documentation, certification, and reporting requirements. It may also involve bribes or collusion by freight handlers, airline staff and crews of container or cruise ships who support or 'turn a blind eye' to trafficking-related activities. At the destination, corporations may play a vital part if they deliberately or negligently source or supply timber, plants, live animals or animal products that come from protected areas or involve protected species. The topic of liability of corporations (legal persons) is discussed separately in Part I, Section 6.4 of this Toolkit.

Corporate sector involvement

- What evidence and indicators show that corporate entities and other businesses are involved in or associated with wildlife and forest crime? Is there an indication or evidence that these organizations are involved in other crimes that facilitate wildlife and forest offences like corruption, tax evasion and money laundering?
- Who are these entities? what is their background; how established are they? What is their usual business activity and source of income? In what (other) crime types are they known to engage?
- What is known about the persons directing these entities, their profile and background?
- How are these entities structured and organized? where do they operate? Do they operate nationally and/or across international borders? Do they collaborate with criminals and/or criminal organizations? Do they collude with public officials and/or with organized criminal groups?

1.2 Public officials

Wildlife and forest crime would not be possible on a broad, international scale without the involvement of public officials. In some cases, officials are primary offenders, directly involved in committing wildlife and forest offences, or they can be participants and associates of others. In most cases, public officials act as facilitators or beneficiaries of wildlife and forest crime. Such involvement is usually the result of corruption. While most public officials working in the wildlife and forest sectors are law-abiding and execute their duties diligently, the set up and circumstances in which many officials work can make them vulnerable to corruption and create opportunities to accept or solicit bribes or embezzle funds meant for wildlife and forest management and protection.

Corruption operates to allow either wildlife and forest crime to occur in the first place, or for it to proceed unchecked or unbalanced. It can involve low-ranking game wardens, customs officers and forest officials who accept bribes and then 'turn a blind eye' to illegal activities. It can also reach to the top levels of government that are involved in policy decisions and law-making in the wildlife and forestry sectors. High-level corruption can be particularly damaging as it causes significant financial losses to a country and may encourage corruption at the lower levels. In some cases, corruption is an intrinsic part of the patronage systems that sustain the power of a country's ruling elite. Political manipulation is a major issue in persistent illegal activities in the wildlife and forestry sectors. This often leads to a breakdown of law and order and hampers private and foreign investment in these sectors.

Because fauna and flora represent high value natural resources, often under government control or regulation, they offer an important potential source of political power, and a correspondingly high risk of abuse of that power. Consequently, corruption in the allocation of hunting concessions, in the award of logging licences, and in the issuing of permits to process, import and/or export fauna and flora is widespread. Criminals may also offer bribes to officials for information on the movement of wildlife or patrols, to allow poaching to go unnoticed, illegal specimens to pass through checkpoints or to ensure that illegal shipments are not inspected or seized. On the corporate level, corruption may be used to create the veneer of legitimacy such that illegal enterprises appear as legitimate sources of wildlife and forest products.

Corruption inhibits the ability of honest public officials to fulfil their mandate, whether that be managing and protecting wildlife resources, protecting borders, or managing and regulating

markets for wildlife products. Corruption also perverts criminal justice processes, as the absence of controls may result in evidence being lost or concealed, as well as leaving witnesses, prosecutors and other judicial officers vulnerable to corruption. Delays in expedient trial processes may increase opportunities for wrongdoing. The involvement of officials in wildlife and forest crime may also increase the mistrust of local populations, thus further undermining compliance with laws in general and wildlife and forest protection laws in particular.

The factors that enable and encourage corruption as it relates to wildlife and forest crime are manifold and they include, inter alia, a lack of transparency in processes and procedures (such as procurement), lack of accountability, conflicts of interest, limited human and technical capacity, lack of inter-agency cooperation, difficulty in bringing cases to court, lenient punishments, inadequate reporting and monitoring systems, complex and contradictory laws, regulations and bureaucracy, and irregular pay . A full analysis of the causes and manifestations of corruption is beyond the scope of this Toolkit, but in assessing mechanisms aimed at preventing and combating wildlife and forest crime it will nevertheless be useful to collate and analyse available information on the levels and characteristics of corruption and the involvement of public officials in wildlife and forest crime. In addition to the questions set out below, Part I, Section 4.3 of this Toolkit outlines corruption-related offences and Part II, Sections 2.3, 3.4 and 8 examine the accountability and integrity of law enforcement officials, prosecutors and the judiciary.

Public officials involvement

- What evidence and indicators show that public officials are involved in or associated with wildlife and forest crime? Are public officials primary actors or facilitators?
- Who are the agencies, units and individuals involved; what is their background? In what (other) crime types are they known to engage?
- What are their primary roles and responsibilities in the field of operation?

Additional resources:
UNODC, Preventing and combating corruption as it relates to crimes that have an impact on the environment: An overview. Vienna (2021)
UNODC, World Wildlife Crime Report. Trafficking in protected species (2020) 20–21
UNODC, Scaling back corruption: A Guide on addressing corruption for wildlife management authorities (2019)

1.3 Local communities and indigenous peoples

Understanding the impact of wildlife and forest crime on affected species' populations, local communities and indigenous people is crucial to preventing and addressing such crime effectively. Due to their strong links to territories, surrounding natural resources and ecosystems, indigenous peoples and local communities are often key allies in preventing and combating wildlife and forest crime. Engaging with these groups and communities is important to develop and implement meaningful strategies, laws and practical measures; to enable and facilitate cooperation and understanding; and to build support for law enforcement efforts.

This is particularly relevant for communities whose livelihoods are dependent upon wildlife and forest resources and indigenous or rural communities who are the traditional custodians of the land and who may be marginalized by existing policies and development programmes. For many indigenous, rural or marginalized groups, wildlife and forest form an integral part of their culture, particularly for food (including wild meat), shelter and medicines, and serve as a safety net during difficult times. Due to their strong connection to their resources, lands and territories, indigenous peoples and those living a traditional lifestyle are disproportionately impacted by

wildlife and forest crime such as poaching, illegal logging and the removal of timber and non-timber products from their forests. All too frequently, wildlife and forest crime go hand in hand with threats and violence, human rights abuses and serious violations of the civil liberties of the people defending their environment. Indigenous peoples and local communities' human rights, including their right to life and security, and to an adequate standard of living, including food and housing, are particularly at risk to threats of violence and human rights violations. Those who take peaceful actions to protect the environment can play a crucial role in preventing and addressing wildlife crime.

In many States, current laws related to wildlife and forests limit the rights and livelihoods of wildlife and forest-dependent communities. These communities often have difficulty obtaining land ownership rights and their access to, and use of, wildlife and forest resources are often not reflected in forest management programmes. Furthermore, wildlife and forest law enforcement measures often reinforce social injustice, limit rural livelihoods and exacerbate the non-sustainable use of wildlife and forest products. Benefit sharing mechanisms can be a method to remedy the adverse effects conservation strategies may have on local communities: the idea is to direct the monetary and nonmonetary benefits generated from a particular use of a resource back into the communities most closely associated with that resource, thus creating acceptance for that particular use.

Against this background, the role and involvement of local communities and indigenous groups should be analyzed properly, and issues such as addressing poverty and providing sustainable, alternative livelihoods need to be considered. Wildlife and forest laws, policies and programmes should ensure that indigenous peoples are consulted on any matters that might affect them, that they provide their free and informed consent before adopting measures affecting them, and that they are involved in decision-making processes that affect their lands, territories and resources (including law-making processes). Having laws and strategies in place for combating wildlife and forest crime that adversely affects local communities and indigenous groups bears the risk of exacerbating the problem by creating tensions and barriers between different groups, and by inciting more wildlife and forest crime as an act of retaliation against laws that are perceived as unfair and unjust. These measures are further discussed in Part V, Sections 4.1 and 4.2 of this Toolkit.

Local communities and indigenous peoples

- Which local communities and indigenous groups are affected by wildlife and forest crime? How are they affected?
- How do local communities explain their actions in connection with wildlife and forest use?
- What is the socio-economic situation of these communities and groups? What are their livelihoods and incomes based on? To what extent do the livelihoods and survival depend on wildlife and forest products?
- What are the legal rights of these communities and groups?
- What is the food security situation of these communities and groups? What are their coping strategies to overcome food shortages?
- How do these communities and groups protect and manage their wildlife and forest resources? Are there any community control and prevention initiatives for hunting and logging?
- Does national law respect the local customs and (property) rights of local communities and indigenous groups? Do the communities and groups have access to wildlife and forests?

TOOL V.6

Local communities and indigenous peoples

- Have any structural benefit sharing and access mechanisms been put in place for the benefit of local communities?
- Are local communities and indigenous groups participating in or consulted in the decision-making and drafting of legislation relevant to the wildlife and forests on which their livelihoods rely?
- Do local communities have their own resource planning, management and protection initiatives?
- Are social assessments of enforcement operations part of standard practice?
- Are there community-based awareness-raising and prevention campaigns?
- Are there currently ongoing initiatives looking at providing sustainable alternative livelihoods and/or addressing poverty?

Additional resources:
OAS & CITES, Handbook on CITES and Livelihoods, Part I: How to rapidly assess the effects of the application of CITES decisions on livelihoods in poor rural communities (2015)
OAS & CITES, Handbook on CITES and Livelihoods, Part II: Addressing and mitigating the effects of the application of CITES decisions on livelihoods in poor rural communities (2015)
UNODC, World Wildlife Crime Report, Trafficking in protected species (2020) 25

1.4 Consumers

The demand and wealth of consumers of wildlife and forest products — who can be located in proximity to or in places far removed from their source — can be a strong driver of wildlife and forest crime. There are many reasons for the strong consumer interest in wildlife and forest products, some of which are explored in Part V, Section 2.3 of this Toolkit. The present Section serves to gather some information on the profile of consumers and their role as actors in the illegal trade chain. Understanding what motivates a consumer to want a product derived from wildlife and forest crime can help develop wildlife and forest crime countermeasures, ranging from awareness-raising to market-based demand reduction interventions and criminalization. It is key to adopt a gender-sensitive lens to understanding and curbing consumer interest in wildlife and forest products, as the use of illegal wildlife products is highly gendered and often driven by identity norms.

TOOL V.7

Consumers

- Is there a high demand for wildlife and forest products in the country/location? What are the main products of consumption? And what are the motivations for their consumption/use? (e.g. food/proteins, medicinal, status symbol et cetera.). Is gender-disaggregated data on this available?
- Do consumers deliberately seek to obtain protected species? Do they know if their object of consumption involves protected species and/or comes from an illegal source?
- What persons or commercial enterprises buy wildlife and forest products from local communities? How do they contact local communities or indigenous groups?
- If the wildlife and forest products come from abroad, how do consumers access the market (e.g. the hospitality sector, online, physical markets, through acquaintances or family members et cetera)?
- Who are the end-users of the wildlife and forest products? Where are they; what is the destination of the wildlife and forest products? Is gender-disaggregated data available?
- Are wildlife and forest products sold in local markets or served in restaurants?

2

Part V

Context analysis

Identifying the patterns of the illegal trade in wildlife and forest products, examining the demand that drives wildlife and forest crime and exploring the impact such crime has on both humans and the environment can help to explain the causes and contexts of both specific offences and of wildlife and forest crime generally.

2.1 Trade and legal markets

2.1.1 Parallel legal markets

In contrast to markets for which there is a complete prohibition, the trade in wildlife and forest products involves goods that can be legal or illegal depending on when, where and how they were acquired, transferred, or sold. Many wild animals and plants are traded legally around the world, with no apparent threat to their long-term survival. The legal trade in wildlife and forest products is a significant global industry, generating revenue for many national economies, creating jobs and generating income for many people worldwide. Therefore, it is not always easy to clearly identify the line between legally and illegally supplied and traded products.

Parallel legal and illegal wildlife trade share many characteristics. Some species are traded both legally and illegally, meaning that illegal trade produces a level of demand that is unsustainable for the populations of the species. As discussed further in Part V, Section 2.3 of this Toolkit, demand may come from centuries-old traditional uses, but can also stem from newly advertised uses. In addition, demand for wild species is often the product of growing wealth, either because more people can afford expensive products or because it can become a form of lavish consumption. An imbalance between the limited legal supply and the high levels of demand increases the flow of products to illegal markets.

Parallel legal markets

- Are wildlife and forest products sold in legal markets? Are these legal markets also used to sell illegal products?
- Do domestic markets for wildlife and forest products exist? Do international markets for wildlife and forest products exist?
- Are wildlife and forest products exported?
- Are the products traded and shipped in live, raw or semi-processed form?
- What forms of the product are the final consumers receiving?
- Are legal markets clearly separable from illegal markets? Where do they converge and what commonalities do they share?
- Are there differences in the legality between international law (such as CITES) and national law?
- How is the legality of products determined?

2.1.2 Market-based interventions

Lucrative gains from illegal trade in wildlife and forest products make the activities involved in this trade attractive. High prices may result from the imbalance between the legal supply of wildlife and forest products on the one hand and high demand on the other. Market-based approaches to reduce wildlife and forest crime address the demand for and supply of wildlife and forest products. They target markets and prices of wildlife and forest products, as well as those of their substitutes, such as sustainably harvested resources. Common market-based strategies to prevent wildlife and forest crime include, among others, imposing taxes or other levies to raise consumer prices or reduce producer profitability, lowering tax rates on (sustainable) substitute products, and increasing the profitability of sustainably harvested production through subsidies, value adding, certification and labelling.

For example, a market-based intervention could be appropriate to address illegal activities relating to logging if increasing the legal allowable and sustainable cut may function better than increasing the capacity of law enforcement. Additionally, lowering import duties could be effective in increasing the supply of wood and, as a result, in reducing the demand for illegal domestic logs. Consumer States and industry should take advantage of these possibilities in order to reduce incentives for illegal logging. This can also include market reforms and public procurement policies that discriminate against stolen material.

The application of financial and economic instruments to the wildlife trade is relatively recent and not yet widespread. Additionally, these instruments typically rely on clearly established property rights and relatively open competitive markets — conditions that do not exist in some of the countries where legal and illegal wildlife trade occurs.

Market-based interventions

- Are market-based intervention employed to address illegal activities associated with wildlife and forest products?
- Do policies on pricing (including taxes, levies and certification requirements) create or promote illegal markets?
- Do public procurement policies promote the use of products from sustainable, legal sources?

2.1.3 Economic data

Economic data and trade statistics can be helpful in identifying the scale and patterns of illegal trade in fauna and flora. For example, data on revenue shortfalls and information on industrial capacities or utilization efficiencies are helpful in analyzing the extent to which illegal fauna and flora are being utilized.

'Shrinkage' is a term applied to an unexplained change in an inventory. In the absence of other obvious causes (such as spoilage and deterioration), shrinkage can often be attributed to theft or other illegal activity. Similarly in forestry and wildlife management, reductions in forest area, populations and wildlife numbers can be used to estimate losses due to crime. Regrettably, in many cases involving natural resources, resource assessments, inventories and wildlife and forest censuses are very out of date, or so inaccurate and imprecise as to be of little practical value in estimating losses due to crime.

Another method to identify illegal activity is to use comparisons of data on production, consumption and trade in wildlife and forest products. Comparing, for example, log deliveries and mill output, or export records in the sending country with import records in the receiving country, can reveal disparities. These differences can indicate the potential magnitude of theft, smuggling and transfer pricing. Similar consistency checks between forest revenues and reported harvest can also be useful.

Economic data

- » What economic data on trade in fauna and flora is available?
- » Do unaccounted changes in inventories reveal any illegal activity?
- » Are there significant trade discrepancies between input-output and export-import that suggest the occurrence of illegal activity?

2.2 Supply chain integrity

The trade in wildlife and forest products involves complex supply chains that often span different States and continents. The supply chain refers to the places, stages and people involved in the flow of goods, services and finances from the place of origin to the end consumer. Supply chain integrity refers to measures that are designed to ensure that no commodities of illegal origin are introduced into otherwise licit market supply chains. The basic stages of the supply chain for wildlife and forest products involve the steps below, but they may not always be linear and for some products and some stages they may repeat:

1. **Preparatory activities:** actions geared towards ensuring access to the location and the land where the fauna or flora is located, as well as to the tools and contacts needed to proceed with the harvest, transport and sale of the targeted fauna or flora. This may also include securing land use rights, certificates and permits;
2. **Hunting, logging, harvesting:** physical removal and extraction of the wild fauna or flora from its original habitat;
3. **Transport:** movement of the harvested fauna or flora to the location where it will be processed (if required), consolidated or sold;
4. **Processing**: modification of the wild fauna or flora in order to extract or manufacture the end product that will be sold to the consumers, if required;

5. **Export/Import:** relevant for international transportation, involving source, destination and sometimes transit countries; and
6. **Sale:** the exchange of the commodities (products or live specimens) for money or other commodities.

2.2.1 Geographic supply chain

The global supply chain for wildlife and forest products is frequently understood as involving source, transit, and destination countries. In the specific context of wildlife and forest crime, a source country is where the wildlife is initially extracted, exploited, taken, killed, or poached. A transit country is one through which illegal wildlife and forest products move (sometimes without formal clearance processes, declarations or payment of duties). A destination country is where these products are sold and consumed for various purposes. Source, transit and destination points are not mutually exclusive and one State or region can serve as multiple points along the supply chain.

2.2.2 Actors chain

A further way is to examine the actors along the wildlife and forest supply chain along the trade route. This can help to identify the links between the actors and trace the illicit financial flows connected to the illegal wildlife and forest trade.

The following categories are one way to classify the various actors involved:

- Poachers are those who illegally harvest, catch, poach, kill or capture the fauna or flora at the source, in contravention of national laws.
- Runners and brokers purchase illegal wildlife or forest products directly from the poacher at the source and transport it to the next actor in the supply chain.
- Intermediaries are usually mid- to high-level traffickers that take care of the logistics required for transporting and consolidating illegal wildlife or forest products. They work as middlemen between brokers and exporters.
- Exporters/importers are key actors in moving the illegal wildlife or forest products from country to country and overseas. They may be responsible for preparing transportation documents and concealing the products.
- Wholesalers purchase illegal wildlife or forest products in the destination countries and distribute them to retail traders.
- Retailers sell the illegal wildlife or forest product to the end consumer.
- Consumers pay the retailers, thus providing the motivation for further criminal activity.

Which actors are involved will depend on the commodity that is traded and on the individual circumstances of each case. While all actors may be involved in the trade of some species, other species may go directly from the poacher to the retailer. In this context, it is also worth noting that some illicit activities are seasonal, especially with regard to migratory species and some plants, so that interventions may need to be targeted at certain times of the year. It may also be the case that poachers and illegal harvesters may turn to other commodities, such as illegal mining, if what they usually seek is not available or profitable.

2.2.3 Supply chain

Understanding the supply chains for different products goes a long way in understanding the actors and the business practices involved in this trade. It can help clarify how criminals and criminal organizations become involved, how they are organized, how organized criminal groups exploit licit business practices, what financial flows accompany the illicit trade and what other crimes (e.g. corruption, money laundering, tax evasion, non-payment of fees) facilitate the illicit wildlife and forest trade. Criminal organizations may, for instance, introduce products from illicit sources into supply chains of the licit market to get better access to potential buyers, who may in turn be unaware of the illegal origin of the product they purchase. Significant quantities of wildlife and forest products are laundered through licit supply chains, often facilitated by fraudulent documents, corruption or other types of fraud.

Documenting the supply chain is one measure to protect its integrity. This is often supported by the use of marking systems such as barcodes, stamps, laser marking, or special paints and indelible ink. Inspections of such markings at the source, at checkpoints and transit points, at borders and by retailers, as well as random inspections in a range of locations, are one way to validate the source and authenticity of the product and to ensure the integrity of the supply chain. This necessarily also includes those stages of the supply chain where raw material is processed, where timber is milled, or where other conversion of fauna and flora takes place. These measures are, however, only useful if commodities are declared accurately; in many instances, this is not the case, and declarations are false, or wildlife and forest contraband is hidden among other cargo. DNA tests can be used at various points in the supply chain to ensure that species are accurately declared.

Supply chain integrity benefits from making some parts of the trade transaction process electronic, thereby reducing opportunities for corruption, which may also include exploring new technologies like blockchain. CITES, for instance, has introduced various measures to strengthen its permits system and supports its Parties that express interest in implementing the e-CITES permit system.

Supply chain analysis

- What role(s) does the country play in the supply chain of wildlife and forest products?
- What economic data on trade in fauna and flora is available?
- What are the places and who are the actors involved in the supply chain of wildlife and forest products?
- How are supply chains monitored?
- Do unaccounted changes in inventories reveal any illegal activity?
- Are there significant trade discrepancies between input-output and export-import that suggest the occurrence of illegal activity?
- What measures have been adopted to ensure the integrity of supply chains? How successful are they?
- Have official or independent studies been conducted to document and analyze supply chains and supply chain integrity for wildlife and forest products?

TOOL V.11

2.2.4 Value chain

The concept of supply chain may be supplemented by that of the value chain, which refers to how the value of the product changes at each stage of the supply chain. Depending on the stage and the commodity, these changes can be significant. A detailed understanding of the value chain of illegal wildlife and forest products, from producers through intermediaries to end consumers, allows for identifying vulnerabilities that may enable disruption of illegal markets and the value chain. Value chain analysis can be particularly useful in identifying other crimes that facilitate wildlife and forest crime (e.g. money laundering, corruption, tax evasion or non-payment of fees) which may be key in disrupting financial flows and to support financial, corruption, money-laundering and tax evasion investigations.

Value chain analysis

- What is the available knowledge on the value of illegally traded wildlife and forest products at source and transit stages through the country?
- What is the available knowledge on amounts/value relating to corruption, money laundering, tax evasion, non-payment of fees and other crimes that are linked to wildlife and forest crime?

Additional resources:
ECOFEL, Financial Investigations into Wildlife Crime (2021) 22–25
UNODC, World Wildlife Crime Report, Trafficking in protected species (2020) 22, 26–27

2.3 Uses of wildlife and forest resources

Wildlife and forest products are the source of a wide range of goods and are used in various ways. They may be used locally (for example, for direct consumption), or they may pass through a complex processing and trade chain from supplier to end-user. Analysing the use and consumption of wildlife and forest resources can be helpful in identifying the demand that drives wildlife and forest crime. Types of demand and levels of consumption change over time, sometimes rapidly, as uses and commodities move in and out of fashion.

One main differentiation regarding the use of wildlife and forest products can be made between subsistence and commercial use. The motives that drive traditional hunting, logging and taking for subsistence and local consumption are different from those that drive large-scale commercial activities to serve bigger, often international, markets. Much of the international demand involves luxury goods; such consumption is driven by choice rather than necessity. Whether in the case of subsistence or commercial use, analysing the use of wildlife and forest resources requires understanding the role played by gender dynamics. For example, the use of illegal wildlife and forest products in commercial consumer markets is often driven by identity and gender norms, claiming to enhance virility, or beauty and fertility.

2.3.1 Subsistence

In many cases, the use of wildlife and forest products is a means of subsistence for communities and individuals that depend on wildlife and forests for their livelihoods and food security. The lack of alternative sources of food and income, and in a broader sense, the lack of rural and economic development, force some groups to rely on wildlife and forest resources for their existence. In these cases, activities that are considered to be illegal are driven by basic needs or traditional ways of living.

Many people around the world rely on wild-sourced animals and plants for food. Food consumption of wild animals covers a great range of species ranging from primates to insects, wild herbivores, wild cats, and reptiles. In some places, wild-sourced animals feature as elements of staple diets, especially if their meat serves as a protein supply because alternatives are not available or not affordable. Traditional cooking, especially in rural areas, often uses products sourced from the wild. This may involve use of the entire animal, with meat being used for food and other parts used for, inter alia, medicinal purposes, clothing and tools.

The use of wildlife as food and as medicine is closely related, not least because of the persistent belief that consumption of wild products is beneficial for health.

Elsewhere, hunting and other forms of wild-sourcing of pelts and skins remain a source of livelihoods for people in rural areas where the source species are abundant, including areas where hunting is enshrined as a right of indigenous people.

With regard to timber and forest products, it is often the chronic imbalance between a high demand for timber, especially fuel wood, and its low (legal) supply that fosters illegal logging. In addition, a lack of affordable alternative sources of energy is forcing the rural poor in many countries to become involved in illegal activities. In a significant number of countries, the illicit production and sale of charcoal, some of which occur outside national borders, are having major impacts on forests. Interventions that address the improvement of economic conditions in rural areas and economic development in general could help to decrease illegal fuel wood extraction.

Subsistence

- What wildlife and forest products are used by local communities?
- Are the wildlife and forest products used for food, firewood, clothing, medicine, construction, tools or other purposes? Do men and women use or value these products differently?
- Are these products used for personal/local consumption or for sale? If for consumption, is there evidence to suggest these products are being consumed for any other purpose beyond subsistence?
- To what extent do livelihoods of local communities depend on these wildlife and forest products? To what extent do communities have legal access and capacity to sustainably manage these products?
- Does a high demand for fuel wood and a lack of sustainable alternatives force local communities to (illegally) use forest products?
- Does a lack of access to forests force local communities to illegally hunt and harvest, including in protected areas?
- Could sustainable substitutes be used instead of the wildlife and forest products under review?
- What kinds of livelihoods could be introduced to substitute the protected wildlife species and forest products?

2.3.2 Income generation from wildlife and forest crime

In some cases, gains made through participation in illegal wildlife and forest activities can serve as a regular source of income or other benefits. In other cases they provide occasional sources of income or safety nets in times of hardship. Depending on the scale and circumstances, wildlife and forest crime can be lucrative and generate large profits encouraging criminals, including organized criminal groups, to engage in this crime type on a continuing basis.

For example, one area that is growing in international attention is the commercial trade of bushmeat. With increasing human populations and increasing affluence, particularly in urban areas, the demand for bushmeat is growing, which is translating into an increasing commercialization of bushmeat.

Income generation from wildlife and forest crime

- Are wildlife and forest products used to supplement agricultural incomes of local communities?
- To what extent do local people generate income through wildlife and forest crime? Is this a main source of income or do they supplement regular income with illegal activities?
- Do people engage in wildlife and forest crime to meet unforeseen or emergency needs for cash income?
- Does involvement in wildlife and forest crime support other needs such as drug use, alcohol consumption, demand for material goods (such as mobile phones) or is used for family needs?
- What realistic alternatives to wildlife and forest crime for income generation are available?

2.3.3 Culture and tradition

Animals and plants illegally sourced from the wild sometimes find use in traditional and religious practices, some of which are rooted in local beliefs and customs. For example, traditional medicines, upon which many people rely for primary healthcare, sometimes involve components derived from illegally sourced wild animal or plant species. Similarly, many tonics and supplements include derivatives from illegally sourced wild animals or plants. Consumption of such products is often based on the belief that they may confer some qualities of the animal or plant from which they come.

The use of such products is not limited to persons sharing this belief: the use of wild animals and plants is deeply enshrined in traditional medicines, which makes it all the more challenging to change consumer behaviour, even if endangered species, prohibited goods or illegal activities are involved. Captive breeding or plantation alternatives, if available, are regarded by many consumers as inferior and less efficient than products based on wild-sourced material. Because of their (presumed) healing effect, the same animal and plant species used in the production of medicines, tonics, and supplements are also often consumed for food.

Culture and tradition

- What kinds of wildlife and forest products are consumed in traditional medicine as tonics or for other health-related purposes? What are their gender dynamics (i.e. are some products preferred by men/women?)
- Are wildlife and forest products used for traditional ceremonies or other cultural practices?
- Is there a legal mechanism for communities to access these products in a sustainable manner?
- Are certain beliefs and social or wealth status linked with wildlife and forest products?
- Is the possession of wildlife and forest products socially accepted, priced or stigmatized?
- Could sustainable substitutes be used instead of these wildlife and forest products?

2.3.4 Leisure activities: tourism, pets and sport

A diverse group of users exists on the demand side of the wildlife and forest trade.[113] These include consumptive end-users in markets and restaurants and users such as tourists and trophy hunters. Some resources can be adversely affected by the impacts of recreational use and tourism. Examples include the collection of corals, the disturbance of nesting sites and trophy hunting.

Exotic and rare animal parts and plants are frequently sold as souvenirs, collectables and curios and then used for decoration or ornamental purposes. This sometimes involves whole animals that are stuffed or insects or small animals that are encased in plastic to put on display in private homes or collections. The rarer the species, the more such items may serve as status symbols and the higher the price they may attract. Tourists frequently purchase souvenirs that are made from local wildlife and may thus, wittingly or unwittingly, acquire objects derived from endangered species or from illegally wild-sourced animals or plants.

The majority of the trafficking of live animals occurs in the context of the pet trade, or for private collections or zoos. Just as people purchase animals for use as pets, many plants are traded internationally for use in gardens, parks, and private homes. Trafficking in living species involves captive-bred and wild-sourced specimens, some of which are protected species. Dedicated collectors frequently seek to obtain endangered species and are prepared to pay high prices for them, regardless of whether they are traded legally or illegally. While some consumers are willing to pay premium prices for wild-sourced animals or plants, depending on the species, it can also be cheaper to source from the wild which, in turn, can stimulate further demand. Breeders may also seek to obtain wild-sourced animals or plants in order to increase genetic diversity of breeding stock.

Leisure activities: tourism, pets, and sport

- Which leisure activities involve wildlife and forest products?
- Which protected or regulated wildlife and forest products are collected to keep at home or sold as pets or ornaments?
- Which species are hunted and how are quotas determined? What positive/negative impacts arise from such hunting programmes?
- What positive/negative impacts do tourist activities have on wildlife and forest resources?
- What captive breeding facilities exist in-country and for which species and use types? How are these licensed or regulated, and by which agency?

2.3.5 Luxury goods

Some wildlife products have attained such status and scarcity that their value has become detached from any practical uses they may have had historically. These materials may be fashioned into jewellery, décor items, or objects of art, with the craftsmanship serving as the vehicle for the precious goods to be conspicuously displayed. The products that lend themselves to this role tend to combine two key factors: they are traditionally recognized as precious and their supply is inherently limited. In other words, they convey prestige precisely because attaining them legally is difficult. Some illegally-sourced wildlife, such as ivory and rhino horn, may subsequently be processed to pass as genuine antique objects, like expensive carvings and libation cups.

113 See also Part V, Section 1.5 of this Toolkit.

For example, in many places the use of wild-sourced animals and plants in cooking is not a result of necessity, but rather a reflection of status or 'fashion trends' in food consumption. Even if captive-bred alternatives are readily available, some consumers prefer to buy wild-sourced products. Exotic plants and the meat of endangered, wild-sourced animals sometimes feature as novelty food on restaurant menus, often as luxury dishes sold for high prices. There are very few popular foods, either animal or plant, that cannot be cultivated. Even rather exotic meats are commercially farmed to meet niche demand. However, wild-sourced foods may be valued precisely because they come from the wild. Food consumption is also a main driver for the use of illegal fishing methods, fishing in protected areas, and over-fishing. Many marine species are threatened not because they are target species, but because they are bycatch.

Demand for bushmeat is growing on account of expanding human populations as well as increasing affluence, particularly in urban areas where bushmeat and wild meats are often considered to be a delicacy. Demand for bushmeat can also exist within diaspora communities wishing to maintain a culinary familiarity with home, resulting in smuggled bushmeat crossing international borders via air and seaports.

Furthermore, wild-sourced plants are still used widely in the cosmetics and fragrance industry, especially if cultivation is not practical or not cost-effective. As wild plant populations are not well documented, it is difficult to determine whether the taking of plants is sustainable or whether it contributes to the extinction of species and the degradation of ecosystems. Increases in demand can lead to rapid overharvesting and when the species in question is slow to recover, as is the case with many tree and succulent species, the impact can be severe.

Animal skins and furs, bird feathers, and fibres have been used to make or decorate clothing for centuries. Their main use today is in the fashion industry where mammal, reptile, bird, and fish products are used to make coats, jackets, pants, footwear, bags, belts, purses and other accessories. Many companies have substituted wild-sourced material with material stemming from captive breeding farms or with synthetic fabrics and material. Expensive, high fashion items, however, continue to be produced from wild-sourced animals, especially if captive breeding is not feasible or not cost effective, and if consumers willing to pay high prices specifically demand genuine, wild-sourced material. The use of animals and animal products in industrially-manufactured clothing is all the more contentious because of the volatile nature of the fashion industry, which is subject to trends and changes such that material that is fashionable in one season is out of fashion the next. Demand can thus change suddenly and rapidly, which can make farming of animals a risky economic proposition. Wild-sourcing, on the other hand, requires less investment and can thus involve fewer financial risks.

TOOL
V.17

Luxury goods

- What kinds of wildlife and forest products are consumed as delicacies or other luxury food items? Do they involve protected or endangered species? Where are they legally sourced from? Can they be replaced with products from captive breeding facilities or farms?
- What kinds of wildlife and forest products are used to produce (sell, consume, et cetera.) cosmetics or fragrance? Do they involve protected or endangered species? Where are they sourced from? Can they be replaced with products from sustainable sources?
- What kinds of wildlife products are used in the fashion industry? Do they involve protected or endangered species? Where are they sourced from? Can they be replaced with synthetic material or with products from captive breeding facilities or farms?

2.3.6 Agricultural and forest activities

Land cover change

Land cover change refers to the human modification of the earth's terrestrial surface. For thousands of years, humans have been modifying land to obtain food, prepare shelter and provide for other essentials. The current extent and intensity of land cover change is far greater than ever before, driving unprecedented changes in ecosystems and environmental processes, which pose considerable risk for ecosystems, wildlife and natural resources.

Land cover change

- How has the land cover changed over time? What are the main drivers for land cover change?
- Is deforestation occurring in the area of interest?
- Is land under cultivation increasing?
- Has the use of agro-industrial crops (such as rubber, palm oil and timber plantations) changed over time?
- How do cross-border investment, transnational agribusiness and contract farming affect the local land use and forest cover? What industries are involved and what are the sources of financing?
- What has been the impact of land cover change on wildlife and forests, ecosystems, and biodiversity? How does it affect endangered species?

Herding and farming

The killing of endangered and protected species can be motivated by the lucrative revenue gained from selling parts and derivatives of the species. Additionally, there are other factors and human behaviours that threaten protected species. Successful conservation, resulting in increased wild animal populations, can lead to higher (risk of) incidences of human-wildlife conflict. Equally, in some contexts, overgrazing by domestic livestock can lead to a reduction or loss of a predator's prey source, also giving rise to increased human-wildlife conflict where domestic livestock are preyed upon, and the predator is killed in retaliation or to prevent further attacks on livestock and adverse impacts on livelihoods. A predator's presence can also pose risks to community members, including children.

Once an animal is killed, its body parts may be sold, even though the prime motive for killing was not for trade. In other words, different types of wildlife-threatening actions can be related, making it difficult to differentiate between baseline causes and effects. It is therefore important to identify and analyse the factors that lead to the killing of protected species. Especially when commercial gain is not the prime motive, it is crucial to identify contextual and contributory factors that are linked with illegal activities and to address these causes to prevent wildlife crime.

Herding and farming

- Are there conflicts between herders and wildlife?
- Are animals killed for by herders/local community members? Why?
- Are animals killed to protect agriculture? Is adequate guarding material available and used (corrals, stables, shelters and so forth)?
- Do animals pose a threat to herders/community members?
- Is a loss of habitat or natural prey base through fragmentation or overgrazing prevalent?
- Has there been an increase in wildlife populations?
- Are there government compensation schemes related to human/animal conflict? Are there non-governmental ones?
- Is fire used to enlarge grazing areas?

Hunting and non-selective killing

Non-selective killing (for example, by using traps or poisoned bait) involves hunting techniques that can lead to the killing of species other than the one being targeted. Such accidental killings can affect both endangered species and more prevalent wildlife. Hunting associations and other means of organizing hunting, and control over the use of guns and other weapons, are one way to regulate and monitor hunting methods but can, in some cases, also function as facilitators of non-selective killings.

Hunting and non-selective killing

- What are common hunting techniques in the area of interest? Do the hunting techniques used in the area of interest cause accidental by-catch (for example, by hunting with nets, traps, poison or fire)?
- Is legal hunting organized? If so, in what manner? Do hunting associations exist and how do they regulate and control hunting and killing methods? How do they distribute benefits, if applicable?
- Is access to and possession of guns, explosives and other weapons and hunting equipment by hunters regulated?
- Does the problem of overhunting exist? If so, to what extent?

2.4 Resource analysis and monitoring

Where available, data on environmental issues such as forest areas and wildlife stock are helpful to identify human activities in the wildlife and forestry sectors and their impact on natural resources. This can, in some cases, assist in detecting illegal activities and the damage caused to natural habitats.

Forest resource analysis and monitoring can provide invaluable information to develop adequate forestry policies and legislation, and to assist in shaping appropriate enforcement measures. Some jurisdictions have established comprehensive wildlife and forest monitoring and tracking systems with standardized reporting procedures that assist in controlling legal trade in fauna and flora and in identifying illegal activities. These systems are designed to track plants or animals (as well as plant or animal material) from the source to the vendor and possibly beyond. Generally, these monitoring systems are based on stock inventories, marking and documentation. Every step of the trade requires proof that the animal, plant or material was obtained from a lawful source and is accompanied by the relevant permits, markings and receipts showing that the necessary duties and taxes have been paid.

Several States use independent wildlife or forest monitors who assist governments in carrying out an informed and independent analysis of the efforts and achievements of the relevant agencies in investigating and suppressing wildlife and forest offences. These monitors often make recommendations to improve current systems. Independent monitoring thus has the potential to strengthen calls for reforms and anti-corruption measures, which are welcomed by those officials with a genuine interest in their public duty. They can also help to reveal the political interests and relationships that underpin many illegal activities in the wildlife and forestry sectors. By and large, independent monitors have been found to be very effective in increasing the levels of information about the wildlife and forestry sectors and the extent of law compliance within them.

Resource analysis and monitoring

- Are there any records, data or other information on changes in forest cover or wildlife stock, or other environmental data relating to the wildlife and forestry sectors?
- Are wildlife or forest monitoring systems used? If so, how do these systems operate? Who carries them out?
- Do monitoring systems involve independent monitors? If so, who are they and how do they operate?

Additional resources:
FAO and ITTO, Best Practices for Improving Law Compliance (2005) 62–64

2.5 Consequences of wildlife and forest crime

Although threats to wildlife and plant species come from multiple sources, such as pollution, deforestation, destruction of natural habitats and climate change, wildlife and forest crime remains a significant contributor to these problems through poaching, harvesting or depleting substantial quantities of already endangered or at-risk species. Furthermore, wildlife and forest crime has other far-reaching implications, not only for the species involved, but also for human livelihoods and rights, biodiversity and governance. While a full examination of the ecological environmental, social, economic and other consequences of wildlife and forest crime is beyond the scope of this Toolkit, the following Sections serve to highlight some of the main issues and to provide additional tools to document, measure and analyze the impact of wildlife and forest crime in the area under examination.

2.5.1 For animal and plant species

Wildlife and forest crime can threaten the survival of species. Poaching, illegal logging and illegal harvesting of endangered species can lead to population decline and eventually extinction.

Many endangered species are fragile and require expert handling. The ways in which many animals and plants are caught, transported and kept frequently cause injury, death, or attrition, resulting in further harm and losses. The methods used by poachers to kill or capture animals and the way animals are handled are often extremely cruel and fail to comply with any animal welfare standards. Smuggling live animals can result in high fatality rates for the specimens involved, especially if animals are not properly kept and fed correctly. Indiscriminate methods used to catch animals can also harm and kill non-target species, deplete populations and damage ecosystems.

Beyond the direct negative biological impact on specific species, wildlife and forest crime can have indirect impacts from a conservation perspective. The two most obvious examples are detrimental by-catch of non-target species and the introduction of harmful alien species into a habitat. Examples of detrimental by-catch are particularly well known from the fisheries sector: nets, lines, and other fishing gear used to catch the desired fish will also catch everything else in their path, including turtles, dolphins, and juvenile fish. Terrestrial examples include impacts on non-target species from activities such as logging and waterfowl hunting.

Consequences of wildlife and forest crime for animal and plant species

- To what extent does wildlife and forest crime in the area/jurisdiction under examination threaten species? Which species are most affected?
- Does wildlife and forest crime in the area/jurisdiction under examination involve cruel methods used to capture, kill, handle, transport, conceal, et cetera, animals? Are many living animals harmed or die during transportation?
- What, if any, data exists on the scale of the problem and the outcomes for the affected species?
- In what way does wildlife and forest crime threaten or otherwise impact on other, non-target species, for instance by indiscriminate hunting, logging and harvesting methods?

2.5.2 For the environment

Wildlife and forest crime is related to some of the most important underlying causes of biodiversity loss and can threaten ecosystem functions on which we all depend. Beyond endangering species via population losses, wildlife overexploitation can cause long-term ecological problems such as creating sex-ratio imbalances and slowing the reproduction rate and genetic diversity of vulnerable species. Population decline is further problematic if keystone species, defined as species that have a significant effect on their surrounding ecosystem and other species within that ecosystem, are affected by wildlife and forest crime. Furthermore, ecosystems have been altered through environmentally destructive practices used to remove wildlife, timber, and fish.

Wildlife and forest crime can pose health threats to humans, native species and livestock, especially if it introduces viruses, bacteria or species to which native populations are not adequately resistant. Illegally traded species by definition do not undergo hygiene, sanitary, and phytosanitary controls and can therefore contribute to the spread of zoonotic diseases (particularly from terrestrial mammals and birds). Exotic species that are smuggled can pose a biosecurity risk because they can potentially establish themselves in the wild and become pests. They can also carry seeds, parasites and viruses which, if released to the environment, may have negative impacts on native wildlife, and on agriculture, horticulture, and aquaculture.

Consequences of wildlife and forest crime for the environment

- To what extent does wildlife and forest crime in the area/jurisdiction under examination cause or contribute to biodiversity loss and threaten ecosystems?
- How does wildlife and forest crime impact on reproduction rates of vulnerable and keystone species?
- Does wildlife and forest crime pose particular biosecurity and encroachment risks, especially through the introduction of alien species?
- Are there increased risks for the spread of zoonotic diseases to other animals associated with species poached, trafficked or sold in the country? Are there procedures to monitor and improve hygiene and sanitary control?
- Are there increased risks for the spread of zoonotic diseases associated with land conversion or encroachment by humans and livestock?

2.5.3 For humans

Wildlife and forest crime undermines and threatens the ability and efforts by States to manage their natural resources and can result in severe economic losses, especially in areas that rely on revenue generated by legal trade. Wildlife and forest crime can threaten rural livelihoods where people's subsistence and income rely on wildlife, including those based on ecotourism. Furthermore, wildlife and forest crime can threaten the whole range of human rights, from the right to life and security to the right to adequate food, water and sanitation.

Because illegally traded fauna and flora do not undergo hygiene, sanitary, and phytosanitary controls they can potentially contribute to the spread of zoonotic diseases to humans. The COVID-19 pandemic has highlighted that wildlife crime is a threat not only to the environment and biodiversity, but also to human health, economic development and security. Zoonotic diseases (those caused by pathogens that spread from animals to humans) represent up to 75% of all emerging infectious diseases. Trafficked wild species and the resulting products offered for human consumption usually escape any hygiene or sanitary control and therefore pose even greater risks of infection. When wild animals are poached from their natural habitat, butchered and sold illegally, the potential for transmission of zoonotic diseases is increased. Use, consumption and trade of wildlife species by humans need to be evaluated on the basis of scientific and fact-based information that puts safety and prosperity for the planet above the economic or commercial value of these species. Stopping the trafficking in wildlife species is a critical step not just to protect biodiversity and the rule of law but also to help prevent future public health emergencies.

The consumption of bushmeat can also affect human health. Bushmeat is often prepared in unhygienic premises due to its illicit nature. In addition, bushmeat can be a vector for zoonotic diseases, with health risks for humans stemming from unsafe and unregulated handling practices along the supply chain, including during butchering, transportation, sale, cooking and consumption.

Poachers and hunters are frequently armed with guns or other weapons that are used not only to kill, capture, or collect wildlife, but are also employed against rangers, conservation officials, police, and local people who protect or live in close proximity to endangered animals or plants. Threats, violence and the scale of depletion can often escalate in parallel where organized criminal groups become involved in wildlife and forest crime. Increased militarization of anti-poaching efforts can sometimes lead to 'shoot first' policies that can ultimately lead to more deaths of potential offenders and escalate the risk of violence between those on the frontline and locals, including risks of gender-based violence. In these circumstances, wildlife and forest crime can severely infringe upon basic human rights.

Consequences of wildlife and forest crime for humans

- What are the consequences of wildlife and forest crime for local economies and the national economy? How does it affect the livelihoods of local communities?
- What types and levels of threats and violence are associated with wildlife and forest crime? How does this affect individuals and local communities?
- In what other ways does wildlife and forest crime infringe upon human rights and civil liberties?
- Are there increased risks for the spread of zoonotic diseases to humans associated with species poached, trafficked or sold in the country? Are there procedures to monitor and improve hygiene and sanitary control?

Additional resources:
UNODC, World Wildlife Crime Report, Trafficking in protected species (2020) 27
UN Environment Programme, Preventing the next pandemic: zoonotic diseases and how to break the chain of transmission (2020) https://www.unep.org/resources/report/preventing-future-zoonotic-disease-outbreaks-protecting-environment-animals-and
OIE, WHO and UNEP, Reducing public health risks associated with the sale of live wild animals of mammalian species in traditional food markets (2021) https://cdn.who.int/media/docs/default-source/food-safety/ig--121-1-food-safety-and-covid-19-guidance-for-traditional-food-markets-2021-04-12-en.pdf?sfvrsn=921ec66d_1&download=true

2.5.4 For governance

Wildlife and forest crime can undermine good governance and the rule of law and, in some cases, threaten national stability. It can fuel internal armed conflicts and contribute to the breakdown of law and order, especially if armed groups and criminal networks benefit from illicit exploitation of natural resources, including wildlife and forest products. In some places, wildlife and forest crime is linked to the proliferation and trafficking of arms and other crime types, which can threaten national security and destabilize national authorities.

Consequences of wildlife and forest crime for governance

- To what extent does wildlife and forest crime in the area/jurisdiction under examination cause or contribute to internal conflicts?
- To what extent is wildlife and forest crime linked to armed groups, the proliferation of weapons and ammunition, and other crime types?
- In what other ways does wildlife and forest crime impact on governance and national security?

2.6 Emerging trends and threats

Wildlife and forest crime is an ever-changing phenomenon both in the way it is conducted and in the way it is perceived. The emergence of new technologies, changing laws and regulations, shifts in law enforcement measures and broader socio-economic development all impact on the levels and patterns of wildlife and forest crime. Successes in the fight against wildlife and forest crime do not always make targeted criminal activity disappear, especially as perpetrators may try to modify or reinvent their criminal activity. Organized criminal groups are often very flexible and can adapt quickly to new restrictions, regulations and enforcement measures.

Illicit markets for wildlife and forest products are like other illicit markets. With strong regulations and high demand, prices for the products go up, which can increase the profits of criminals. When efforts to curb the illicit trade do not impact both supply and demand, different types of displacement effects can be seen. Strong regulations in one place combined with high levels of demand can shift criminal operations to less-regulated places or to the use of substitute species. Wildlife and forest crime can also shift to wholly new species due to changes in demand or supply.

Policies, capacities and regulatory frameworks differ between countries, prompting criminals to turn to places where they can operate efficiently with low risk of punishment. Criminals and criminal organizations tend to exploit legislative and enforcement gaps in countries that are less capable of addressing them, with the result these countries begin to be affected by criminal activities. Increased enforcement in one area may make other geographic locations where enforcement is less stringent and more lucrative to criminals.

A similar form of displacement may occur for the types of species trafficked. If enforcement efforts target a particular species as a high priority, poachers may adapt to traffic other species, notably those of similar value at destination markets, for which the risk of being caught is lower. This sort of species replacement is very common in wood markets, where even experts can struggle to distinguish between timber of related species. Some of these shifts are also the result of changes in consumer preferences or reductions in consumption because of strong enforcement.

In other instances, criminals may resort to new practices or use existing, in-principle legitimate, fields of economic activity to expand or continue their criminal activity. A well-documented example is captive breeding: when no viable wild population exists, captive breeding has been seen as an effective solution for the preservation of species threatened with extinction, but it can also be exploited by organized criminal groups. There is evidence that criminals have used some licensed breeding facilities to supply the illegal trade in exotic pets, luxury products and ingredients for traditional medicine.[114]

Like many markets, trade in wildlife and wildlife products is moving online. Organized criminal groups are increasingly using a range of online platforms, social media, and technologies to facilitate the sale of wildlife and forest products, whether nationally or internationally. Monitoring of online trade, and using available technology to track key hubs, patterns and players involved in the illegal trade, is critical to disrupting the organizations exploiting online platforms.[115]

Emerging trends and threats

- Do measures to combat wildlife and forest crime reflect on potential displacement of criminal activity to neighbouring countries or other regions? Are sufficient cooperation mechanisms in place?
- Is wildlife and forest crime increasing in one place due to displacement from other regions?
- Are there any species that can potentially serve criminals as alternative target species? Is enough done to mitigate the effects of varying supply and demand on these alternative target species?
- Are there captive breeding operations that could be or have been potential targets of criminal activity?
- Are there areas of legitimate economic activity that bear considerable risk of being used as covers for wildlife and forest crime?
- Is legislation and enforcement keeping up with technology and any shifts it may introduce into wildlife and forest crime? Are agencies cooperating with technology service providers in preventing and disrupting criminal activity?
- How are emerging trends and threats established, assessed and reviewed? Is there a process in place to collect and evaluate relevant data? Which data is used? Who is responsible for its collection?

Additional resources:
UNODC, Wildlife Crime Report (2020) 12–15, 21, 25, 27

114 See further Part I, Section 3.3 of this Toolkit.

115 See further Part II, Section 5.1.4 of this Toolkit.

3 Wildlife and forest management

The scope of action to prevent wildlife and forest crime includes the management of wildlife and forest resources so that opportunities for illegal activities are reduced.

Sustainable resource management seeks to strike a balance between the protection and conservation of natural resources on the one hand and economic and developmental demands on the other, and is an important complementary element to wildlife and forest law enforcement.

This Section provides some basic tools to examine preventive wildlife and forest management mechanisms. It should be used prior to, or concurrently with, the analyses of the legal, enforcement, judiciary and prosecution mechanisms. An analysis of a country's resource management helps to design an adequate and effective response to wildlife and forest crime and facilitating crimes such as corruption and money laundering. This response could focus either on the building of protective structures, such as resource management or rural development programmes, or on the strengthening of law enforcement and criminal justice measures. This Section is not designed to provide concrete recommendations to be applied to all wildlife and forest challenges in a given area or jurisdiction but to underscore the importance of wildlife and forest crime prevention and associated measures in the discussion of wildlife and forest legislation and law enforcement.

3.1 Management systems

Wildlife and forest crime is frequently facilitated by ineffective or weak natural resource management. This includes, among other factors, the absence of basic surveys and inventories, unsafe working conditions, lack of knowledge of the problem, corrupt actors and a lack of standardized business practices. On the contrary, transparent and accountable natural resource management mechanisms with clear objectives, socially accepted tenure arrangements, public participation and benefit sharing with groups depending on the natural resources can help to prevent wildlife and forest crime. The following tools explore the existence and robustness of natural resource management systems and highlight the linkages between natural resource management planning and the prevention of wildlife and forest crime.

National wildlife and forest laws, examined further in Part I, Section 2 of this Toolkit, lay the groundwork for effective natural resource management. In this regard, laws pertaining to the wildlife and forestry sectors should, at a minimum, set out rules for ownership, management and administration, hunting areas and licence systems. In addition to these elements, the World Wide Fund for Nature (WWF) and World Bank Global Forest Alliance recommend that the following standards be part of any effective and sustainable wildlife and forest management system:

- ¬ Compliance with all laws relevant to wildlife and forests
- ¬ Compliance with all applicable national and international laws and regulations
- ¬ Respect for legal and customary rights of tenure, access and use
- ¬ Respect for indigenous people's rights, customs and culture
- ¬ Respect for community relations
- ¬ Respect for workers' rights
- ¬ Delivery of multiple benefits from the forest
- ¬ Assessment and mitigation of environmental impact
- ¬ Maintenance of critical forest areas
- ¬ Specific provisions for plantations
- ¬ Implementation of a management plan
- ¬ Effective monitoring and assessment.

The *Framework for Assessing and Monitoring Forest Governance* was developed by the World Bank Program on Forests together with the Food and Agriculture Organization of the United Nations (FAO). It presents a comprehensive framework for stakeholders to use when analyzing the status of forest governance in a given country and when planning reforms. It consists of three pillars:

a. policy, legal, institutional and regulatory frameworks;

b. planning and decision-making processes; and

c. implementation, enforcement and compliance.

Each pillar consists of three to five components. The framework is designed to be used in national or subnational forest governance assessments.

Management systems

- » Is the system for managing wildlife and forest resources transparent and accountable with clear objectives, socially accepted tenure arrangements and does it involve public participation?
- » Is wildlife and forest management in compliance with all the relevant wildlife and forest laws in a given country?
- » Does wildlife and forest management respect tenure and use rights?
- » Does wildlife and forest management respect international human rights laws and standards, including with respect to indigenous people's rights?

TOOL
V.27

Management systems

- Does wildlife and forest management respect community relations?
- Does wildlife and forest management respect workers' rights?
- Does wildlife and forest management deliver multiple benefits from the forest?
- Does wildlife and forest management assess and mitigate environmental impacts?
- Does wildlife and forest management maintain protected forest areas?
- Does wildlife and forest management provide specific provisions for plantations?
- Are wildlife and forest management plans affected by interference from public officials?
- Are wildlife and forest management plans implemented?
- Is effective monitoring and assessment conducted?
- Has the country or region undergone a holistic natural resource governance assessment?

3.2 Institutions and mandates

Wildlife and forest resources have local value through their consumptive use and provide an income by attracting non-residents, such as trophy hunters or tourists. There are also notable local and global public goods and services provided by forests and wildlife, including biodiversity, carbon sequestration and watershed protection. Therefore, different and sometimes opposing interests need to be managed at the appropriate level by decision-makers at relevant institutions. Such institutions should have a mandate to define, implement and control the use of wildlife and forest resources and the distribution of benefits associated with them. These institutions create the basis for the effective and sustainable management of natural resources. On an institutional level, wildlife and forest management should include the regulation and control of tenure and property rights, natural resource economics and legal enforcement. On a sectoral level, wildlife management organizations should have a mandate to manage habitats and boundaries, wild populations (species, population structure and dynamics) and human impact (stakeholders, manipulation of habitat and population).

TOOL V.28

Institutions and mandates

- What institutions or agencies are responsible for wildlife and forest management?
- Does a forestry, wildlife or environment department or unit exist?
- Do wildlife and forest management mechanisms and structures cover the entire area of interest?
- What is the wildlife and forest management structure and its chain of command? What is the coordinating mechanism among these agencies?
- Are wildlife and forest management institutions affected by interference from public officials and/or private persons, including corporations?
- Do local people and communities participate in these mechanisms and structures?
- Do local communities have the authority to manage their natural resources? Are they empowered to protect their wildlife and forests?
- Do civil society organizations or non-governmental organizations participate in the wildlife and forest management process?

3.3 Management plans

3.3.1 Management planning

The effective and sustainable management of natural resources is founded on legislation, regulations and policies. In practice, these are summarized and combined with biophysical data in management plans that have been developed and agreed upon by all the main stakeholders.

As a general guide, these management plans should include the following aspects:

- ¬ Inventory of resources and values to define the area of interest, and categories of land use and zoning (such as protected area, limited access, access for indigenous communities and commercial);
- ¬ Well-defined and socially accepted arrangements on land tenure and land ownership, including the rights and obligations of key stakeholder groups such as local communities and indigenous groups;
- ¬ Determination and regulation of productivity and sustainable yield, and designing hunting and harvesting plans to set limits regarding the amount or the species that can be cut or hunted legally in a certain period of time;
- ¬ Consultation with stakeholders, including local communities and the wildlife and forestry sectors;
- ¬ Clearly defined and sustainable objectives of management based on agreement and consensus among key stakeholder groups;
- ¬ Codes of practice that translate management objectives into site-specific operational plans and standards;
- ¬ Planning and regulation of access by locating roads, barriers, gates and checkpoints to avoid sensitive areas; facilitating surveillance, monitoring and control; and
- ¬ Consultation with the public (such as landowners and community groups) and involving them as 'watchdogs' to report illegal activities, and providing them with educational, awareness-raising programmes and incentives to change attitudes and behaviours.

Wildlife and forest management planning

- » Do inventories and surveys of resources exist? If so, are they carried out on a regular basis?
- » Are boundaries marked clearly on maps and on the ground, using secure markers or easily identifiable features such as roads or streams?
- » Do hunting and harvesting plans exist? If so, are they based on information from inventories and surveys carried out in the area of interest?
- » Are management objectives clearly defined?
- » Are the roles, rights and responsibilities of all parties clarified? Are key stakeholders, such as the local community and wildlife and forestry sectors, consulted?
- » Do codes of practice exist? If so, how do they translate management objectives into operational plans and standards?

Wildlife and forest management planning

- Is access to sensitive areas regulated, monitored and controlled, for example, by the location of roads, gates and checkpoints? Are these properly manned at all times?
- Are key stakeholders involved and encouraged to serve as 'watchdogs'?
- Are programmes and incentives available to educate and train stakeholders to raise awareness and change attitudes and behaviour?
- Do local communities have knowledge and understanding of the area's zoning? Are they aware of the restrictions and regulations?

3.3.2 Legal and policy framework

Legislation and policies that govern wildlife and forest management should clearly delineate the terms of land tenures, ownership and use in order to remove ambiguity or doubts about the legality of activities. This includes the rights and duties of key stakeholders such as wildlife and forest managers and workers, and local communities. Legislation and policies relating to wildlife and forest management are discussed in detail in Part I of the Toolkit. The key aspects of an effective and functional legal framework to prevent wildlife and forest crime are summarized in the following tool.

TOOL V.30

Legal and policy framework

- Is the area of interest delineated in terms of land tenures, ownership and use?
- Are land tenure and boundaries clearly defined and identified?
- Does the legal framework specify the rights of key stakeholders, including local communities and indigenous groups?
- Does the legal framework prescribe the scope of the objectives of forest management?
- Do codes of practice exist? Are they followed?

3.3.3 Natural resource inventory

Conducting a proper inventory of wildlife and forest resources indicating the range of endangered and protected species in a given country or region is crucial to drafting effective responses to wildlife and forest crime. The inventory serves as a baseline to identify occurring activities and to measure the impact and sustainability of interventions.

TOOL V.31

Natural resource inventory

- What are the area's or jurisdiction's wildlife and forest resources?
- What ecosystems are prevalent (such as rainforest or desert)?
- Do protected areas such as natural parks exist? How are national forest areas classified by national law?
- To what extent are these areas under a functioning resource management plan?
- What key wildlife species exist in the area under review?
- Are these areas zoned (for example, open for commercial logging, tourism, research or reserved for indigenous groups)?
- What species are affected by wildlife and forest crime? Are these species considered endangered? Are they listed in CITES or other relevant lists for endangered species?

3.3.4 Protected areas

Protected areas are essential for biodiversity conservation and constitute essential elements in many national and international conservation strategies. The International Union for the Conservation of Nature (IUCN) has created a framework for the development and analysis of protected areas. The Management Effectiveness Tracking Tool developed by the World Wide Fund for Nature (WWF) and the World Bank provides another set of questions to assess the management of protected areas.

Protected areas

- What are the potential threats to the protected area (such as commercial development, agriculture, mining, transportation, tourism, war, pollution, severe weather and specific cultural threats)?
- Does the protected area have a legal status or is it covered by a covenant?
- Do management plans, objectives and enforcement measures exist? Are staff able to enforce the rules for the protected area?
- Does the protected area have the right size and shape to protect all species of concern?
- Does boundary demarcation exist? If so, what is it?
- Are visitor facilities available? If so, are they sufficient? Are they policed in any way?
- Do commercial tourism operators respect and contribute to protection?

Additional resources:
Marc Hockings et al, Evaluating Effectiveness: A framework for assessing management effectiveness of protected areas (IUCN, 2nd ed 2006)
World Bank Global Wildlife Program, Collaborative Management Partnership Toolkit (2021)

3.3.5 Certification and permit systems

Where a State has a regime for permits or certificates, a holder of such an instrument may have a right recognized by law to perform certain activities in relation to specific species, to enter into protected areas or to possess or use particular regulated weapons or devices. Various other terms, such as 'licences', 'concessions' and 'authorizations', may be used to describe instruments that confer such rights to the instrument-holder.

Such instruments are often used to separate unlawful from lawful conduct and, as shown in Part I, Section 3 of this Toolkit, certain activities without valid permits, licences or the like may amount to criminal offences. For example, a State may use a system of permits or certificates to regulate the number of specimens that can be hunted in a given time frame or to limit the hunting of certain species during breeding season. A permit system can allow a State to tailor the boundaries of lawful conduct by taking into account the State's geographical and ecological context. Certification systems help to identify, document and prove the sustainability of certified wildlife and forest products.

Rights conferred by permits or certificates are usually subject to particular conditions. These conditions may be specific to the individual permit or certificate granted or may be generally applicable to all permits or certificates of a particular class. For example, common conditions for a permit to hunt relate to the identity of the permit-holder, the number and sex of the hunted specimens, the period of validity, the area and season to which the permit applies and the information to be provided to the relevant authorities about activities carried out under the permit. There may also be conditions that a permit-holder mark the relevant specimen(s) subject to the permit in some way (for example, through an indelible mark, a tag or a microchip) and to reference that mark in documentation provided to the competent authority so that the

permit cannot be used for another specimen. It would be an offence for a permit-holder to contravene any of these conditions.

Certification of wildlife and forest products is often used to prove that products come from particular and sustainable sources, comply with international standards, and are of high environmental, social and economic value. Certification systems help to guarantee the maintenance of adequate wildlife habitat and water quality protection.

Since permits and certificates confer the holder with rights to access wildlife and forest resources (as shown in Part 1, Sections 4 and 5) and preferential markets, they are at risk of corruption to enable individuals and organizations to obtain these permits and certificates. There is a need to ensure the permits and certificates management process is transparent and accountable.

Certification and permit systems

- What permits are required in relation to wildlife and forest activities, such as hunting licences, logging permits and the like? What are the requirements and procedures to obtain and renew such permits; who issues them?
- What certification and accreditation systems exist in relation to wildlife and forest products? If they exist, are they in compliance with international frameworks for certification, accreditation and standard setting?
- Do all relevant stakeholder groups participate in governance and standard setting?
- Do permit and certification systems cause unnecessary obstacles to trade?
- Are requirements and standards adapted to local conditions? Are they based on objective and measurable performance?
- Are procedures and decision-making processes transparent and reported to the public?
- Do complaint and appeal mechanisms exist?

Additional resources:
UNODC, Guide on drafting legislation to combat wildlife crime (2018) 9–10

3.3.6 Land tenure, property rights and access

Land tenure and property rights relating to wildlife and forests may be exercised through authority conferred or recognized by law. Lawful authority is distinguished from permits and certificates because its exercise does not depend on a competent authority granting a relevant permit or certificate. The circumstances in which a person or local communities should be able to exercise lawful authority in respect of wildlife and forests is a matter for each jurisdiction to determine in accordance with its legal tradition and culture, and guided by international laws and standards. Wildlife and forest management programmes should be carefully designed so as to reflect the livelihoods and rights of wildlife- and forest-dependent people and therefore ensure their adequate ownership, access to and use of such resources. Furthermore, lawful authority should be granted to law enforcement and wildlife officers carrying out activities for the purposes of investigating and prosecuting wildlife crime offences.

Land tenure and property rights and access

- Who owns the natural resources under review?
- Do national laws respect the property rights of local communities?
- How do people own land? How are people granted land ownership and entitlement?
- How are land inheritance and ownership transfer carried out?
- Who has access to natural resources such as wildlife, forests and land? How is access regulated?
- What are the national policies and legislation for the personal and commercial utilization of forests and other natural resources?
- To what extent does the government grant concessions to domestic and international companies for the commercial use of forests and other natural resources?
- Is law enforcement able to investigate wildlife crime or are they hindered in any way by the land tenure and property rights of the local communities/indigenous groups? If they are hindered, have there been efforts to ensure the meaningful participation of and cooperation with local communities/indigenous groups in the processes aimed at tackling wildlife and forest crime?

Additional resources:
UNODC, Guide on drafting legislation to combat wildlife crime (2018) 10

3.3.7 Security measures

Natural resource management plans should include security measures to protect managing personnel from potential threats occurring as a result of their daily work. This includes, inter alia, threats from organized criminal groups, armed groups, individual perpetrators and their associates, and from locals who may view enforcement personnel as a threat.

Security measures

- What risks and threats do protective and management personnel face as a result of their work?
- With which capacities, tools and equipment are personnel provided?
- With which safety and insurance services are personnel provided?
- What monetary and non-monetary compensation or rewards are offered to the personnel?

3.4 Databases, online tools and information management

Information sharing among national agencies and across international borders is crucial in combating wildlife and forest crime. A variety of tools designed to initiate and facilitate cooperation within and among countries have been identified in earlier parts of the Toolkit. Increased access to information and electronic communication technologies has led to the development of online governance initiatives, that is, online applications for interaction between governments and citizens. The increased use of technology has improved public access to information. Furthermore, many natural resource management vulnerabilities can be addressed through the use of electronic information and communication technology.

Although the internet and electronic communication can also play into the hands of criminals and create new forms or pathways for exploitation by organized criminal groups, the same

technology can be used to exploit the vulnerabilities within such groups, and thus can play a role in prevention, detection and suppression of forest and wildlife crime and facilitating/linked crimes like corruption, money laundering, tax evasion and non-payment of fees. Examples include:

- **Prevention:** crime mapping and corruption reporting mechanism and systems;
- **Detection:** timber tracking, chain of custody systems, checkpoints, satellite images, global positioning system surveillance, identifying vulnerabilities; and
- **Suppression:** crime databases and case management systems.

In addition, and given the transnational nature of wildlife and forest crime and the complexity of trafficking routes, access to global enforcement communications platforms is important. These are further explored in Part IV, Sections 4.3 and 4.4 of this Toolkit.

3.4.1 Databases

Databases provide a structure and framework for storing and organizing information on wildlife and forest crime. They can be utilized to increase knowledge and understanding of the nature, scale and scope of trade, and to highlight vulnerabilities in legal markets and supply chains. Trade data can thus be used to shed light on possible trafficking routes, including legitimate markets that are used as cover for illegal trade. Databases are vital information systems that help enable wildlife and forest crime enforcement officers to detect, prevent, and pursue criminals. At an operational level, they are a key vehicle for enabling sharing of information within intelligence and law enforcement agencies and, when properly integrated, between them.

At an international level, the CITES Trade Database is an important mechanism for monitoring legal wildlife trade levels that helps to identify where trade might adversely affect wild populations. Each Party to CITES is required to provide regular national trade reporting. The database provides a summary of trade between countries, spanning a number of years and can aid in the analysis of trade routes. It is an important tool for monitoring the level of international trade in CITES-listed species. The database can be accessed to provide a summary of trading in species between countries, which facilitates global analysis of trade patterns.

The World Wildlife Seizures (WorldWISE) database (and the parallel CITES Annual Illegal Trade Report Database) is managed by UNODC. WorldWISE amalgamates all available data on wildlife seizures to build a better understanding of wildlife trafficking. Since 2016, CITES Parties are required to submit annual illegal trade reports which are entered into the CITES Annual Illegal Trade Report Database. Several NGOs, such as TRAFFIC and the EIA, operate further databases that can be useful to document and analyze wildlife and forest crime.

In addition to accessing these specific wildlife crime databases, the ability of officials to access available general national and international criminal databases is also important for identifying offenders and organized criminal groups involved in these crimes.

Despite being a vital tool to prevent and combat wildlife and forest crime, databases are still imperfect and there is considerable variability in the quality, scope and accessibility of various databases. Officials and other users require training to systematically enter and search for data. Officials may resent the time-consuming nature of data entry, but errors in data entry or information categorization can lead to vital information being unlocatable when needed. The most effective databases are designed in such a way as to reduce the administrative burden on

enforcement officers and to provide detailed, robust search functions that can effectively discriminate between relevant and irrelevant matches.

Databases

- Does the country maintain a national database that records incidents of wildlife and forest crime?
- Which agencies have access to that database?
- What information is recorded? How is information recorded, entered and disseminated? Does legislation limit the use of forensic data in the database? If information about offenders' identities is recorded, does it include gender?
- Do relevant authorities enter relevant information into and retrieve information from the CITES Trade Database? When and how is that information used?
- Do relevant authorities submit annual reports about illegal trade?
- Who is responsible for data entry? Is the maintenance of databases adequately resourced?

Additional resources:
UNODC, World Wildlife Crime Report, Trafficking in protected species (2020) 31–32
World Bank, Tools and Resources to Combat Illegal Wildlife Trade (2018) 8–9

3.4.2 Mobile applications and online platforms

Among the most innovative tools and techniques available are smartphone applications (apps) designed to aid the detection of wildlife and forest crime and the prosecution of criminals. Several apps are available that assist users in identifying species of fauna and flora and assess the authenticity of the source of the item. Many apps use a decision-tree design to allow users to quickly determine the probable identity of the wildlife or forest product in question. It is often difficult for non-experts to quickly and accurately distinguish between protected and non-protected species. This is particularly true if the animal product has been significantly processed or combined with other materials. Wildlife and forest crime apps are at their most useful when they have the capability to quickly differentiate between local protected and unprotected species.

Some apps include additional functionality, such as real-time communications functions. These functions can be very useful to frontline officers and customs officials at ports who may be under significant time pressure to arrive at a decision to halt or pass cargo. Other apps and software can assist in recording, storing and disseminating information collected during patrols or at particular sites. Systems to collect, record, and analyze particular geographic sites (for example, protected areas) or particular species (for example, elephants and rhinos) are important to build an accurate picture of wildlife locations, population levels, and specific threats to protected species.

Mobile applications and online platforms

- What mobile applications and online platforms are available to determine and exchange information about protected species, protected areas, et cetera.?
- Which agencies and officials have access to and use these apps or this software? Are officials adequately trained in their use? Are officials provided with mobile phones or other similar technology (i.e. tablets) to use these apps or are they privately owned?
- What information is recorded? How is information recorded, entered and disseminated?

Additional resources:
World Bank, Tools and Resources to Combat Illegal Wildlife Trade (2018) 9–10

3.5 Compliance

In the context of wildlife and forest management, compliance refers to questions about why some people adhere to existing rules and regulations and why others choose not to. Such questions are important to shed light on the reasons and motivations people have for engaging in wildlife and forest crime.

Non-compliance frequently occurs if actors know or believe that they will not face any — or will only face minor — consequences for failing to comply with relevant wildlife and forest management rules and regulations. In addition, if actors know that such rules are not monitored and enforced, and that non-compliance is financially more profitable than strict adherence, non-compliance may proliferate. Non-compliance may also occur if existing rules and regulations are overly bureaucratic and cumbersome or where people rely on wildlife and forest activities for their survival or to generate basic income.

Explanations for compliance with wildlife and forest management rules and regulations can be broadly divided into instrumental reasons and normative reasons. The instrumental perspective views compliance as the maximization of individual, personal benefits. In this context, the use of incentives is important to promote and enhance compliance. The normative perspective emphasizes the individual's commitment to rules or acceptance of authority. Here, compliance can be promoted by public participation and by moving decision-making closer to the people. For example, delegation of user rights to collect revenue from natural resource exploitation to local communities can have a positive financial benefit and create incentives for compliance, sustainable use and protection of natural resources by those communities.

The implementation of incentives for complying with wildlife and forest management regulations is of great importance. Such incentives start by simplifying rules and regulations and reducing bureaucracy. Furthermore, increasing the financial and personal costs for non-compliance (including the loss of licences and privileges, sanctions and fees), whilst providing further and realistic avenues to generate income in lawful ways, can strengthen compliance. Linking wildlife and forest offences to facilitating crimes (such as corruption, money laundering, tax evasion and non-payment of fees), and investigating and prosecuting these crimes which often offer higher penalties and sanctions than those provided under wildlife and forest crime legislation, will also increase cost for non-compliance.

Compliance

- To what extent do relevant individuals, organizations and businesses comply with relevant wildlife and forest management rules and regulations?
- What are the main reasons for non-compliance?
- What incentives exist for complying with relevant rules and regulations? What are the disincentives for failing to comply?
- Is investigation and prosecution of crimes that facilitate wildlife and forest offences (such as corruption, money laundering and tax evasion) seen as a mechanism to increase compliance to wildlife and forest rules and regulations?

TOOL
V.38

4 Social capacity-building

Many individuals and communities, including indigenous groups, depend on wildlife and forests for their livelihoods. In many places, wildlife and forest resources serve as safety nets for poor and marginalized communities.

At the same time, laws related to forests and wildlife can limit the rights and livelihoods of these communities. They often have difficulties obtaining land ownership rights, and their access to and use of wildlife and forest resources are often not a part of wildlife and forest management programmes. Furthermore, traditional hunting for subsistence may fall under a national law that protects wildlife and forests, and in some cases can lead to the criminalization of their traditional activities and to further marginalization.

Against this background, the prevention of wildlife and forest crime must take into consideration the condition and needs of rural and poor communities that depend on wildlife and forests for their living. The following tools serve to identify and analyze the existence and robustness of preventive measures that address rural development and social capacity-building in the field of wildlife and forest protection.

In many cases, interventions aimed at reducing and preventing wildlife and forest crime have to consider factors and fields that lay outside the wildlife and forest sectors. Such interventions and programmes could address issues like the promotion of alternative, sustainable sources of energy, such as by providing rural areas with solar and wind energy to improve the balance between the demand for and the supply of fuel wood.

4.1 Poverty reduction

For many people living in extreme poverty, wildlife and forest resources directly contribute to their livelihoods. In many developing countries, these are central to development and economic growth through trade and industrial development. Furthermore, in many States, the poorest and most vulnerable forest-dwelling communities, many of them indigenous groups, depend largely or entirely on wildlife and forest resources for their livelihoods and food security.[116]

Interventions and long-term programmes aimed at reducing poverty and promoting rural

116 See also Part V, Section 1.4 of this Toolkit.

development can help to address the poverty-related drivers that cause wildlife and forest crime. In this sense, poverty reduction interventions targeted at wildlife- and forest-dependent communities that are involved in illegal activities can be an effective and sustainable approach to preventing wildlife and forest crime in the long term. These interventions and measures must take into consideration the relevant laws and legislation that are often biased against poor wildlife- and forest-dependent communities. Additionally, they should include issues connected to land tenure arrangements, access rights, transparency and stakeholder participation in decisions directly affecting the livelihoods of the communities concerned.

Poverty reduction

- Do poverty reduction programmes or rural development programmes for communities involved in or affected by wildlife and forest crime exist?
- Do these programmes link poverty reduction with the sustainable use of natural resources or wildlife and forest products?

4.2 Sustainable livelihoods

In addition to the reduction of poverty, looking at the issue of wildlife and forest crime from a livelihood perspective can be particularly useful. Livelihood in this context refers to the way in which individuals and communities provide for their basic necessities as well as other outcomes to which they aspire. This approach is sensitive to the context and distinguishes between the assets (the available natural and socio-economic resources), capabilities (the opportunities opened by the assets) and activities (the practices pursued within the available assets and capabilities) attached to a particular livelihood.

A livelihood is commonly considered sustainable when it can cope with and recover from various stresses and shocks (such as changing climatic conditions or natural disasters) and maintain or enhance its capabilities and assets both now and in the future without undermining the natural resource base. Livelihoods can become unsustainable if they undermine the natural resource base or because of the (often concurring) criminalization of activities associated with that particular livelihood. In many places, wildlife and forest laws and policies, along with enforcement and management measures, have a negative impact on rural livelihoods and exacerbate the non-sustainable use of wildlife and forest products. These factors are usually all the more pressing in post-conflict situations.

In these circumstances, it becomes crucial to provide the affected individuals and communities with pathways to re-establish sustainable use of wildlife or create alternative livelihoods. Providing alternative livelihoods for marginalized populations dependent on wildlife and forest resources for their basic income is necessary for both human rights reasons and the effectiveness of policies to conserve wildlife and forests. Just how the livelihoods of local communities, especially in rural areas and those of indigenous groups, can be made sustainable depends on a myriad of factors, many of which are beyond the scope of this Toolkit. Recognizing indigenous groups' special rights to use their natural environment is an important step, but it is no panacea. Access to legal markets and the legalization of trade is another option that may be useful in some places, but it may hasten the exploitation of natural resources and facilitate the drain of fauna and flora from the area. In some circumstances it may also be necessary to incorporate learning and discussions with local communities and indigenous groups to the effect that some of their traditional practices could result in non-sustainable use of wildlife and forest products, especially if their population increases, thereby negatively affecting the sustainability of their livelihood.

Such measures also need to take due account of human rights and civil liberties. All too frequently, drastic measures have been taken without due regard for the rights, situation and histories of local communities and indigenous peoples. In some cases, this has led to populations being relocated against their will, including through the use of force. It has often led to violations of local communities and indigenous peoples' rights to own, develop, control and use the lands, territories and resources which they have traditionally owned or otherwise occupied or used. Such policies have led local communities to associate some conservation measures with colonialism and thus reject environmental protection efforts, with potentially negative impacts on the conservation of wildlife and forests.

Provision of sustainable alternative livelihoods is one element of a comprehensive response to wildlife and forest crime. The CITES Parties created a working group with the mandate to develop tools for sustainable implementation of CITES listings.

Sustainable livelihoods

- Are the livelihoods of individuals and communities dependent on wildlife and forest crime sustainable or are they detrimental to the natural resource base, the protection of species and conservation efforts?
- What measures have been implemented to provide affected individuals and communities with alternative sustainable livelihoods? What effect have these measures had? What more needs to be done?

Additional resources:
CITES, 'CITES and Livelihoods', available at <https://cites.org/eng/prog/livelihoods>
OAS & CITES, Handbook on CITES and Livelihoods, Part II: Addressing and mitigating the effects of the application of CITES decisions on livelihoods in poor rural communities (2015)
UNODC, World Wildlife Crime Report, Trafficking in protected species (2020) 25
World Bank, Tools and Resources to Combat Illegal Wildlife Trade (2018) 16

4.3 Participatory approaches

Civil society, the private sector, international organizations and non-governmental organizations (NGOs) play a crucial role in understanding and preventing wildlife and forest crime and in assisting the individual and communities most affected by it. Their expertise can be valuable in developing and assessing policies, laws and practical measures, and in the development of technical tools and training. The participation of civil society, the private sector and national and international NGOs, as well as representatives from local communities, and from indigenous peoples, is important to establish and maintain the management of natural resources and the protection of wildlife and forests. The involvement of civil society — including indigenous peoples and local communities, the private sector and NGOs -— in wildlife and forest crime prevention includes, among other things, raising awareness about the extent and impact of illegal activities, research and analysis contributing to an understanding of the scope and causes of wildlife and forest crimes, and the provision of potential solutions for wildlife and forest crime. This is equally true for facilitating crimes, such as corruption.

In this context, it is also important to recognize and include women as key stakeholders and ensure that their consultation and participation is equitable and efficient. Research has shown that gender is an important variable in how groups and individuals engage in conservation efforts and women play a unique role in this context; they are also often disproportionately affected by wildlife and forest crime. Equally, it is important to involve youth in efforts aimed

at preventing wildlife and forest crime, as they should be engaged and help influence the implementation of conservation strategies.

The importance of the main stakeholders' participation in the decision-making processes and in enforcement is further explored in Part II, Sections 1.4–1.8.

Participatory approaches

- How are civil society, the private sector, non-governmental and international organizations involved in wildlife and forest management? Are they consulted when management strategies and plans are developed?
- Are these stakeholders involved in decision-making or do they have an advisory or observer role?
- How are women, men and youth, represented and how do they engage in consultative forums? How are they recognized in wildlife and forest management plans and development?

5 Deterrence

Deterrence is one of the primary purposes of imposing sanctions on an offender. As a purpose of punishment, deterrence aims to prevent crime through the example of punishing offenders.

General deterrence is directed at preventing crime among the general population, while special deterrence is aimed at preventing future crimes by a particular offender. Deterrence is also explicitly recognized in Article 11 of the *United Nations Convention against Transnational Organized Crime*. Part III, Section 4 of this Toolkit explores sentencing and sanctions both in general terms and in relation to the particularities of wildlife and forest crime. Beyond striking a balance between general and specific elements, deterrence relies on three main components: in order to effectively deter prospective perpetrators, sanctions need to be (i) justly severe, (ii) sufficiently likely to occur and (iii) be imposed without undue delay.

The focus on deterrence as a prevention strategy is frequently called into question. It is particularly important to differentiate between perpetrators whose illegal acts are more localized in scope and those that have transnational, organized criminal intentions. While individuals involved in transnational organized crime are more likely to display the kind of rational behaviour that deterrence strategies rely on, perpetrators whose criminal activity is better explained by livelihood preservation or local culture might be considering a variety of factors in committing any of these offences, of which the severity, certainty, and swiftness of sanctions may not be the most pertinent ones.

Although the overall relevance of deterrence-based strategies to combating wildlife and forest crime remains undisputed, deterrence is most effective when embedded in a holistic approach to prevention. Crime has multiple causes and many sectors of society can have an impact on the occurrence and level of crime, and therefore many sectors possess a responsibility to act to help prevent crime. While in many jurisdictions, crime prevention has traditionally been seen as the responsibility of the police or as stemming from the deterrent aspects of the law or repression of offenders, law enforcement agencies and the judiciary are not detached from overall society and therefore cannot do it alone. Creating an environment in which communities and neighbourhoods take an interest in their surroundings and look out for possible offenders can act as a significant deterrent in some situations. [117]

117 See further Part II, Section 1.6 of this Toolkit.

Governmental legitimacy is crucial to normative compliance. Only where people trust in the overall legitimacy of laws and law enforcement can conservation efforts have lasting success. Wildlife and forest crime mainly motivated by livelihood preservation or other broader structural factors will only cease when the legitimacy of its legal prohibition is accepted and internalized. Deterrence-based strategies might be a necessary stepping stone to achieve this outcome, but they are not a panacea.

Deterrence

- Are sentencing and sanctions for wildlife and forest crime offences overall justly severe, certain and swift enough to be an effective deterrent? Are there relevant wildlife and forest offences for which that is not the case?
- Are the legislature, law enforcement and the judiciary aware of the potential need to differentiate between local offenders and organized criminal groups, when it comes to deterrence? Is the differentiation pertinent in the national context?
- Are there any corruption and/or other legitimacy issues in relation to government and law enforcement officials in the areas where wildlife and forest crime typically occurs that may adversely impact deterrent programs?

Additional resources:
UNODC, Criminal Justice Assessment Toolkit, Cross-Cutting Issues, Volume 5: Crime Prevention Assessment Tool (2009) 2
Moreto/Gau, Deterrence, Legitimacy, and Wildlife Crime in Protected Areas, in: Gore (Ed.) Conservation Criminology (2017) 45–58

6 Awareness-raising and behaviour change

Most efforts to combat wildlife and forest crime have sought to deter and punish suppliers: the poachers, who carry out the killing; the traffickers, who smuggle carcasses and animal derivatives to consumer markets; and the retailers, who profit from the sale of wildlife and forest contraband.

Campaigns seeking to change consumer behaviour to reduce the demand for these products have been a secondary consideration. This is slowly changing. There is now an increased focus on reducing demand in order to hamper the illegal trade and lower the incentive to engage in wildlife and forest crime for profit. Targeted demand reduction campaigns in conjunction with punitive measures is now widely recognized as the favoured strategy when aiming to reduce wildlife and forest crime. For example, a 2017 United Nations General Assembly resolution urged Member States to reduce demand for trafficked wildlife by *"using targeted and evidence-based strategies in order to influence consumer behaviour and create greater awareness of laws prohibiting illegal trade in wildlife and associated penalties".*[118]

Reducing demand for illegal wildlife and forest products aims to decrease consumer intent to purchase such products and achieve an actual shift in consumer behaviour away from such products.[119] As shown in Part V, Section 2.3 of this Toolkit, there are a significant number of reasons for the consumption of products that stem from wildlife and forest crime. Without a thorough understanding of these drivers, through behavioural insight into the motivations and triggers for consumption, change is not possible. When demand reduction campaigns are executed in accordance with best practice, they can return remarkable results.

Additional resources:
UNODC, World Wildlife Crime Report, Trafficking in protected species (2020) 25–26
CITES, CITES Demand Reduction Guidance (2021) https://cites.org/sites/default/files/eng/com/sc/74/E-SC74-34-A3-R1.pdf

118 UN General Assembly, Tackling Illicit Trafficking in Wildlife, UN Doc A/RES/71/326 (11 September 2017) 5 [11].

119 CITES characterizes demand reduction as one of three approaches to combat illegal trade in end-markets for wildlife products. The other two approaches are enforcement and livelihoods. Within the demand reduction approach, a Five Step Process is defined. See draft Guidance for CITES Parties to Develop and Implement Demand Reduction Strategies to Combat Illegal Trade in CITES-listed Species (April 2021): https://cites.org/sites/default/files/notifications/E-Notfi-2021-038.pdf

6.1 Awareness campaigns

The level of awareness of wildlife and forest crime is considerably lower in the general population than awareness of crime areas such as drugs and illegal immigration. The reasons for this are varied but include lack of awareness and misunderstanding of the origins of wildlife and forest commodities, lack of awareness that certain species are regularly poached or harvested illegally, lack of awareness about the laws prohibiting sale and consumption (compounded when prosecution and conviction rates are low or not widely publicized), and accidental consumption of items made from protected species but sold as alternative products. In some cases, there is even a negative perception of certain animals, which are seen to be a danger to local humans and livestock, and thus needing to be killed. This view is supplemented by the erroneous belief that trafficked species are in no danger of becoming extinct, due to a perceived abundance of animals in source countries.

For a demand reduction strategy to be successful, there must be a baseline understanding that a problem exists, and of the specific species, territories, behaviours and audience segments to target to address this. To that end, awareness campaigns are a necessary, though insufficient, element of a wider approach to behavioural change. For example, ignorance about the existential threat to elephants needs to be addressed, but knowledge of their status as an endangered species may not dissuade a buyer from purchasing a small ivory curio, if they believe the purchase will have little impact on the species' future. This said, in many cases there is a complementary awareness gap about alternative commodities that may fulfil the consumer's need or desire without the conservation or legal consequence.

Although even the most effective awareness campaigns will not wholly eliminate wildlife and forest crime, it is important for consumers to have an accurate understanding of the origin of the products they purchase. Ignorance of these facts may preclude consumers from making conscious informed decisions. Furthermore, the difference between legal and illegal activities should be clear, especially for key stakeholders such as wildlife and forest workers, wildlife and forest managers, local communities, and the judicial system. Legal and policy frameworks cannot be implemented effectively unless their regulators have a clear understanding of their contents and procedures. It is therefore important to raise awareness among consumers and key stakeholders. They must have a clear understanding of the requirements of legislation and the sanctions for non-compliance, as well as the negative impacts of wildlife and forest crime on nature and society and how they can affect them personally.

Raising awareness on the linkage of wildlife and forest crime with other crimes such as corruption, money laundering, tax evasion, non-payment of fees and even terrorism may help to change the perception of consumers of wildlife and forest products, potentially reducing demand.

Awareness campaigns

- Are consumers aware of the origin, legality and species of the wildlife and forest produce they purchase? If not, what information is lacking?
- Are consumers and other stakeholders aware of the extent, consequences and impact of wildlife and forest crime? Are they informed of the linkage of wildlife and forest crime with other crimes such as corruption, money laundering, tax evasion, terrorism?
- Do consumers and other stakeholders have an understanding of existing legislation, remedies and sanctions related to wildlife and forest crime?
- Which entity and means would be most effective to deliver this information to consumers, and would different means be needed to target women and men?
- What campaigns and efforts have been undertaken to raise the level of awareness of these issues? On what research and information were these campaigns based, how were they designed, and what effect have they had? Was gender considered?

Additional resources:
CITES. Standing Committee 74. Demand reduction strategies to combat the illegal trade in CITES-listed species. https://cites.org/sites/default/files/eng/com/sc/74/E-SC74-34.pdf
USAID Wildlife Asia. Social and Behavior Change Communication Demand Reduction Guidebook (2020). https://www.usaidwildlifeasia.org/resources/tools/sbcc-guidebook/view

6.2 Education programmes

Education campaigns should go further than awareness raising efforts in terms of spreading information about wildlife and forest crime, broader environmental issues and the linkage with other crimes such as corruption, money laundering and tax evasion. They can also serve to dispel myths about the nature of a wildlife and forest product. For example, an awareness campaign may highlight the plight of the rhinoceros in the face of poaching; an education programme will inform that rhinoceros horn has no medicinal value and that any trade in it is not only a waste of money but is supporting transnational organized crime.

The focus of an educational programme can sometimes be confused by differing opinions about what changes human behaviour. For example, some argue that appealing to altruism is not an effective strategy because selfish impulses prevail over self-control. Instead, education efforts are most effective when individuals feel there is a direct threat to their own lives or choices, and an opportunity to avoid that threat is available to them. Others caution not to overwhelm the target audience with overly negative messaging, risking the creation of a sense of apathy. It is clear that a 'one-size-fits-all' approach to education efforts is neither effective nor desirable. Ultimately, it is vital to remember that messaging appropriate for one demographic group may not be appropriate for another.

The use of education programmes in schools involves educating children about the effects of wildlife and forest crime on species survival. They can give children tools to avoid consuming such products, either by negotiating their way out of peer pressure or by enhancing a culture in which the consumption of endangered species is looked down upon. While the results of such efforts may not be realized immediately, it is well established that such campaigns enhance critical thinking, which may increase the effectiveness of education and awareness programming as children enter consumption demographics.

Education programmes

- What, if any, education efforts have been undertaken on issues related to wildlife and forest crime? Do such educational programmes indicate the linkage between wildlife and forest crimes and other crimes such as corruption, money laundering, tax evasion?
- Who were the target audiences?
- On what research and information were these programmes or efforts based, how were they designed, and what effect have they had?
- Are school children educated about the effects of wildlife and forest crime and about ways to prevent and stop it?

Additional resources:
UNODC, Education for Justice, University Module Series: Wildlife Crime (2019)
UNODC, Animals in Danger: Vita and Scooter on a Mission (2022). https://www.unodc.org/unodc/en/environment-climate/education-raising-awareness.html

6.3 Community initiatives

Community initiatives involve a community-based program incorporating awareness, education and prevention, targeting societal pressures to conform. Examples in this category are still limited, but the ones that do exist have produced promising results.

For example, the Animals Asia Foundation has worked in classrooms in Viet Nam to educate children on the cruelty of bear bile farming. The Indonesian Council of Ulema declared a fatwa — a religious ruling — against wildlife trafficking and various other religious organizations have added their voices against this practice.

One example of a community initiative with a focus beyond the immediate consumer demographic is the partnership between the Humane Society International and the Viet Nam CITES Management Authority to reduce rhino horn consumption in that country. Outside the campaign's target audience, the strategy has included working with children, women's associations, university students, businesses and the Viet Nam Union of Science and Technology Associations. Workshops and education programmes have targeted a broad cross-section of the community in an attempt to shift cultural and societal norms, such that anti-consumption behaviour can be reinforced by these groups.

Community initiatives

- What, if any, community initiatives have been undertaken to inform people on issues related to wildlife and forest crime?
- Who were the target audiences?
- On what research and information were these initiatives based, how were they designed, and what effect have they had?

7 Research and analysis

Analytic research work is fundamental to understanding wildlife and forest crime, and to gaining a perspective on the functioning of the local, regional and global illegal markets for fauna and flora in order to identify better ways of countering it.

Only with a solid base of knowledge can governments be encouraged and held accountable to take evidence-based policy action that would lead to altering the dynamics of wildlife and forest offences.

7.1 Scholarly and independent research

Independent scholarly research is crucial to understand and counteract wildlife and forest crime. It is also needed to analyze existing and proposed government policies, legislation, administrative and enforcement measures, and in developing recommendations for law reform and policy change. There is a need for scholarly research to analyze the linkage between wildlife and forest crime and facilitating/linked crimes such as corruption, money laundering, tax evasion, non-payment of fees, and terrorism. In addition, work is needed to analyze the connection between wildlife and forest crime and broader issues such as climate change.

It is encouraging that a growing number of research institutions, universities, individual scholars and other experts are interested in researching the many aspects and facets of wildlife and forest crime and making their findings available to relevant audiences and the public at large. Such research can give greater legitimacy to initiatives taken by government authorities.

While some governments are supportive of independent research in this field, others are less open and do not collaborate with scholarly researchers for fear that their policies, laws and administrative systems may be criticized. This attitude directly and indirectly benefits those engaged in wildlife and forest crime and hampers domestic and international efforts to curtail the illegal trade in fauna and flora.

Additional resources:
NODC, World Wildlife Crime Report, Trafficking in protected species (2020) 24

Scholarly and independent research

- What independent research on any aspect of wildlife and forest crime has been undertaken? What aspects have been researched and by whom? What aspects need further research?
- Does the research on wildlife and forest crime include linkages to other facilitating crimes e.g. corruption, tax evasion, money laundering, non-payment of fees et cetera?
- What are the key findings and research outcomes of the relevant analyses?
- What response, if any, have the relevant government agencies shown or given to scholarly and independent research on wildlife and forest crime?
- Are systems in place to evaluate and utilize information from academic research and from non-governmental organizations for policy development, law-making and enforcement purposes?

7.2 Diagnostic surveys

Accurate diagnostic surveys of illegal activities can be an effective instrument to estimate their magnitude, the procedures employed to commit and combat these offences, and the motivation of offenders and enforcers. These surveys can be aimed at businesses, government officials, communities and other major actors in the sector. In addition, they can provide a useful baseline for designing corrective action. These surveys are most useful if they are aimed at several different actors in order to cross-check the information received. Contrary to initial scepticism, experience shows that respondents can be quite honest and informative. Diagnostic surveys have been useful in obtaining information on the most secretive acts of the criminal process, such as the laundering of timber and wildlife, the payment of bribes and other corruption acts that facilitate wildlife and forest crime, specific procedures used to break the law, and the linkages of wildlife and forest crime to other crimes such money laundering, tax evasion and non-payment of fees. Surveys can be aimed at measuring the extent of illegal acts, exploring the factors (including policy failures) that facilitate them, or investigating specific acts or actors.

Diagnostic surveys require careful design to ensure objective and statistically valid results and therefore, in the final analysis, a high degree of credibility. They must also be carried out in a way that respondents are assured of the confidentiality of their responses, as needed. The employment of independent and reputable surveyors is an important condition to ensure objectivity and credibility. For example, the framework developed by the World Bank's Program on Forests and the United Nations Food and Agriculture Organization (FAO) is based on a transparent multi-stakeholder process.

Diagnostic surveys

- Have diagnostic surveys relating to wildlife and forest crime been undertaken?
- Have diagnostic surveys relating to crimes that facilitate wildlife and forest crime (e.g. corruption, money laundering, tax evasion et cetera) been undertaken?
- Who commissioned these surveys and who carried them out?
- What were the key findings of these surveys? How did the relevant agencies respond to these findings?

Additional resources:
FAO and ITTO, Best Practices for Improving Law Compliance (2005) 78

7.3 Dissemination

A final point relates to the dissemination and publication of the relevant data, research and other information. In many countries and in individual agencies, large piles of information relating to wildlife and forest crime exist, but this information is not often made publicly available. In some instances, agencies may not have the capacity or resources to present, publish and disseminate information more widely, while elsewhere cultures of secrecy, silence and suspicion prevent the sharing of information and expertise.

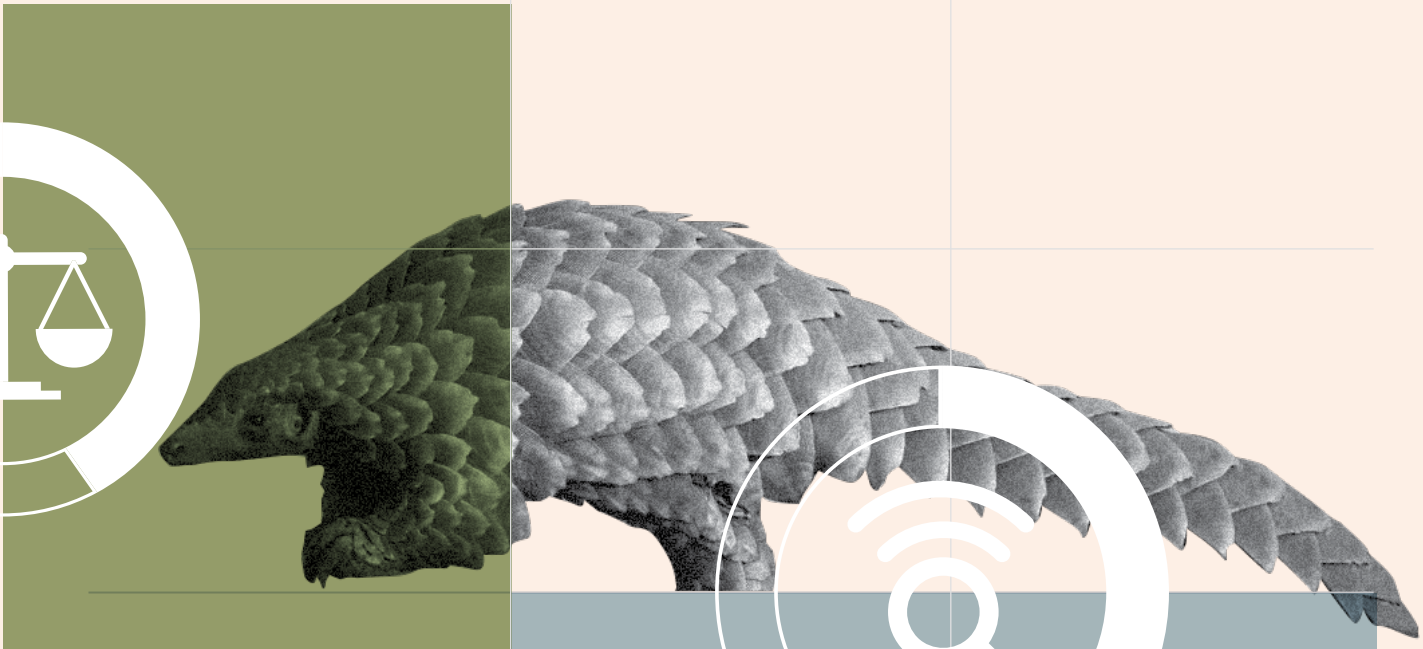
Greater transparency and communication are important tools to prevent and address wildlife and forest crime more effectively. Publications on the linkages between wildlife and forest crime with other crimes like corruption, money laundering, tax evasion and terrorism may assist in prioritizing the fight against wildlife and forest crime. It is essential that all stakeholders engage in open dialogue and make information available that will help others in their efforts to curtail this phenomenon.

TOOL
V.48

Dissemination

- How do the relevant government agencies publish, release and disseminate data and other information relating to wildlife and forest offences? Do such publications include the linkage between wildlife and forest crime with other facilitating crimes like corruption, tax evasion, money laundering, or connections to other major issues such as climate change?
- What information is publicly available? What information is classified and available only to domestic agencies or international law enforcement agencies?
- Is the relevant information published online, and/or in annual or other periodic reports?

CROSS-REFERENCES TO ICCWC INDICATOR FRAMEWORK



Wildlife and Forest Crime Analytical Toolkit (2nd ed 2022)	ICCWC, Indicator Framework for Combating Wildlife and Forest Crime (2016)
I. Legal Frameworks	
1. Convention on International Trade in Endangered Species of Wildlife Fauna and Flora	29. CITES legislation assessment
2. Other international law	30. Legal provisions for international cooperation 31. Legal provisions to combat corruption 32. Legal provisions to address organized crime
3. National wildlife and forest laws	28. National wildlife legislation
4. Specialized wildlife and forest offences	28. National wildlife legislation
5. Facilitation and enabling offences	28. National wildlife legislation 31. Legal provisions to combat corruption 32. Legal provisions to address organized crime 43.Legal provisions for asset forfeiture
6. Criminal law – general matters	33. Use of criminal law
II. Enforcement	
1. Enforcement agencies	3. National enforcement strategy 4. National cooperation
2. Human resources	8. Staffing and recruitment 9. Law enforcement training
3. Enforcement powers and equipment	3. National enforcement strategy 24. Legal authority to use specialized investigation techniques
4. Intelligence	18. Investigative capacity 20. Intelligence analysis 21. Intelligence-led investigations 23. Transnational wildlife crime reporting
5. Investigative techniques	25. Use of specialized investigation techniques 26. Forensic technology 27. Financial investigations
6. Investigation procedures	2. Serious crime 14. Inspection and seizure powers 15. Disposal of confiscated wildlife specimens 23. Transnational wildlife crime reporting 24. Legal authority to use specialized investigation 39. Conviction rate
7. Financial aspects of wildlife and forest crime investigations	27. Financial investigations
8. Border control and customs	12. Border control staff 13. Border control equipment
9. Corruption, Integrity and Accountability	N.A.

Wildlife and Forest Crime Analytical Toolkit (2nd ed 2022)	ICCWC, Indicator Framework for Combating Wildlife and Forest Crime (2016)
III. Criminal Procedure and the Courts	
1. Criminal procedure	33. Use of criminal law 34. Case file preparation 39. Conviction rate
2. Prosecution	9. Law enforcement training 8. Staffing and recruitment 35. Case clearance rate 37. Prosecutorial capacity 39. Conviction rate
3. Judiciary	34. Case file preparation 39. Sentencing guidelines 41. Conviction rate 42. Judicial awareness
4. Sentencing and Sanctions	40. Available penalties 41. Sentencing guidelines 42. Judicial awareness,
5. Restitution, compensation and restoration	40. Available penalties 43. Legal provisions for asset forfeiture
6. Other disruption measures	43. Legal provisions for asset forfeiture 44. Use of asset forfeiture legislation
IV. International Cooperation	
1. Legal and administrative frameworks for international cooperation	30. Legal provisions for international cooperation 32. Legal provisions to address organized crime
2. International law enforcement cooperation	4. National cooperation 5. International cooperation 19. Information management 26. Forensic technology 30. Legal provisions for international cooperation 43. Legal provisions for asset forfeiture
3. Customs Cooperation	5. International cooperation 16. Wildlife seizures 17. Large-scale wildlife seizures 19. Information management 30. Legal provisions for international cooperation
4. Judicial Cooperation	5. International cooperation 30. Legal provisions for international cooperation
5. Regional and specialized initiatives	5. International cooperation 30. Legal provisions for international cooperation

Wildlife and Forest Crime Analytical Toolkit (2nd ed 2022)	ICCWC, Indicator Framework for Combating Wildlife and Forest Crime (2016)
V. Drivers and Prevention	
1. Actors	45. Drivers of wildlife crime 46. Demand-side activities 48. Local community engagement 49. Livelihoods 50. Public Awareness
2. Context Analysis	46. Demand-side activities 47. Regulated community 50. Public Awareness;
3. Wildlife and forest management	6. Strategic risk management 16. Wildlife seizures 17. Large-scale wildlife seizures 23. Wildlife crime reporting 39. Conviction rate 47. Regulated community 48. Local community engagement 49. Livelihood 50. Public awareness
4. Social capacity-building	48. Local community engagement 49. Livelihoods 50. Public awareness
5. Deterrence	42. Judicial awareness 50. Public awareness
6. Awareness-raising and behaviour change	48. Local community engagement 50. Public awareness
7. Research and analysis	46. Regulated community 48. Local community engagement 50. Public awareness

LIST OF REFERENCES

APG and UNODC, *Enhancing the Detection, Investigation and Disruption of Illicit Financial Flows from Wildlife Crime*, Research Report (2017):
https://www.unodc.org/documents/southeastasiaandpacific/Publications/2017/FINAL_-_UNODC_APG_Wildlife_Crime_report.pdf
CITES, *CITES and Livelihoods*:
https://cites.org/eng/prog/livelihoods
CITES, *Directory of wildlife enforcement network (WEN) focal points* (2019):
https://cites.org/sites/default/files/eng/prog/iccwc/WENs/WENs%20list%2009.01.2019.pdf
de Klemm, C, *Guidelines for Legislation to Implement CITES, IUCN Environmental Policy and Law Paper* No 26 (1993):
https://portals.iucn.org/library/efiles/documents/EPLP-026.pdf
ECOFEL, *Financial Investigations into Wildlife Crime* (2021):
https://egmontgroup.org/en/content/ecofel-financial-investigations-wildlife-crime-report-now-available-0
EU FLEGT Facility:
https://www.euflegt.efi.int/home
FAO / ITTO, *Best Practices for Improving Law Compliance in the Forestry Sector* (2005):
https://www.fao.org/3/a0146e/a0146e00.htm
FATF, *Money Laundering and the Illegal Wildlife Trade, Report* (2020):
https://www.fatf-gafi.org/media/fatf/documents/Money-laundering-and-illegal-wildlife-trade.pdf
FATF, *Money Laundering from Environmental Crimes*, Report (2021):
https://www.fatf-gafi.org/media/fatf/documents/reports/Money-Laundering-from-Environmental-Crime.pdf
Hockings M. et al, *Evaluating Effectiveness: A framework for assessing management effectiveness of protected areas* (2006), 2nd ed.:
https://www.iucn.org/content/evaluating-effectiveness-a-framework-assessing-management-effectiveness-protected-areas
ICCWC, *ICCWC Guidelines for Wildlife Enforcement Networks: A self-assessment tool for regional use* (2020):
https://cites.org/sites/default/files/EST/Complete_ICCWC_WEN_Guidelines_ENG.pdf
International Association of Prosecutors, *Standards of professional responsibility and statement of the essential duties and rights of prosecutors* (1999):
https://www.iap-association.org/Resources-Documentation/IAP-Standards-(1)
International Bank for Reconstruction and Development / The World Bank, Certification, *Verification and Governance in Forestry in Southeast Asia* (2012):
https://openknowledge.worldbank.org/handle/10986/27433?locale-attribute=en
INTERPOL and CITES, *Controlled Deliveries: A Technique for Investigating Wildlife Crime* (2007)
INTERPOL and WCO, *Customs–Police Cooperation Handbook* (2018):
https://cites.org/sites/default/files/eng/prog/enforcement/CustomsPoliceCoopHandbook_EN_LR.pdf
INTERPOL, *Wildlife Crime Linked to the Internet – Practical Guidelines for Law Enforcement Practitioners* (2021), restricted access:
https://cites.org/sites/default/files/EST/INTERPOL_Guidelines-Wildlife_Crime_Linked_to_Internet-March2020-PUBLIC.pdf
Ireland R., Cantens T. and Yasui T., *An Overview of Performance Measurement in Customs Administrations*, WCO Research Paper No. 13 (2011):
http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/research/research-paper-series/13_performance_measurement_2011.pdf?la=fr
Kleinschmit et al (eds.), I*llegal Logging and Related Timber Trade – Dimensions, Drivers, Impacts and Responses*, Chapter 7, IUFRO World Series Volume 35 (2016):
https://www.iufro.org/publications/series/world-series/article/2016/12/03/world-series-vol-35-illegal-logging-and-related-timber-trade-dimensions-drivers-impacts-and-r/
Moreto/Gau, Deterrence, *Legitimacy, and Wildlife Crime in Protected Areas*, in: Gore (Ed.) Conservation Criminology (2017)
OAS and CITES, *Handbook on CITES and Livelihoods, Part I: How to rapidly assess the effects of the application of CITES decisions on livelihoods in poor rural communities* (2015):
https://cites.org/sites/default/files/eng/prog/Livelihoods/Guia_Parte1_CITES_eng_final.pdf

OAS and CITES, *Handbook on CITES and Livelihoods, Part II: Addressing and mitigating the effects of the application of CITES decisions on livelihoods in poor rural communities* (2015):
https://cites.org/sites/default/files/eng/prog/Livelihoods/Guia_PART2_CITES_ENG_FINAL.pdf
PROFOR / FAO, *Framework for Assessing and Monitoring Forest Governance* (2011):
https://www.fao.org/documents/card/en/c/03cc002e-b31e-5081-af25-94fabb00f7e8/
PROFOR, *Approaches to Measuring the Conservation Impact of Forest Management Certification*, Working Paper (2013):
https://openknowledge.worldbank.org/handle/10986/16498?locale-attribute=en
Seager, *Gender and illegal wildlife trade: Overlooked and underestimated*, WWF Report (2021):
https://wwfint.awsassets.panda.org/downloads/gender_iwt_wwf_report_v9.pdf
TRACE, the wildlife network:
https://www.tracenetwork.org/about-trace-network/
TRAFFIC, Case Digest : *Financial flows and payment mechanisms behind wildlife crime* (2021)
UN General Assembly, 45/116. *Model Treaty on Extradition*, UN Doc A/RES/45/116 (14 December 1990):
https://www.unodc.org/pdf/model_treaty_extradition.pdf
UN General Assembly, 52/88. I*nternational cooperation in criminal matters*, UN Doc A/RES/52/88 (4 February 1998), 2–4 and Annex: Complementary provisions for the Model Treaty on Extradition:
https://www.unodc.org/documents/commissions/CCPCJ/Crime_Resolutions/1990-1999/1997/General_Assembly/A-RES-52-88.pdf
UN General Assembly, *Model Treaty on Mutual Assistance in Criminal Matters*, UN Doc A/RES/45/117 (14 December 1990):
https://www.unodc.org/pdf/model_treaty_mutual_assistance_criminal_matters.pdf
UN, *UN Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Working Group on International Cooperation, International cooperation involving special investigative techniques*, UN Doc CTOC/COP/WG.3/2020/3 (12 May 2020):
https://www.unodc.org/documents/treaties/International_Cooperation_2020/WG_IC_website/CTOC_COP_WG.3_2020_3/CTOC_COP_WG.3_2020_3_E.pdf
UN, *UN Conference of the Parties to the United Nations Convention against Transnational Organized Crime*, Working Group on International Cooperation, Practical considerations, good practices and challenges encountered in the area of transfer of criminal proceedings as a separate form of international cooperation in criminal matters, Background paper prepared by the Secretariat, UN Doc CTOC/WG.3/2017/2 (7 August 2017):
https://www.unodc.org/documents/treaties/International_Cooperation_2017/V1705658_E.pdf
UN, *United Nations Convention on Animal Health and Protection*:
www.uncahp.org
UNODC and UNICRI, *Technical guide to the United Nations Convention against Corruption* (2009):
https://www.unodc.org/documents/treaties/UNCAC/Publications/TechnicalGuide/09-84395_Ebook.pdf
UNODC, *Best Practice Guide for Forensic Timber Identification* (2016):
https://www.unodc.org/documents/Wildlife/Guide_Timber.pdf
UNODC, *Criminal Justice Assessment Toolkit, Cross-Cutting Issues*, Volume 5: Crime Prevention Assessment Tool (2009):
https://www.unodc.org/unodc/en/justice-and-prison-reform/Criminal-Justice-Toolkit.html
UNODC, *Criminal Justice Assessment Toolkit: Access to Justice*, Volume 1 The Courts (2006):
https://www.unodc.org/unodc/en/justice-and-prison-reform/Criminal-Justice-Toolkit.html
UNODC, C*riminal Justice Assessment Toolkit: Access to Justice*, Volume 2 The Independence, Impartiality and Integrity of the Judiciary (2006):
https://www.unodc.org/unodc/en/justice-and-prison-reform/Criminal-Justice-Toolkit.html
UNODC, *Criminal Justice Assessment Toolkit: Access to Justice*, Volume 3 The Prosecution Service (2006):
https://www.unodc.org/unodc/en/justice-and-prison-reform/Criminal-Justice-Toolkit.html

UNODC, *Criminal Justice Assessment Toolkit: Cross-cutting Issues*, Volume 1 Criminal Justice Information (2006):
https://www.unodc.org/unodc/en/justice-and-prison-reform/Criminal-Justice-Toolkit.html
UNODC, *Criminal Justice Assessment Toolkit: Cross-Cutting Issues*, Volume 3 Victims and Witnesses (2006):
https://www.unodc.org/unodc/en/justice-and-prison-reform/Criminal-Justice-Toolkit.html
UNODC, *Criminal Justice Assessment Toolkit: Cross-cutting Issues*, Volume 4 International Cooperation (2006):
https://www.unodc.org/unodc/en/justice-and-prison-reform/Criminal-Justice-Toolkit.html
UNODC, *Criminal Justice Assessment Toolkit: Policing*, Volume 1 Public Safety and Police Service Delivery (2006):
https://www.unodc.org/unodc/en/justice-and-prison-reform/Criminal-Justice-Toolkit.html
UNODC, *Criminal Justice Assessment Toolkit: Policing*, Volume 2 The Integrity and Accountability of the Police (2006):
https://www.unodc.org/unodc/en/justice-and-prison-reform/Criminal-Justice-Toolkit.html
UNODC, *Criminal Justice Assessment Toolkit: Policing*, Volume 3 Crime Investigation (2006):
https://www.unodc.org/unodc/en/justice-and-prison-reform/Criminal-Justice-Toolkit.html
UNODC, *Criminal Justice Assessment Toolkit: Policing,* Volume 4 Police Information and Intelligence Systems (2006):
https://www.unodc.org/unodc/en/justice-and-prison-reform/Criminal-Justice-Toolkit.html
UNODC, *Criminal Justice Assessment Toolkit: Policing*, Volume 5 Forensic Services and Infrastructure (2006):
https://www.unodc.org/unodc/en/justice-and-prison-reform/Criminal-Justice-Toolkit.html
UNODC, *Current practices in electronic surveillance in the investigation of serious and organized crime* (2009):
https://www.unodc.org/documents/organized-crime/Law-Enforcement/Electronic_surveillance.pdf
UNODC, *Guide on drafting legislation to combat wildlife crime* (2018):
https://sherloc.unodc.org/cld/uploads/res/guide-on-drafting-legislation-to-combat-wildlife-crime_html/Wildlife_Crime_ebook.pdf
UNODC, *Guide on drafting legislation to combat wildlife crime* (2018):
https://sherloc.unodc.org/cld/uploads/res/guide-on-drafting-legislation-to-combat-wildlife-crime_html/Wildlife_Crime_ebook.pdf
UNODC, *Guidelines on Methods and Procedures for Ivory Sampling and Laboratory Analysis* (2014):
https://www.unodc.org/unodc/en/scientists/guidelines-on-methods-and-procedures-for-ivory-sampling.html
UNODC, *Implementation of the United Nations Convention against Transnational Organized Crime: Needs Assessment Tools* (2016):
https://www.unodc.org/documents/organized-crime/tools_and_publications/16-02938_eBook.pdf
UNODC, *Legislative Guide for the Implementation of the United Nations Convention against Transnational Organized Crime* (2017), 2nd ed.:
https://www.unodc.org/unodc/en/treaties/CTOC/legislative-guide.html
UNODC, *Manual on Wildlife and Forest Crime for frontline officers* (2014)
UNODC, *Model Law on Extradition* (2004):
https://www.unodc.org/pdf/model_law_extradition.pdf
UNODC, *Model Law on Mutual Assistance in Criminal Matters* (2007):
https://www.unodc.org/pdf/legal_advisory/Model%20Law%20on%20MLA%202007.pdf
UNODC, *Policymaking and the role of online intermediaries in illicit trafficking* (2021)
UNODC, *Scaling back corruption: A Guide on addressing corruption for wildlife management authorities* (2019):
https://www.unodc.org/documents/corruption/Publications/2019/19-08373_Scaling_Back_Corruption_ebook.pdf
UNODC, *The Global Programme against Corruption: UN Anti-Corruption Toolkit* (2004), 3rd ed.:
https://www.unodc.org/documents/treaties/corruption/toolkit/toolkitv5_foreword.pdf
UNODC, *Wildlife and Forest Crime: a field guide for frontline offices* (2018):
https://fieldguides.github.io/guide03/en/
UNODC, *Wildlife Crime Scene Guide for First Responders* (2019), not for circulation:
https://www.unodc.org/documents/Wildlife/Wildlife_Crime_Scene_Guide_restricted.pdf

UNODC, *World Wildlife Crime Report: Trafficking in protected species* (2020):
https://www.unodc.org/documents/data-and-analysis/wildlife/2020/World_Wildlife_Report_2020_9July.pdf
WCO and Egmont Group, *Customs–FIU Cooperation Handbook* (2020):
http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/enforcement-and-compliance/report/wco_fiu_handbook_sanitised-public-version_wco_en.pdf?la=en
WCO, *Guidelines on Co-operation between Customs Administrations and CITES Management Authorities Managing the Trade in Animals and Plants* (CITES). WCO reference number Annex IV to Doc. 41.827 (classified, only available to WCO members)
World Bank Global Wildlife Program, *Collaborative Management Partnership Toolkit* (2021):
https://www.worldbank.org/en/programs/global-wildlife-program/publication/collaborative-management-partnership-toolkit
World Bank, *National Risk Assessment for Anti-Money Laundering and Terrorism Financing, module on "Environmental and Natural Resource Crimes."*
World Bank, *Strengthening forest law enforcement and governance* (2006):
https://documents1.worldbank.org/curated/en/330441468161667685/pdf/366380REVISED010Forest0Law01PUBLIC1.pdf
World Bank, *Tools and Resources to Combat Illegal Wildlife Trade* (2018):
https://pubdocs.worldbank.org/en/389851519769693304/24691-Wildlife-Law-Enforcement-002.pdf
WWF and World Bank Global Forest Alliance, *Forest Certification Assessment Guide* (2006):
https://wwf.panda.org/wwf_news/?81080/WWFWorld-Banks-Forest-Certification-Assessment-Guide-En-Ru-Pt-

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