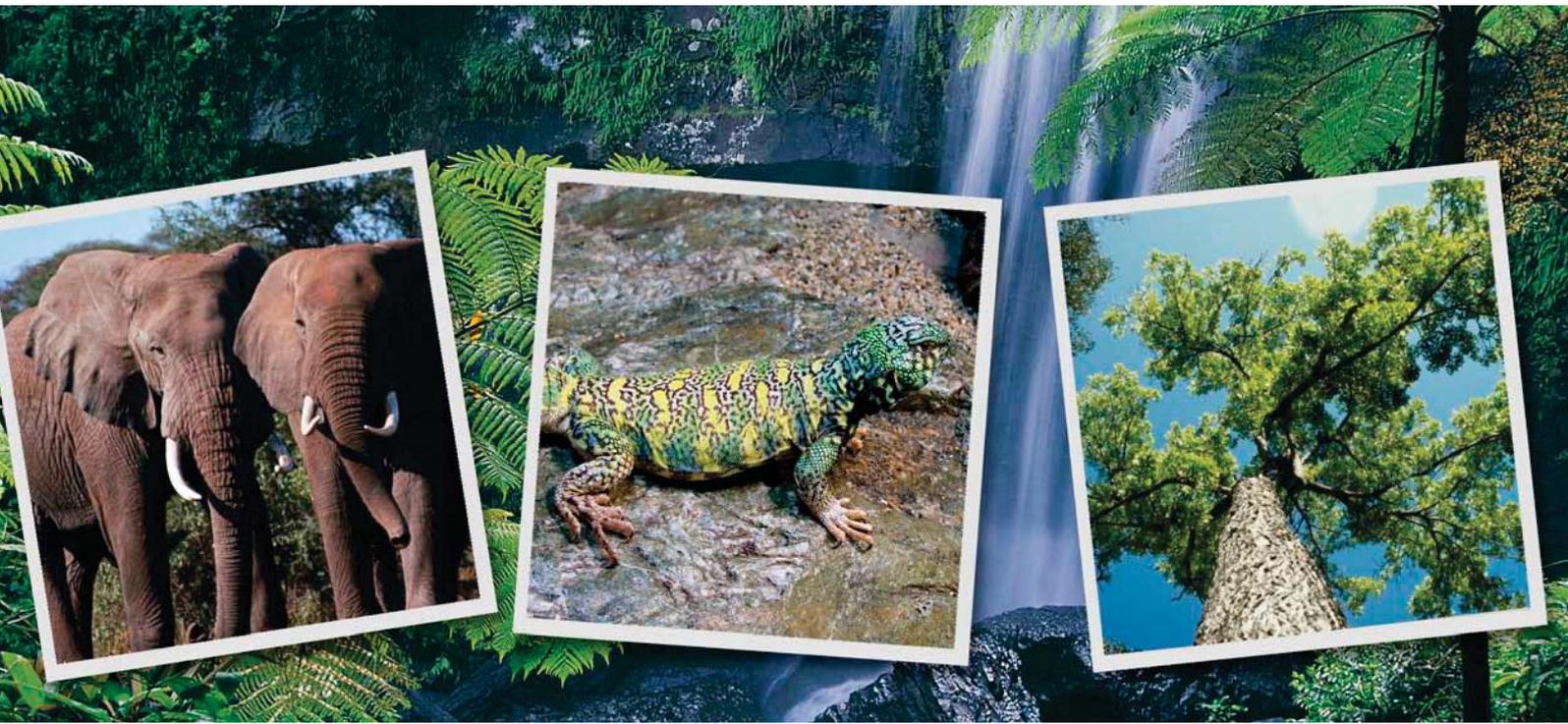




UNODC

United Nations Office on Drugs and Crime



Wildlife and Forest Crime Analytic Toolkit

REVISED EDITION



UNODC

United Nations Office on Drugs and Crime

INTERNATIONAL CONSORTIUM ON COMBATING WILDLIFE CRIME



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UNITED NATIONS OFFICE ON DRUGS AND CRIME
Vienna

Wildlife and Forest Crime Analytic Toolkit

REVISED EDITION



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Abbreviations

ASEAN	Association of Southeast Asian Nations
CEN	Customs Enforcement Network
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
ETIS	Elephant Trade Information System
EU-TWIX	European Union Trade in Wildlife Information Exchange
FAO	Food and Agriculture Organization of the United Nations
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
FLEG	Forest Law Enforcement and Governance
FLEGT	Forest Law Enforcement, Governance and Trade
ICCWC	International Consortium on Combating Wildlife Crime
ICT	information and communication technology
INTERPOL	International Criminal Police Organization
ITTO	International Tropical Timber Organization
IUCN	International Union for Conservation of Nature
MIKE	Monitoring the Illegal Killing of Elephants
MOU	memorandum of understanding
NGO	non-governmental organization
PEP	politically exposed person
PROFOR	Program on Forests
UNODC	United Nations Office on Drugs and Crime
VPA	Voluntary Partnership Agreement
WCO	World Customs Organization
WWF	World Wildlife Fund

About the *Toolkit*

The present version of the *Wildlife and Forest Crime Analytic Toolkit* is an initial attempt to provide a comprehensive overview for understanding the main issues related to environmental offences and for analysing preventive and criminal justice responses to wildlife and forest offences in a given country. Efforts have been made to provide a framework through which measures for prevention and response can be analysed and understood as the basis for an effective national response to wildlife and forest offences.

The *Toolkit* is designed mainly to assist government officials in wildlife and forestry administration, Customs and other relevant enforcement agencies. It will help them to conduct a comprehensive analysis of possible means and measures to protect wildlife and forests and monitor their use and thus, to identify technical assistance needs. In this sense, the *Toolkit* may also be used as training material for law enforcers. In addition, other stakeholders at the international and national levels, as well as civil society, may find the *Toolkit* useful regarding their daily responsibilities.

The *Toolkit* can be used effectively to address (a) a wide range of wildlife and forest offences, including illegal logging and illegal trade in timber and a lack of adherence to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and, (b) the usefulness of the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Corruption.

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

Part one Legislation

Part one analyses legislation relevant to wildlife and forest offences and other illegal activities. It includes an overview of international law, CITES implementation and regional initiatives, as well as domestic wildlife and forest offences and associated crimes, such as corruption and money-laundering.

Part two Enforcement

Part two analyses law enforcement measures pertaining to wildlife and forest offences. It includes analytic tools related to enforcement agencies, staffing, intelligence, investigations, border control and Customs, international cooperation, technical assistance and aid, witness and victim protection, and the accountability and integrity of law enforcers.

Part three Judiciary and prosecution

Part three analyses prosecutorial and judicial capacities to respond to wildlife and forest crime. It includes an analysis of the mandate, structure and processes of prosecution services and judicial organs, sentencing issues, international judicial cooperation and victim compensation.

Part four Drivers and prevention

Part four analyses the factors that drive wildlife and forest offences, and the effectiveness of preventive interventions. This includes the motives of the actors involved, different uses of wildlife and forest products, and natural resource management systems and other preventive mechanisms.

Part five Data and analysis

Part five explores the availability, collection, analysis and examination of data and other information relevant to wildlife and forest crime. It includes an analysis of available crime statistics and other data, mechanisms for information sharing, performance measures and analytic research capacities of a given country.

In its entirety, the *Toolkit* provides an overview of the immense number and great variety of tools available to prevent and combat wildlife and forest offences. Each part of the *Toolkit* provides a practical and detailed guide on the key issues to be examined, with reference to the relevant international conventions, standards and norms, as well as the relevant guidelines and documents. Every effort has been made to make each section comprehensive so as to provide *Toolkit* users with a checklist to analyse thoroughly the root causes of crime, preventive mechanisms and responses of the criminal justice system. However, the *Toolkit* does not replace the need for a tailor-made approach to the assessment of the situation in specific countries, and it does not purport to cover all aspects of each country's legal systems.

The *Toolkit* presented here is the first version of a living document that will be improved and developed in the course of its use, building on feedback received, lessons learned, best practices observed and case studies carried out in the field of wildlife and forest crime prevention and suppression. In this sense, the *Toolkit* should be considered a first working draft that is intended to present a collection of tools and resources from which its users can pick and choose.

To make the practical application of this *Toolkit* most effective, 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 community groups. The user of the *Toolkit* is invited to choose those tools relevant to an analysis of the area of interest. To enable an effective analysis and a sustainable follow-up, it is recommended that the results of the analysis be put in a report form. Such a report 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, agency and governmental policies, and so forth. It should also prove very useful for organizations (intergovernmental and non-governmental)—such as the International Consortium on Combating Wildlife Crime (ICWC)—which may be in a position to offer support and capacity-building. Such a report may also be of considerable use in liaising with the donor community when designing projects or programmes to instigate change at the national level.

The co-sponsors of this *Toolkit* intend to verify its utility through a series of pilot tests with partner governments, following which the proposed approach may be further refined and information revised. It is intended that the *Toolkit* be a living and evolving document, and its regular updates will be based on practical cases, recent literature and studies, and feedback from users in order to ensure that it continues to reflect the most comprehensive tools and relevant experiences in this field.



Executive summary

Wildlife and forest offences¹ are a complex phenomenon with many layers and dimensions. Wildlife and forest offences often result from the interplay of a multitude of factors—cultural, economic, social and environmental—and can involve a wide variety of actors. Thus, to achieve an effective response, wildlife and forest offences need to be addressed via a coordinated and multisectoral approach. This complexity makes it challenging for governments and international organizations to identify the strengths and weaknesses of and gaps in existing legislative, administrative, enforcement, judicial and preventive systems.

Additionally, the fundamental difference between wildlife and forest offences 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 man-made property by creating uncertainty, diminishing confidence, and harming commerce and economic growth. All of these reasons apply for criminalizing the same acts against natural resources. However, there is 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. This sets a different dynamic for wildlife and forest law enforcement, which should lead to the analysis of uses and users of wildlife resources taking into consideration the sustainability and promotion of compliance with good resource management policies.

This *Wildlife and Forest Crime Analytic Toolkit* is intended to serve as an initial entry point for national governments, international actors, practitioners and scholars to better understand the complexity of the issue, and to serve as a framework around which a prevention and response strategy can be developed.

The *Toolkit* provides an inventory of measures that can assist in the analysis of the nature and extent of wildlife and forest offences 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 to integrate the information and experience gained from such analysis into national, regional and international strategies. The *Toolkit* has been developed 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

¹ For the purposes of the *Wildlife and Forest Crime Analytic Toolkit*, the term “offence” includes all activities that may be subject to criminal or administrative penalties.

and the concerns of local communities be recognized and integrated into policy and legislation. The *Wildlife and Forest Crime Analytic Toolkit* is intended to provide a range of options that, in various combinations, will enable each country to assemble an integrated strategy that will be as effective as possible in meeting the country's own unique needs.

The measures set out in this *Toolkit* have been grouped into five key parts: legislation, enforcement, judiciary and prosecution, drivers and prevention, and data and analysis. The tools are organized thematically to ensure ease of use and to assist users in understanding the key issues confronting the system being analysed. The *Toolkit* in its current form will be pilot-tested in partnership with three selected national governments and will be revised to ensure that it is a practical, applicable tool. Additional material will be added as future needs are identified.

1. Background

In this *Toolkit*, “wildlife and forest” refers to all wild fauna and flora, including animals, birds and fish, as well as timber and non-timber forest products. “Wildlife and forest crime” refers to 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.² Wildlife and forest offences considerably accelerate the destruction of forest and wildlife resources and contribute to deforestation, desertification and other forms of environmental degradation. They also have an impact on biodiversity as they reduce or even eliminate species, destroy many unique natural habitats and deprive many countries and their populations of scarce renewable resources.³

Wildlife and forest offences threaten the existence of many plant and animal species. The more endangered a species becomes, the greater the commercial value of the remaining specimen—thereby increasing the incentive for further illegal activities. The fact that some trade in wild fauna and flora is regulated while some trade is prohibited provides opportunities for circumventing the relevant laws and regulations through false documents. In particular, staff that have not received adequate training may have difficulties in differentiating species that can be legitimately traded from those that cannot.⁴

The loss of income from the illegal trade in plants, plant material, wildlife and animal derivatives erodes the revenues of governments and undermines their ability to implement development programmes and to strengthen the rule of law. Where they are linked to organized crime, violence, grand corruption or armed conflict, wildlife and forest offences may destabilize governments and threaten regional security.⁵

Despite many suggestions that wildlife and forest offences are one of the most profitable forms of organized crime, only after illegal drugs and trafficking in firearms and ammunitions,⁶ it remains difficult, if not impossible, to estimate the true scale of the problem. Wild fauna and flora are very heterogeneous specimens that are sourced, traded and consumed for a great variety of purposes. For example, wildlife and forest products are used for food, fuel, construction, furniture, medicine, as collectable goods and in the manufacture of other goods. Secondary wildlife and forest products are

² Cf. John E. Cooper, Margaret E. Cooper and Paul Budgen, “Wildlife crime scene investigation: techniques, tools and technology”, *Endangered Species Research* (2009), p. 1. With further references.

³ Cf. Jacqueline L. Schneider, “Reducing the illicit trade in endangered wildlife”, *Journal of Contemporary Criminal Justice*, vol. 24, No. 3 (2008), pp. 274-289.

⁴ United Nations, Economic and Social Council, “Illicit trafficking in protected species of wild flora and fauna and illicit access to genetic resources”, report of the Secretary-General, 4 March 2003 (E/CN.15/2003/8), para. 26.

⁵ Mara E. Zimmermann, “The black market for wildlife”, *Vanderbilt Journal of Transnational Law*, vol. 36, No. 5 (2003), pp. 1657-1661.

⁶ See, for example, Mara E. Zimmermann, “The black market for wildlife”, pp. 1657-1659.

not produced to a uniform standard and thus considerable price variation can occur. Moreover, the loss of wild fauna and flora, and the damage wildlife and forest offences cause to the environment, extend well beyond monetary value. This heterogeneity makes valuing the illegal trade in wild fauna and flora very challenging.⁷

For most countries, combating wildlife and forest crime is not currently a priority and often remains overlooked and poorly understood, despite the actual and potential scale and consequences. Wildlife and forestry policies and laws and their enforcement have not, or not always, kept up with the changing levels and patterns of trafficking in wild fauna and flora. Underdeveloped legal frameworks, weak law enforcement and poor prosecutorial and judicial practices, as well as a lack of understanding of the different factors that drive wildlife and forest offences, have resulted in valuable wildlife and plant resources becoming threatened by, *inter alia*, illegal logging, illegal trade in timber products, poaching and trafficking in animal parts, derivatives and plant material. The high demand for timber, wildlife, animal parts and plant material around the world has seen large-scale illegal logging, harvesting and poaching operations. Illegal trade in protected fauna and flora offers opportunities to make significant profits because it supplies goods that are considerably cheaper than legally sourced material. This illegal trade is also an impediment to developing long-term legal industries. The gaps in domestic and international control regimes, difficulties in identifying illegal commodities and secondary products, along with intricate trafficking routes, have resulted in the inability to effectively curtail the trade. One commentator notes:

Wildlife protection legislation remains a low priority in most parts of the world, and non-existent in the rest of it. Enforcement of the few international treaties aimed at preventing trade in this macabre biological bazaar ranges from delinquent to derelict. In fact, Customs officials in many nations are not inspecting for biological contraband or are untrained in detecting it. Similarly, wildlife inspectors and permit authorisation agencies in member nations often lack the training necessary to discharge their responsibilities... The odds of getting caught are extremely low, and the possibility of being convicted is virtually non-existent.⁸

In many countries, the existing systems governing the wildlife and forestry sectors have also enabled corruption to flourish and yielded considerable profits for corrupt wildlife and forestry officials, as well as politicians and businesspeople, in the form of bribes and commissions. This, in turn, has given logging and hunting companies the freedom to engage in illegal practices without fear of prosecution. Wildlife and forest offences also enrich transnational organized criminal groups and other criminal networks that engage in cross-border sourcing and supplying illegal commodities.

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. However, in the 2000s, an increasing number of countries (for example, Australia, the Member States of the European Union and the United States of America) introduced legislation to ban the import of illegally harvested timber and wood products. This has also led to bilateral agreements with exporter countries to implement the legislation.

Where wildlife and forest law enforcement measures are implemented or strengthened, the direct impact of these measures on the livelihoods of rural communities is often not a central aspect of

⁷ Cf. Steven Broad, Teresa Mulliken and Dilys Roe, "The nature and extent of legal and illegal trade in wildlife", in *The Trade in Wildlife: Regulation for Conservation*, Sara Oldfield, ed. (London: Earthscan, 2003), pp. 3-11; Brendan Moyle, "The black market in China for tiger products" *Global Crime*, vol. 10, Nos. 1 and 2 (March 2009), pp. 124-125; Jacqueline L. Schneider, "Reducing the illicit trade in endangered wildlife", pp. 274-282; Mara E. Zimmermann, "The black market for wildlife" pp. 1657-1669.

⁸ Jonathan P. Kazmar, "The international illegal plant and wildlife trade: biological genocide?", *University of California Davis Journal of International Law and Policy* (Winter 2000) pp. 105-109.

consideration. In addition, laws related to wildlife and forests often tend to limit the rights and livelihoods of persons depending on natural resources for their living.⁹ By not taking this into consideration and focusing only on law enforcement, communities could be harmed. The links between wildlife and forest offences and issues beyond the wildlife and forestry sectors, such as rural development and public awareness, are often neglected.

Complicating the situation further is the fact that the international community lacks a common understanding and a universally accepted definition of wildlife and forest offences. To date, there is no universal strategy acceptable to all nations to prevent and suppress wildlife and forest offences. Despite a prolific production of bibliographical material, there is not enough available expertise on this phenomenon, and studies based on systematic empirical analysis are still scarce.

1.1 International Consortium on Combating Wildlife Crime

In November 2009, various international organizations and agencies with mandates in law enforcement and criminal justice capacity-building—as they relate to wildlife and forest offences—decided to come together to work jointly on the formation of an international consortium. Representatives from the CITES Secretariat, the International Criminal Police Organization (INTERPOL), the United Nations Office on Drugs and Crime (UNODC), the World Bank and the World Customs Organization (WCO) held their first-ever joint meeting in Vienna to design a strategy intended to prevent and combat illegal trade in wild animals and plants. While several of these organizations and agencies had previously worked together on this subject, this was the first occasion that the five entities had collaborated together on this, or any other form of crime prevention. They decided to form ICCWC to jointly move forward in a coordinated manner.

The Consortium was formally launched in November 2010 during the International Tiger Forum, hosted in St. Petersburg, Russian Federation, by Prime Minister Vladimir Putin, when the final signatures were added to a letter of understanding among the five entities.

At its initial meeting, ICCWC requested UNODC to take the lead in developing an analytic *Toolkit* concerning existing wildlife and forest law enforcement systems.

2. Purpose, concept and objectives

2.1 Purpose

The aim of this *Toolkit* is to provide comprehensive guidance in analysing administrative, preventive and criminal justice responses to wildlife and forest crime and other related offences in a given country. An additional purpose of the *Toolkit* is to identify the different actors in the wildlife and forest offences chain and to provide an understanding of the factors that drive their activities, in order to begin the comprehension of what may be required to prevent an increase in wildlife offences as a global phenomenon. To that end, the *Toolkit* contains a great number of components that are crucial to curtailing wildlife and forest crime both nationally and internationally. The “next great step,” notes INTERPOL:

⁹ Marcus Colchester and others, *Justice in the Forest: Rural Livelihoods and Forest Law Enforcement* (Bogor, Indonesia: Center for International Forestry Research, 2006).

must be to bridge the divisions that separate law enforcement agencies from the public, the activists, the academics, and the policy makers. If we, the international community, are committed to the conservation of the world's environment, biodiversity, and natural resources, all five elements must work together in harmony.¹⁰

The *Wildlife and Forest Crime Analytic Toolkit* 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.

2.2 Concept

Combating crime, including corruption, in sectors that form the backbone of many countries' economies is crucial for the political, social and economic future of a nation. This is a complex process that requires the commitment of all levels and all sectors of government and civil society. Preventing, deterring and detecting wildlife and forest offences require determination, time and consistency, as well as a comprehensive understanding of the underlying causes and drivers of such criminal behaviour. Building integrity and establishing credibility in sectors that sometimes have a long history of illegal activities is a slow and ongoing process. Success cannot be expected overnight. Change is possible, however, and there are positive examples that can be a reason for optimism.

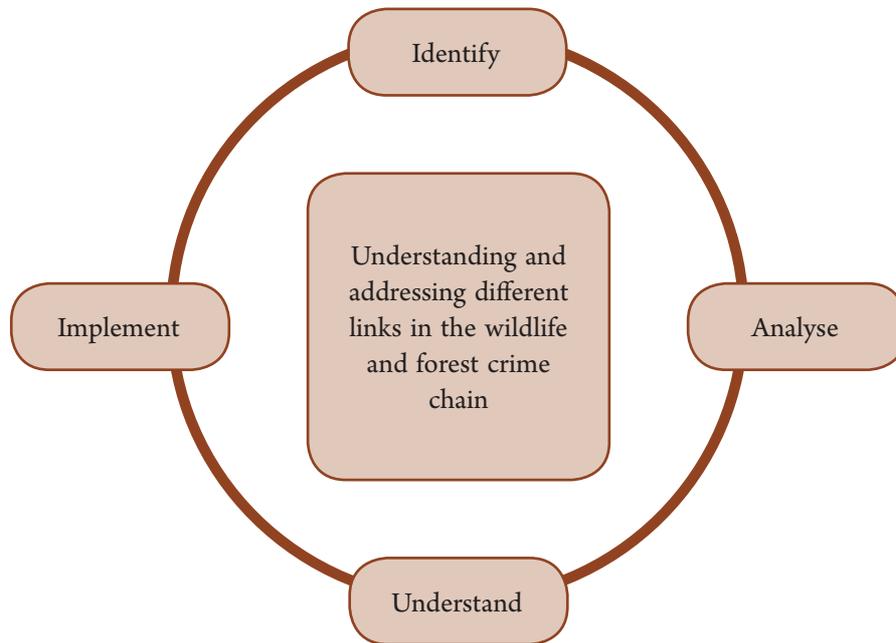
The *Toolkit* has attempted to provide a comprehensive set of assessment guidelines, which—individually and collectively—may assist in curtailing illegal trade in wild fauna and flora.

The concept of this *Toolkit* has four key elements, which assist users in the following ways:

- (1) Identifying current patterns of wildlife and forest offences, 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 offences chain; and
- (4) Implementing measures to address and prevent wildlife and forest offences from being committed by offering alternative incentives.

¹⁰ INTERPOL, *Environmental Crime Programme: Strategic Plan 2009-2010* (Lyon, France, 2009), p. 6.

Figure I. Four keys of the *Wildlife and Forest Crime Analytic Toolkit*



Building on other UNODC assessment toolkits, particularly the *Criminal Justice Assessment Toolkit* (an analytic tool with a broader scope),¹¹ the *Wildlife and Forest Crime Analytic Toolkit* has been developed to serve as a compendium that can be requested by and given to countries as initial assistance in approaching existing wildlife and forest offence issues. 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 States.

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 offences;
- Examine the capacity of national wildlife and forestry management institutes and mechanisms;
- 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 offences;
- Identify different actors in the wildlife and forest offence chain, as well as factors that drive wildlife and forest offences;
- Identify any gaps in the existing response to wildlife and forest offences; and

¹¹ UNODC, *Criminal Justice Assessment Toolkit* (New York, United Nations, 2006).

- Facilitate the formulation and development of measures that adequately 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. It does not set out or advocate model laws, or templates for administrative and enforcement systems, and does not comment on the quality or effectiveness of existing domestic and international strategies and systems.

Instead, the *Toolkit* can be useful to the expert practitioner as a checklist and effective guide to understanding the main issues in this emerging field. 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 offences. The detailed sets of tools should function to provoke thought about, and to provide insight into, the relevant causes and consequences of wildlife and forest offences.

While the terms of reference for an analytic mission may call for an analysis of specific aspects of the wildlife and forestry system, such as policing or the judiciary, a complete analysis will always include an analysis of the 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 an adequate 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 *Wildlife and Forest Crime Analytic Toolkit* is designed to enable government officials in wildlife and forestry administration, Customs and law enforcement agencies, United Nations 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 wildlife and forest offences, and (d) assist in training on these issues.

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

- Governments, by providing them with a sound understanding of their responses to wildlife and forest offences, 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 entities and research 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.

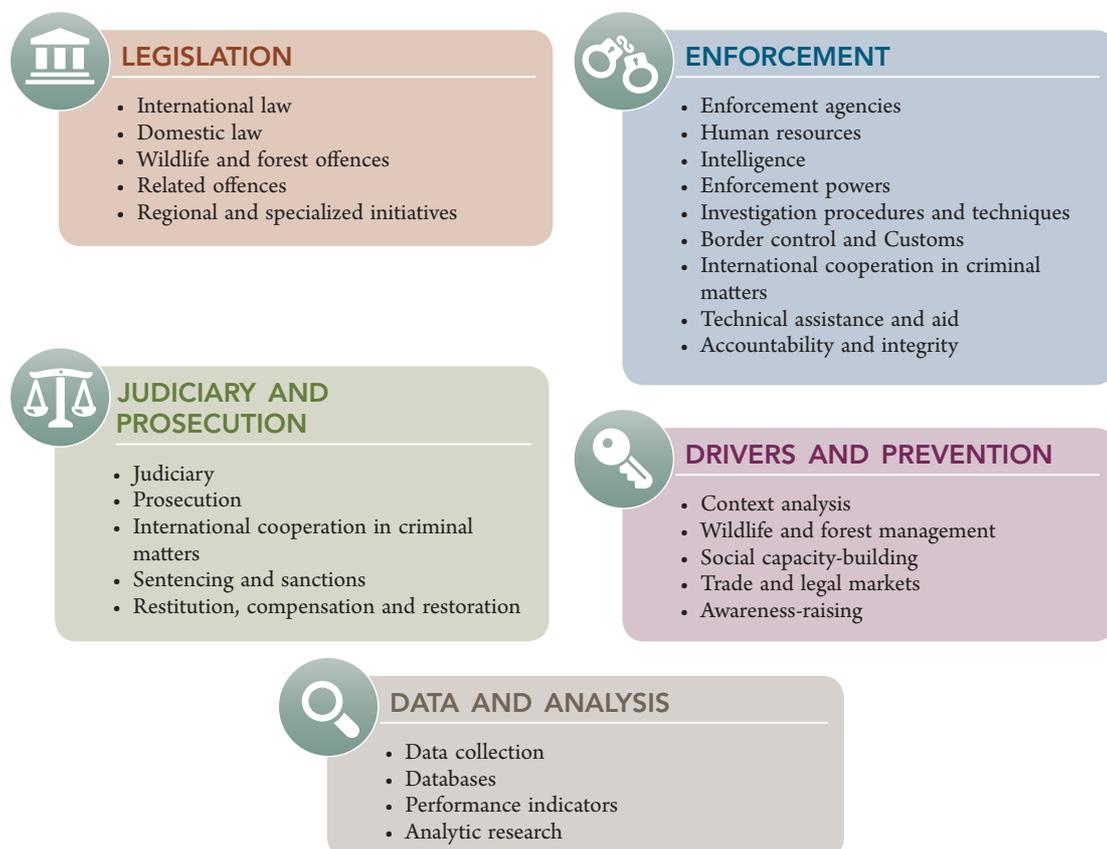
3. Structure and contents of the *Toolkit*

The *Wildlife and Forest Crime Analytic Toolkit* is organized into five parts: (a) legislation; (b) enforcement; (c) judiciary and prosecution; (d) drivers and prevention; and (e) data and analysis. Each part represents one of the sectors involved in the preventive and criminal justice response to wildlife and forest offences. The five parts also reflect and bring together a great variety of government agencies, civil society organizations, individuals and other stakeholders.

The criminal justice systems and other relevant mechanisms pertaining to wildlife and forests—even when dysfunctional—are highly interdependent and interactive. Accordingly, the five parts of the *Toolkit* cannot be isolated. Many parts overlap and several tools and elements appear in more than one part. Within each part of this *Toolkit* are analytic tools and checklists designed to enable a comprehensive analysis of that aspect of the wildlife and forestry system. Wherever possible and relevant, tools are cross-referenced to applicable sections in the other parts.

A thorough analysis of any jurisdiction will involve the use of the complete *Toolkit*. However, 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. All parts follow the same template and are supplemented by visual aids and icons to facilitate the use of the *Toolkit*. Each part is colour coded.

Figure II. Five parts of the *Wildlife and Forest Crime Analytic Toolkit*



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 the relevant literature, documents and guidelines (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.

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

4. Methodology

The development, review and future maintenance of the *Wildlife and Forest Crime Analytic Toolkit* is based on pilot testing of the *Toolkit* with a number of partner governments, as well as ongoing research of the criminal justice systems relevant to combating wildlife and forest offences. 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 offences;
- Availability and quality of legal frameworks to counter wildlife and forest offences;
- Effectiveness of internal enforcement, national border control standards and cross-border collaboration; and
- Inter-agency cooperation, bottlenecks and gaps hindering effective action, and how to counter them.

The *Toolkit* was prepared using exclusively open source material. It is based on a comprehensive review of existing academic scholarship, the analysis of legislative material, official publications by government sources and international organizations, the close examination of reported case law 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 offences—and the efforts to combat them—change constantly, often at short, or without any, notice. The *Toolkit* reflects the best available and most comprehensive information at the time of writing, and every effort will be made to update the *Toolkit* in the future and to keep relevant information as current as possible.

The present version of the *Toolkit* was completed in, and the information presented is current as of, November 2012.

5. Using the *Toolkit*

Each part of the *Toolkit* has been structured so that it can be consulted independently of the others. 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. Because the five parts do not function in isolation, the tools are cross-referenced to relevant sections in other parts.

A simple set of icons, colour codes and other graphic features are employed to facilitate the use of the *Toolkit*.

I	Legislation
II	Enforcement
III	Judiciary and prosecution
IV	Drivers and prevention
V	Data and analysis

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 have been included that may serve as entry points for further reading and analysis.

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 following is an example of a tool:



Tool I.1 CITES

- Is the country a Party to CITES?
- In which domestic law or laws has CITES been implemented? Is there a single national endangered species statute or similar law, or are there multiple legislative instruments?

The tools are not checklists with questions simply to be ticked. Not every wildlife and forestry system in every country approaches the same issue in the same way. The 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 of the suggested tools are appropriate nor, indeed, desirable in every situation. They are there to prompt systematic enquiry and to guide users through the major areas to be analysed.

The resources included in the *Toolkit* by no means comprise an exhaustive collection of all successful, creative and innovative responses to wildlife and forest offences. The *Toolkit* demonstrates the range of resources available to assist those involved in combating wildlife and forest crime.

It is hoped that the guidance offered and the resources recommended in 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.



Part one.

Legislation

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Legislation

Wildlife and forest crime and other offences of this nature vary from country to country. Within a country, 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, while others rely more on civil or administrative sanctions.

Over the last 40 years, there has emerged an extensive body of treaties, agreements, declarations and organizations that seek to protect the environment, natural resources, habitats, and the world's wild fauna and flora. While none of these initiatives is specifically aimed at preventing and suppressing wildlife and forest offences, many international treaties and domestic laws provide frameworks that, directly or indirectly, regulate, control and limit international trade in wild fauna and flora, and criminalize illegal activities in the wildlife and forestry sectors.

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is the principal international instrument to control and regulate international trade in protected species and to suppress any illegal dealings in wild fauna and flora. The treaty has quickly widened its membership and to this day, with its 175 Parties, remains the single most important instrument in this field. In addition, the offences and international cooperation frameworks established by the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Corruption enable the criminalization, investigation and prosecution of those aspects of wildlife and forest offences that are linked to organized crime or corruption. Part one, section 1, of this *Toolkit* identifies and explores relevant international legal frameworks.

Great discrepancies exist within and among national wildlife, forestry, criminal and other laws. Many countries do not, or do not yet, comprehensively criminalize the many activities involved in illegal trade in wild fauna and flora. In some jurisdictions, the criminal law does not adequately capture attempts at committing offences or participation in these offences. In addition, it may not contain special provisions for corruption and money-laundering in the wildlife and forestry sectors. Consequently, the reform of legal and regulatory systems becomes a prerequisite for combating wildlife and forest crime. This may include creating clear definitions of illegal activities, including corrupt or improper allocation of concessions, establishing significant deterrent sanctions and specifying relevant control and enforcement powers at every stage in the commodity chain.¹² Part one, sections 2 to 4, of the *Toolkit* identify the spectrum of wildlife and forest offences and related domestic provisions.

In addition to domestic and international frameworks, a number of regional and topic-specific initiatives to curtail wildlife and forest offences have emerged. These are identified and examined in part I, section 5.

1. International law

Existing international law, insofar as it relates to illegal activities in the wildlife and forestry sectors, consists largely of agreements designed for environmental protection and the sustainable use of natural resources. Agreements may deal with:

¹² Cf. Duncan Brack, Kevin Gray and Gavin Hayman, "Controlling the international trade in illegally logged timber and wood products", study prepared for the United Kingdom Department for International Development (London, Royal Institute of International Affairs, 2002), p. 14.

- Species protection, including measures to suppress illegal trade in those species, is important to prevent the extinction of particular animals and plants, and to prevent their unnecessary exploitation. Species protection measures, however, cannot prevent the destruction of natural habitats and entire ecosystems.¹³
- Mechanisms to protect national parks, ecosystems or geographical areas 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 wild fauna or flora.
- Biodiversity protection involves conservation and habitat protection. Its purpose is to safeguard certain ecosystems or natural areas and all the species therein. The conservation of biodiversity usually involves the protection of designated lands, so-called conservation areas or reserves, from any encroachment. Habitat protection, in contrast, refers to the protection of human land use, including the sustainable development, income-producing opportunities and maintenance of the habitat.¹⁴

An important feature of all aspects of international environmental law is the emerging concept of sustainable development, which is increasingly recognized in many international treaties and regional agreements. Sustainable development may be defined as “the integration of environmental considerations into the development planning process so that long-term economic development is ensured while the quality of life of present and future generations is preserved and improved.”¹⁵ The concept of 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.¹⁶

The following sections identify those international treaties that are directly or indirectly connected to wildlife and forest offences and other associated offences. It should be noted, however, that international law remains fragmentary and inconsistent insofar as specific measures to prevent and suppress wildlife and forest offences are concerned. To this day, there is no specific treaty dealing comprehensively with the many aspects and facets of wildlife and forest offences, such as illegal logging, poaching, trafficking in wild fauna and flora, the possession and consumption of illegally traded plant and animal material, and associated offences such as money-laundering. The absence of such a treaty impedes the prosecution of many acts since they may not be considered to be criminal offences.

1.1 Convention on International Trade in Endangered Species of Wild Fauna and Flora¹⁷

CITES 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.

In short, the purpose of CITES is to protect species of endangered wild fauna and flora (including products from them) by creating a control system for any trade and transaction in these species.

¹³ Ben Boer, Ross Ramsay and Donald Rothwell, *International Environmental Law in the Asia Pacific* (London, Kluwer Law International, 1998), p. 100.

¹⁴ *Ibid.*, p. 101.

¹⁵ Roda Mushkat, “International environmental Law in the Asia-Pacific region: recent developments”, *California Western International Law Journal*, vol. 20 (1989), pp. 21-29. With reference to the World Commission on Environment and Development.

¹⁶ For further information, see part four on drivers and prevention.

¹⁷ United Nations, *Treaty Series*, vol. 993, No. 14537. CITES was opened for signature in Washington, DC, on 3 March 1973 and entered into force on 1 July 1975.

The Convention contains three separate Appendices of species, and sets out the control and reporting mechanisms applicable to them:

- Appendix I includes those species threatened with extinction and in respect of which commercial trade is not appropriate or sustainable. Any trade listed in Appendix I species 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 trade in them 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 species and must be presented to the importing State's Customs authorities.
- Appendix III includes those species that individual Parties choose to make subject to regulation and which require the cooperation of the other Parties in controlling trade. Trade in Appendix III species requires the Management Authority 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 wild fauna and flora because it is the only treaty that requires Parties to penalize some aspects of illegal trade in protected species. It also enables countries to confiscate illegally sourced wild fauna and flora. CITES is, in fact, the only international treaty that sets out specific violations relating to illegal activities in the wildlife and forestry sectors.

Many 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 long before CITES came into existence.¹⁸ It has been noted that:

If national legislation does not provide for the basic implementation of the [CITES] permit system, it becomes difficult both to prevent criminal groups from engaging in the illegal trade in wildlife species and to punish the perpetrators. The lack of national legislation implementing CITES greatly diminishes the effectiveness of the treaty in specific members and throughout the world.¹⁹

Thus, CITES can be effective only to the extent that Parties enact (and enforce) specific provisions. This is usually done through an endangered species statute or similarly termed legislation.²⁰

CITES is widely implemented, even if not always to its full extent. The treaty has also had some success in preventing the extinction of particularly endangered species, especially where commercial trade has been ended completely. CITES is therefore likely to prove of value in curtailing wildlife and forest offences insofar as the protection of individual endangered species is concerned, but it cannot credibly be extended into an agreement to suppress and control every aspect of illegal trade in wild fauna and flora.²¹

It has also been noted that listing species in one of the CITES Appendices can have a negative side effect in that it “may promote, as opposed to curb, the illegal trade in species by inadvertently

¹⁸ Cyrille de Klemm, “Guidelines for legislation to implement CITES”, IUCN Environmental Policy and Law Paper, No. 26 (Gland, Switzerland, and Cambridge, United Kingdom, International Union for Conservation of Nature, 1993), p. 5.

¹⁹ Mara E. Zimmermann, “The black market for wildlife”, pp. 1657-1665 (emphasis added).

²⁰ See further section 2.4.

²¹ Duncan Brack, Kevin Gray and Gavin Hayman, “Controlling the international trade”, p. 36.

advertising their rarity.”²² Such criticism highlights the fact that the accession to and implementation of CITES must be accompanied by clear and stringent control mechanisms and enforcement action.



Tool I.1 CITES

- Is the country a Party to CITES?
- In which domestic law or laws has CITES been implemented? Is there a single national endangered species statute or similar law, or are there multiple legislative instruments?
- Do these laws empower the government to regulate international and domestic trade, possession and transport in animal and plant species?

The domestic implementation of CITES obligations is further analysed in part one, section 2.3, of the *Toolkit*. Section 3.5 examines criminal offences relating to the protection of endangered species.

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 the Convention). 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, paragraph 2).²³

The reservations allowed under CITES are seen by many as weakening the purposes of the Convention as they open the door for countries to opt out of the protection of some species, thus enabling the commercial exploitation of endangered species.²⁴ 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. Further, the reservation clauses acknowledge that countries may have legitimate trading interests in some species and seek to protect their economic interests.²⁵



Tool I.2 CITES reservations

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

²² Erika Alacs and Arthur Georges, “Wildlife across our borders: a review of the illegal trade in Australia”, *Australian Journal of Forensic Sciences*, vol. 40, No. 2 (December 2008), pp. 147-154.

²³ Gwyneth G. Stewart, “Enforcement problems in the endangered species convention: reservations regarding the reservation clauses”, *Cornell International Law Journal*, vol. 14, No. 3 (1981), pp. 429-435.

²⁴ Patricia W. Birnie and Alan E. Boyle, *International Law and the Environment*, 2nd ed. (New York, Oxford University Press, 2002), pp. 629–630; Ben Boer, Ross Ramsay and Donald Rothwell, *International Environmental Law in the Asia Pacific*, p. 106.

²⁵ Gwyneth G. Stewart, “Enforcement problems in the endangered species convention”, pp. 429-436.

1.2 United Nations Convention against Transnational Organized Crime

Several recent United Nations reports suggest that criminal organizations have diversified into the illegal markets for wild fauna and flora, attracted by high profits and low risks.²⁶ Serious and organized forms of wildlife and forest offences, such as trafficking in tiger products,²⁷ ivory, exotic birds, caviar, *inter alia*, may fall within the scope of the United Nations Convention against Transnational Organized Crime.²⁸ Since its inception, the Convention has become an important and nearly universal tool in preventing and combating organized crime, including illegal trade in wild fauna, flora, and their parts and derivatives.

The Convention against Transnational Organized Crime—also known as the Palermo Convention—is the main instrument in the fight against transnational organized crime. It signifies the recognition by its Member States of the seriousness of the problems posed by organized crime, as well as the need to foster close international cooperation. The Convention encourages Parties to adopt measures against transnational organized crime, including the establishment of domestic criminal offences, as well as frameworks for extradition, mutual legal assistance and law enforcement cooperation. The Convention also 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.²⁹

The Convention applies to specific sets of offences, specified in the following provisions: participation in an organized criminal group (article 5); money-laundering (article 6); corruption (Article 8); and obstruction of justice (article 23). Additionally, the Convention applies to the offences under the three protocols that supplement the Convention,³⁰ as well as to all “serious crime” with a transnational organized criminal aspect. Under article 2, paragraph (b), “serious crime” shall mean a conduct, constituting an offence punishable by a maximum deprivation of liberty of at least four years of imprisonment or a more serious penalty.³¹ “Seriousness” refers to the penalty foreseen for an offence under domestic law and thus “serious crime” can also capture those wildlife and forest offences that are punishable by an imprisonment of four years or more.

Since both the perpetration and the effects of wildlife and forest offences are often transnational in nature, and given the frequent involvement of organized criminal groups in these undertakings, there is considerable potential for invoking the Convention against Transnational Organized Crime in a legal response to the cross-border aspects of wildlife and forest offences.³² Indeed, the General Assembly of the United Nations confirmed that the Convention:

constitutes an effective tool and the necessary legal framework for international cooperation in combating such criminal activities as the illegal trafficking of protected species of wild flora and fauna, in furtherance of the principle of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).³³

²⁶ United Nations, Economic and Social Council, “Illicit trafficking in protected species”, para. 28.

²⁷ See further Brendan Moyle, “The black market in China for tiger products”, pp. 124-141.

²⁸ United Nations, *Treaty Series*, vol. 2225, No. 39574. Adopted on 15 November 2000; entered into force on 29 September 2003.

²⁹ See further David McClean, *Transnational Organized Crime: A Commentary on the United Nations Convention and its Protocols* (Oxford, Oxford University Press, 2007), pp. 1-31; and Andreas Schloenhardt, *Palermo in the Pacific: Organised Crime Offences in the Asia Pacific Region* (Leiden, Boston, Martinus Nijhoff, 2010), pp. 33-39.

³⁰ The Convention is supplemented by three protocols: the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children, the Protocol against the Smuggling of Migrants by Land, Sea and Air, and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition.

³¹ See further Andreas Schloenhardt, *Palermo in the Pacific*, pp. 41-43.

³² Under the condition that such offences are considered in the legislation of the States Parties to the Convention.

³³ United Nations General Assembly resolution 55/25 of 15 November 2000. See further Mara E. Zimmermann, “The black market for wildlife”, pp. 1657-1685.



Tool 1.3 United Nations Convention against Transnational Organized Crime

- Is the country a Party to the United Nations Convention against Transnational Organized Crime?
- In which domestic law or laws has the Convention been implemented?

The domestic implementation of Convention provisions is discussed further in part one, section 4.5, below. The Convention against Transnational Organized Crime also offers a particularly effective mechanism for international cooperation in criminal matters by providing a broad and flexible legal basis for cooperation on extradition, mutual legal assistance and international cooperation among States Parties with regard to all forms of serious crime. These tools are further explored in part two, section 5 of the *Toolkit*.

1.3 United Nations Convention against Corruption

Insofar as the different forms of wildlife and forest offences are connected with corrupt practices, the United Nations Convention against Corruption³⁴ can provide an important legal basis for combating them. This Convention, which is the first global legally binding instrument against corruption, builds on the precedent of the Convention against Transnational Organized Crime and incorporates a substantial number of similar provisions. As of May 2011, the United Nations Convention against Corruption had 152 States Parties.

The Convention seeks:

“to promote and strengthen measures to prevent and combat corruption more effectively; to promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery; to promote integrity, accountability and proper management of public affairs and public property.”³⁵

The Convention sets out a great range of preventive anti-corruption measures, and measures relating to criminalization and law enforcement, international cooperation, asset recovery, technical assistance and information exchange.



Tool 1.4 United Nations Convention against Corruption

- Is the country a Party to the United Nations Convention against Corruption?
- In which domestic law or laws has the United Nations Convention against Corruption been implemented?

³⁴ United Nations, *Treaty Series*, vol. 2349, No. 42146. Adopted on 31 October 2003 and entered into force on 14 December 2005.

³⁵ United Nations Convention against Corruption, chap. I, art. 1.

The domestic implementation of Convention provisions is discussed further in section 4.3 below. The United Nations Convention against Corruption also offers a particularly effective mechanism for international cooperation in criminal matters by providing a broad legal basis for cooperation on extradition, mutual legal assistance and international cooperation among States Parties. These tools are further explored in part two, sections 7 and 8.

The United Nations Convention against Corruption contains a comprehensive set of preventive measures aimed at establishing integrity, transparency and accountability that can help to curb corruption in the agencies involved in the fight against wildlife and forest offences, such as law enforcement agencies, Customs, wildlife and forestry departments, but also prosecutors and the judiciary. These and other measures are discussed in part two, section 9, and part three, sections 1.4 and 2.4.

1.4 Other international conventions

In addition to the system created by CITES, the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Corruption, several other treaties set out principles and mechanisms that can be utilized to curtail wildlife and forest offences.

Convention on Biological Diversity

The Convention on Biological Diversity³⁶ focuses predominantly on habitat protection by endeavouring to balance the need for economic development with the protection of biodiversity, especially through the nomination of reserves in developing countries. The principal emphasis of the Convention is on the sustainable development and use of natural resources (article 1), including wild fauna and flora, recognizing “the interaction between habitats and human populations.”³⁷

In relation to wild fauna and flora, the Convention seeks to protect ecosystems, including forests. To this end, the Convention requires States Parties to, *inter alia*, take steps to limit activities that threaten the extinction of species or the degradation of ecosystems within their territory. Specifically, the Convention calls on States Parties to take active steps in the rehabilitation and restoration of degraded ecosystems, to create and enforce laws and regulations to protect threatened species, to establish special protection areas, and to conduct environmental impact assessments of development projects (articles 8 and 9).³⁸

The Convention on Biological Diversity has frequently been criticized for achieving limited practical outcomes.³⁹ First, the protection mechanisms are secondary to “economic and social development and poverty eradication”, which are recognized as “the first and overriding priorities of developing countries”. The Convention also ensures that States Parties maintain full sovereignty “to exploit their own resources [according to] their own environmental policies” (article 3). Consequently, critics argue that biodiversity protection “will continue to be limited by other developmental priorities within the individual nations.”⁴⁰ Second, unlike CITES, the Convention on Biological Diversity does not protect particular species and, unlike the Convention Concerning the Protection of the World Cultural and Natural Heritage, it does not protect particular places or areas. While the Convention on Biological Diversity advocates the protection of natural habitats, it does not contain specific measures to achieve this end.

³⁶ United Nations, *Treaty Series*, vol. 1760, No. 30619. Adopted on 5 June 1992 and entered into force on 29 December 1993.

³⁷ Ben Boer, Ross Ramsay and Donald Rothwell, *International Environmental Law in the Asia Pacific*, p. 111.

³⁸ Cf. Debra J. Callister, “Corrupt and illegal activities in the forest sector: current understandings and implications for the World Bank”, background paper for the 2002 Forest Strategy (Washington, DC, May 1999), p. 26.

³⁹ Ben Boer, Ross Ramsay and Donald Rothwell, *International Environmental Law in the Asia Pacific*, pp. 111-112.

⁴⁰ Raymond Michalowski and Kevin Bitten, “Transnational environmental crime”, in *Handbook of Transnational Crime and Justice*, Philip Reichel, ed. (Thousand Oaks, California, Sage Publications, 2005), pp. 139-155.

One strength of the Convention is considered to be the financial assistance that developing nations can seek for biodiversity conservation programmes. Moreover, some experts have noted that:

In principle, the Convention on Biological Diversity could provide a home for a set of multi-lateral negotiations aimed at creating a specific protocol on illegal logging... However, it is fair to say that most of the forestry industry remains suspicious of the Convention on Biological Diversity, which is generally seen as a tool of environmentalists.⁴¹



Tool I.5 Convention on Biological Diversity

- Is the country a Party to the Convention on Biological Diversity?
- Does the country have domestic laws on the sustainable development and use of natural resources that seek to balance environmental protection with economic development?
- How do these laws ensure the enforcement of their provisions? Do they create offences relating to wildlife and forest crime?

Convention Concerning the Protection of the World Cultural and Natural Heritage

The purpose of the Convention Concerning the Protection of the World Cultural and Natural Heritage,⁴² also referred to as the World Heritage Convention, is to protect designated cultural and natural sites from destruction, encroachment and exploitation. The Convention seeks 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”.⁴³ The main concern raised by the Convention is the protection of the world’s natural (and cultural) heritage of “outstanding universal value”.⁴⁴ Guidelines issued for the operation of the Convention set out in detail the criteria that need to be met to elevate natural heritage to one of “outstanding universal value”. Parties may identify their national “inventory of property forming part of the cultural and natural heritage” and submit their proposals to the World Heritage Committee.⁴⁵ The Committee collects information about legislative and administrative measures relevant to the protection of designated properties situation on the territory of Member States. It also maintains and updates the List of World Heritage in Danger for natural heritage that requires major operations for its conservation (article 11, paragraph 4). Inclusion in this list is limited to properties that face “serious and specific dangers such as the threat of disappearance”.⁴⁶

Unlike CITES, the Convention Concerning the Protection of the World Cultural and Natural Heritage does not protect particular plant or animal species. Importantly, it does not require mandatory steps of protection and conservation. The Convention provides a set of guidelines to encourage Parties to protect their cultural and natural heritage. Article 5 sets out a range of steps that countries

⁴¹ Duncan Brack, Kevin Gray and Gavin Hayman, “Controlling the international trade”, p. 36.

⁴² United Nations, *Treaty Series*, vol. 1037, No. 15511. Adopted on 16 November 1972 and entered into force on 17 December 1975.

⁴³ Convention Concerning the Protection of the World Cultural and Natural Heritage, preamble.

⁴⁴ Article 2 of the Convention Concerning the Protection of the World Cultural and Natural Heritage establishes that the term “natural heritage” includes “natural features consisting of physical and biological formations of groups of such formations which are of outstanding universal value from the aesthetic or scientific point of view; geological or physiographical formations and precisely delineated areas which constitute the habitat of threatened species of animals and plants of outstanding universal value from the point of view of science or conservation; natural sites or precisely delineated natural areas of outstanding universal value from the point of view science, conservation or natural beauty”.

⁴⁵ Convention Concerning the Protection of the World Cultural and Natural Heritage, art. 8 and art. 11, para. 11.

⁴⁶ Convention Concerning the Protection of the World Cultural and Natural Heritage, art. 11, para. 4.

may take to achieve the protection, conservation and presentation of the natural and cultural heritage. The Convention also creates the World Heritage Fund,⁴⁷ to which Parties contribute voluntarily, and from which they can seek financial and other assistance to protect their cultural and natural heritage.



Tool 1.6 Convention Concerning the Protection of the World Cultural and Natural Heritage

- Is the country a Party to the Convention Concerning the Protection of the World Cultural and Natural Heritage?
- Are any natural sites in the country listed under the Convention as world heritage of “outstanding universal value”?
- Does the country have domestic laws to protect natural heritage sites? Do they contain criminal offences relating to illegal trade in natural heritage?

1.5 Bilateral agreements

Many countries or their responsible authorities have made numerous bilateral agreements—such as mutual administrative or judicial assistance agreements and memorandums of understanding (MOUs)—for general enforcement issues, which could also apply to combating transnational wildlife and forest offences. At the same time, some countries have entered into specific bilateral agreements to curtail illegal trade in wildlife and forest products. Such agreements may be set up between individual producer and consumer countries that agree to take action to prevent and suppress the illegal trade in wild fauna or flora that affects them. The possibility of having such voluntary agreements has also been endorsed by the Ministerial Declaration made at the Forest Law Enforcement and Governance East Asia Ministerial Conference, held in Bali, Indonesia, in 2001.⁴⁸

The first of this kind of bilateral agreements was an MOU between Indonesia and the United Kingdom of Great Britain and Northern Ireland in 2002, which commits the two countries to work together to reduce, and eventually eliminate, illegal logging and international trade in illegally logged timber and wood products. Indonesia has since entered into similar agreements with China, Japan, Norway and the Republic of Korea.⁴⁹

In July 2010, the European parliament approved the European Union Timber Regulation (formerly the Due Diligence Regulation). This regulation not only requires timber traders to exercise “due diligence” when selling timber on the European Union market but also prohibits the sale of illegally harvested timber in the European Union. It is expected that the regulation will become applicable in all European Union Member States in early 2013.

Timber from Forest Law Enforcement, Government and Trade (FLEGT) partner countries will be considered to have met the requirements of the European Union Timber Regulation if the FLEGT Voluntary Partnership Agreements (VPAs) with these countries establish control and licensing procedures that ensure that only timber products derived from legally harvested timber are sold on the European Union market.

⁴⁷ Convention Concerning the Protection of the World Cultural and Natural Heritage, art. 15.

⁴⁸ See part one, section 5.1.

⁴⁹ Food and Agriculture Organization of the United Nations and International Tropical Timber Organization, *Best Practices for Improving Law Compliance in the Forestry Sector*, FAO Forestry Paper, No. 145 (Rome, FAO, 2005), p. 69.

A common element to all VPAs is that producing countries put in place credible control systems to verify that timber is produced in accordance with national laws. This implies:

- A commitment to ensure that the applicable forest law is consistent, understandable and enforceable, and promotes sustainable forest management;
- The development of technical and administrative systems to monitor logging operations and to identify and track timber from the point of harvest and the point of import to the point of export;
- A commitment to improving transparency and accountability in forest governance;
- The building of checks and balances into the tracking and licensing system, including the implementation of an independent monitoring system; and
- The developing procedures to license the export of legally harvested timber.

As of July 2011, the European Union had concluded VPAs with six countries, and it is negotiating agreements with several more. The European Union and China have an MOU to work on FLEGT-related matters in preparation of the entry into force of the European Union Timber Regulation in 2013.⁵⁰

A number of other consumer countries have similar legislation or are in the process of developing legislation against trade in illegally harvested timber. The United States was the first to take such measures by amending the Lacey Act in 2008 to make it illegal to import, trade in or transport illegally harvested wood and wood products. Australia is in the process of developing legislation against trade in illegally harvested timber, while Switzerland is introducing an import declaration. A growing number of countries have developed public procurement policies that aim to avoid using illegally harvested timber in public projects.



Tool 1.7 Bilateral agreements

- Has the country entered into any bilateral agreements with other countries that, directly or indirectly, relate to wildlife and forest crime or illegal trade in wild fauna and flora?
- Is the country engaged in VPA negotiations, free trade agreements or other bilateral agreements to curtail illegal timber trade?
- What mechanisms does the agreement contain? Does it include criminal offences, measures for Customs and law enforcement cooperation, information exchange and so forth? How is the agreement enforced?

Often such bilateral agreements between individual countries affected by illegal trade are relatively easy to negotiate and are usually supported by the political willingness necessary for them to work.

⁵⁰ European Commission, "Forest Law Enforcement, Governance and Trade: Voluntary Partnership Agreements", FLEGT Briefing Notes, No. 6 (2007). Available from http://ec.europa.eu/development/icenter/repository/B2_Flegt_Br6_2007_en.pdf; European Forest Institute, FLEGT Team, *Forest Law Enforcement Governance and Trade: The European Union Approach*, Policy Brief, No. 2 (Helsinki: European Forest Institute, 2008). Available from www.efi.int/files/attachments/publications/efi_policy_brief_2_eng_net.pdf; European Forest Institute, EU FLEGT Facility, *What is a Voluntary Partnership Agreement? The European Union Approach*, EFI Policy Brief, No. 3 (2009). Available from www.efi.int/files/attachments/publications/efi_policy_brief_3_eng_net.pdf, www.euflegt.efi.int/portal/home/vpa_countries/.

However, it has to be noted that bilateral agreements can be evaded by trans-shipping products through third countries, neighbouring the country of origin or the country of destination.⁵¹

For example, over the last two decades, the United States and its trading partners have also included in their bilateral free trade agreements the requirement to curtail illegal logging and other illegal trade in wildlife products. Such provisions facilitate legal trade in wildlife and timbers and promote cooperation in the area of environmental protection, but they have also been criticized for creating possible loopholes due to simplified procedures and reduced border control. The bilateral administrative agreements signed between countries have also provided enhanced mutual assistance and information exchange in various areas, including indirectly enforcing legislation related to wildlife and forests.

2. Domestic law

The lack of comprehensive international legal norms dealing with wildlife and forest offences means that domestic law is primarily responsible for determining the nature, scope and consequences of wildlife and forest offences. In turn, without comprehensive wildlife and forest laws at the national level, including criminal offences, it is difficult to combat wildlife and forest offences at the international level.⁵²

In many countries, the reform of legal and regulatory systems is a prerequisite for addressing wildlife and forest offences. One of the many challenges in developing and enhancing these systems is the fact that wildlife and forest offences relate to a diverse range of government sectors that are governed by a great variety of legislative instruments. The following sections and tools are designed to identify the relevant statutes pertaining to wildlife, forests, species protection and criminal law.

In some countries, laws related 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 analysing domestic wildlife, forest and criminal laws, including offences, and in developing recommendations for law reform, it is important to avoid unnecessary duplication, complication and bureaucratization: “Simplicity and efficiency of regulations often go hand in hand.”⁵³

[F]ewer and simpler government rules reduce opportunities for arbitrary interpretation and malfeasance... Laws 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.⁵⁴

Furthermore, it is not sufficient to have the correct laws; transparency is also critical. This includes both the broad dissemination of the laws and ensuring that the language they use is understandable to the public.⁵⁵

⁵¹ Duncan Brack, Kevin Gray and Gavin Hayman, “Controlling the international trade”, p. 32.

⁵² Mara E. Zimmerman, “The black market for wildlife”, pp. 1657-1675.

⁵³ Esa Puustjärvi, *Proposal for Typology of Illegal Logging* (Helsinki, Savcor Indufor Oy, 2008), p. 30.

⁵⁴ Arnolando Contreras-Hermosilla, “Law compliance in the forest sector: an overview”, World Bank Institute Working Paper (Washington, DC, World Bank, 2002), pp. 15-16.

⁵⁵ 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 resist illegal activities and corruption by doing the following:⁵⁶

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 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.⁵⁷

Increase the effectiveness of law enforcement mechanisms in the law: Set appropriate penalties and have effective enforcement powers and procedures.

Domestic laws, however, do not exist in a vacuum and are generally influenced by government policy. Wildlife and forestry policy development is an essential precursor to developing and maintaining adequate legislation. Wildlife and forestry policy choices are, of course, the prerogative of individual countries and this *Toolkit* is not intended to assess or comment on the wildlife and forestry policies of individual countries. It is pertinent to note that policy choices should be made carefully, in consultation with relevant stakeholders, and should be reflected fully and accurately in legislation. A thorough review of the stakeholders that should be considered is established in part four. 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.⁵⁸

Donor country governments 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.⁵⁹

⁵⁶ Ibid.

⁵⁷ Aspects of forest management and participation are further discussed in part four of the *Toolkit*.

⁵⁸ CITES Secretariat, *Model Law on International Trade in Wild Fauna and Flora* (Geneva, n.d.), p. 5.

⁵⁹ Duncan Brack, Kevin Gray and Gavin Hayman, “Controlling the international trade”, p. 14.

2.1 Wildlife and forest law

In most countries, the ownership of, management of, and offences relating to, the wildlife sector are usually set out in a wildlife and forest statute or similar law. While many aspects of domestic wildlife and forest laws focus predominantly on administrative matters, these frameworks directly and indirectly shape the patterns of criminal activity in the wildlife and forestry sectors. Criminal groups quickly adapt to loopholes in domestic legislation, attempt to circumvent certain rules and processes or identify access points for corruption and coercion. Accordingly, domestic wildlife and forest laws, including ownership and management, should form part of any analysis of the criminal justice response to wildlife and forest offences. A more detailed analysis of these points are included in part four of the *Toolkit*.

For the most part, wildlife law is intended to address issues arising from claims concerning conflicts over wild animals living on or transiting through public habitats, or private lands or waterways. Historically, competing claims related to the hunting and trapping of wildlife has been a major driver behind the development of wildlife law. In addition, environmental concerns and issues of conflict with domestic animals have become important. In general, domestic laws pertaining 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, rights of indigenous people or native title;
- Designation of government agencies to oversee and regulate the wildlife sector, administrative processes and so forth;
- 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 hunting licences;
- 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.

The following tool sets out basic analytic questions designed 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 one, section 3, and part two of the *Toolkit*.



Tool 1.8 Domestic wildlife laws

- Which domestic laws regulate the wildlife sector? When were these laws enacted? When were they last updated?
- Do domestic laws regulate ownership and property rights over wildlife?
- Do domestic laws 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?
- Are subsistence, leisure or commercial hunting permissible under domestic law? What are the requirements to hunt legally?

- Do domestic laws designate game reserves or other areas in which no hunting is permitted? Do they designate areas in which subsistence, leisure or commercial hunting is permissible?
- Do domestic laws set out a system for hunting concessions? Who issues hunting concessions? How can they be obtained, renewed, suspended and cancelled?
- Do domestic laws set out rules for the transportation and import/export of wildlife, including live animals, dead animals, trophies, animal parts and products made from wildlife?
- Do domestic wildlife laws set out specific offences and enforcement measures?
- Do domestic wildlife laws set out specific responsibilities of each agency or authority and mechanisms of coordination and cooperation?

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

- Ownership over forests, that is, State-ownership, private property 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 are prohibited and those where they are permissible;
- Licence systems for logging, including conditions for granting, renewing and cancelling logging concessions;
- 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.

The following tool lists basic analytic 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 examined in part one, section 3, and part two of the *Toolkit*.



Tool 1.9 Domestic forest laws

- Under which domestic laws is the forestry sector regulated? When were these laws enacted? When were they last updated?
- Do domestic laws regulate ownership and property rights pertaining to forests?

- Which domestic laws regulate the management and administration of the forestry sector? Which agency is charged with forest administration? Which government department does the agency belong to, and to whom does it report?
- Do domestic laws designate forest and nature reserves and catchment areas (in which no logging or taking of plants is permitted)? Do they designate areas in which subsistence or commercial logging is permissible?
- Is subsistence or commercial logging permissible under domestic law? What are the requirements to extract timber and take other plants legally?
- Do domestic laws set out a system for logging concessions? Who issues logging concessions? How can these be obtained, renewed, suspended and cancelled?
- Does domestic law require licences to process timber (for example, for sawmills)? Who issues these licences? How can these be obtained, renewed, suspended and cancelled?
- Do domestic laws set out rules for the transportation and import/export of timber, including logs, sawn timber and the like?
- Do domestic forest laws set out specific offences and enforcement measures?
- Do domestic forest laws set out specific responsibilities of each agency or authority and mechanisms of coordination and cooperation?

In addition to forest laws, some countries have specific legislation on the use of wild flora. This legislation is often related to species protection, which is examined in the next section. It is, however, conceivable 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 generally. Insofar as they exist, these statutes should be integrated into an analysis of domestic laws related to wildlife and forests.

2.2 Species protection

In most countries, laws pertaining to species protection and the regulation of the trade in endangered species of wild fauna and flora are synonymous with the domestic laws implementing CITES.⁶⁰ 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 law”, or similar, while other countries rely on their general wildlife legislation, and sometimes on Customs or foreign trade legislation to control the trade in specimens of CITES-listed species.⁶¹

To ensure the protection of endangered species under the framework of CITES, further elaboration and implementation of legislation at the national level is needed. In this context, the CITES Secretariat notes that:

⁶⁰ See tool I.1.

⁶¹ Juan C. Vasquez, “Compliance and enforcement mechanisms of CITES”, in *The Trade in Wildlife: Regulation for Conservation*, Sara Oldfield, ed. (London, Earthscan Publications, 2003), pp. 63-65.

Creating and adopting effective and enforceable legislation is not an easy task. Effective legislation is not just a piece of paper but the practical solution to a problem. Enforceable legislation is that which is realistic in terms of what can be achieved within a country's particular context and its human or financial resources...

The legislative provisions for implementing CITES in each Party are similar, though 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.⁶²

The current reality, however, shows that less than half of CITES Parties have adequate domestic legislative, regulatory and institutional measures that effectively implement CITES.⁶³

Implementation of CITES

The CITES Secretariat can help States Parties to implement the Convention by offering a variety of tools, expertise, documents and training. Further, the Secretariat, through its National Legislation Project,⁶⁴ has developed a template for a model law on international trade in wild fauna and flora that can be used by States Parties in order to develop new, and analyse existing, legislation.

The Secretariat has also 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".⁶⁵ The 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.

The following tool sets out those elements of the Convention that are of particular relevance to the control and prohibition of wildlife and forest offences. It also considers whether domestic CITES legislation covers all specimens of all species (animals and plants, alive or dead, and parts and derivatives) included in the three CITES Appendices, and whether the legislation and its schedules are amended regularly as necessary.⁶⁶



Tool I.10 Domestic CITES implementation

- Do the relevant laws set out the following?
 - General rules to regulate international and domestic trade in endangered species;
 - Role of Management and Scientific Authorities;
 - Role and powers of enforcement agents;

⁶² CITES Secretariat, *Model Law on International Trade*, p. 2 (emphasis added).

⁶³ CITES Secretariat, "National laws for implementation of the Convention", Fifteenth meeting of the Conference of the Parties, Doha, March 2010. See also Juan C. Vasquez, "Compliance and enforcement mechanisms of CITES", pp. 63-65.

⁶⁴ See also Juan C. Vasquez, "Compliance and enforcement mechanisms of CITES", pp. 63-65.

⁶⁵ Cyrille de Klemm, "Guidelines for legislation to implement CITES", IUCN Environmental Policy and Law Paper, No. 26 (Gland, Switzerland and Cambridge, United Kingdom, International Union for Conservation of Nature, 1993).

⁶⁶ CITES Secretariat, *Model Law on International Trade*, p. 3.

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;

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 relevant domestic laws apply to all animal and plant species listed in CITES Appendices I, II and III? Do these laws apply to non-CITES species? Are these listed in a separate schedule?
- Do the laws use the Convention definitions of “specimen”, “introduction from sea” and other relevant terms?
- When were these laws last updated? Are schedules and appendices updated if and when listings in the CITES Appendices change?

CITES Management and Scientific Authorities

Each CITES signatory must designate a Management Authority (or Authorities) to issue permits or certificates, as well as a Scientific Authority 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 Appendices to the Convention requires the issuance of a permit or certificate (depending on the case) issued 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, 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. 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 (for example, Scientific Authority, police, Customs and relevant ministries).⁶⁷

⁶⁷ CITES Secretariat, *Model Law on International Trade*, p. 3.



Tool I.11 CITES Management Authority

- If the country is a Party to CITES, has it designated a Management Authority? What is the name of the Authority? Is it created by statute?
- Has the country designated a Scientific Authority?
- What is the mandate of the Management Authority? Is it the body designated to grant, cancel and retain the permits and certificates required under CITES?
- Is the Management Authority authorized to proceed with any required investigation and detain specimens where there are reasonable doubts on their identification, pending the results of other investigations?
- Can the Management Authority refuse to accept permits from exporting countries when it has reasonable grounds to do so (for example, if it appears that substantial irregularities have occurred)?
- Where is the Management Authority located? How is it equipped and funded? How is it staffed?

The mandate of the national Management Authority necessitates close collaboration with domestic law enforcement agencies, especially Customs. To facilitate such cooperation, the World Customs Organization and the CITES Secretariat recommend the signing of a national MOU between Customs and the CITES Management Authority. Such a framework gives Customs an appropriate platform for obtaining information from the Management Authority with which to target high-risk consignments and travellers. The MOU also enables Customs to help the Management Authority by indicating the existence of suspicious circumstances or consignments. The increased quantity and frequency of information provided by the Management Authority enables Customs to identify, distinguish and target high-risk traffic more effectively, while permitting the majority of legitimate trade to move freely.⁶⁸



Tool I.12 Cooperation between Management Authority and Customs

- How does the Management Authority cooperate with Customs? 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?

⁶⁸ See *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 (only available to WCO members).

Species protection beyond CITES

The application and enforcement of CITES provisions are necessarily limited to specimens of species listed in the CITES Appendices. Most 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 endangered species that are not listed in the Appendices. Neither do they apply to any trade 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.⁶⁹

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 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,⁷⁰ as provided for in article X of the CITES Convention.⁷¹



Tool 1.13 Species protection outside CITES

- Do domestic laws relating to species protection apply to the trade in endangered species with States not a Party to CITES?
- Do domestic laws apply to species not listed in the CITES Appendices?

2.3 Criminal law

Generally, criminal law articulates those principles that apply to all criminal offences within one jurisdiction, regardless of the nature of the crime. This includes 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, among many others. Depending on the jurisdiction, these general principles of criminal liability—along with specific offences—are set out in a single statute or a series of laws, or even in case law, depending on the legal system.

The general rules and principles of criminal liability are of equal importance to wildlife and forest offences as they determine 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 the wildlife and forestry sectors. The *Toolkit* is not equipped to conduct a comprehensive analysis of the general rules of criminal law and 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 analyses 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.

⁶⁹ Patricia W. Birnie and Alan E. Boyle, *International Law and the Environment*, p. 629.

⁷⁰ Rosalind Reeve, *Policing International Trade in Endangered Species: The CITES Treaty and Compliance* (London, Royal Institute of International Affairs, 2002), pp. 34-35.

⁷¹ Convention on International Trade in Endangered Species of Wild Fauna and Flora, article X.

Establishing fault elements (*mens rea*)

Most common law and civil law jurisdictions require proof of fault for criminal offences. In most countries, criminal liability is based on the presumption of “no conviction without fault”. Before a person is found guilty of an offence, the prosecution must prove the *mens rea*, or mental elements, of the offence. This ensures that the prosecution establishes the “guilty mind” of the accused before a conviction. It is based on the principle that persons should not be convicted for something they did not intend, did not know, or were unaware of.

The difficulty with fault elements, especially subjective fault elements such as intention and knowledge, is to prove 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, which provides that “the knowledge, aim, purpose or agreement” required to establish relevant offences under the Convention “may be inferred from objective factual circumstances”.⁷² The same provision is found in article 28 of the United Nations Convention against Corruption.

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. Some legal systems admit the concept of “strict liability”, where certain forms of conduct would be criminalized regardless of whether or not an accused intended the outcome, or at least without the need to prove subjective elements. The establishment of liability without the proof of fault elements eases the work of investigative and prosecutorial organs and may theoretically constitute a greater deterrent. However, in other countries, the concept of strict liability is not acceptable under criminal law. 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.



Tool I.14 Proof of subjective fault elements

- Does the national criminal law permit the use of objective factual circumstances to prove subjective fault elements such as intention, knowledge and so forth?
- Is it permissible to infer the subjective fault elements of the relevant wildlife and forest offences from objective factual circumstances?
- Does the criminal law presume that every offence requires the proof of fault 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?
- What fault elements are required for wildlife and forest offences? Can liability for wildlife and forest offences arise without the proof of fault?

⁷² See further David McClean, *Transnational Organized Crime*, pp. 65-66.

Extensions of criminal liability

In all jurisdictions, criminal liability is not limited to completed offences, and extensions are provided to capture those persons who attempt, incite or participate in a criminal offence. The extensions are also of great importance to wildlife and forest offences as they 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.

Most jurisdictions recognize three inchoate offences, namely attempt, conspiracy and incitement, as described below. The common thread among these offences is that they are committed even though the substantive offence that had been intended was not completed and no harm was caused.

- Attempt is designed to punish those who intend to commit a crime and who commit acts that are more than merely preparatory to the crime, but who are unsuccessful in carrying it out. 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 of the accused were abandoned, aborted, interrupted or were doomed to fail from the outset.
- Conspiracy—an offence known mostly in common law countries—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.
- The offence of incitement covers situations in which a person tries to incite or 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.

Secondary liability extends criminalization beyond the main offenders. It refers to extensions of criminal liability that capture offenders 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. Secondary liability may apply to conduct that occurs before or during the commission of the principal offence: so-called “accessorial liability” (accessories).



Tool 1.15 Extensions to criminal liability

- Are attempts, conspiracy and incitement to wildlife and forest crime criminalized? What are the requirements to establish liability for these inchoate offences?
- 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?

Liability of legal persons

In many States, criminal law extends liability for criminal offences to legal persons such as corporations. The simple rationale of corporate criminal liability is that corporate entities on whose behalf

or for whose benefit any offence, including wildlife and forest crime, was committed by one of their employees or agents ought to be criminalized in the same way as natural persons. Corporate structures should not be used—as they often are—to shield anyone from criminal prosecution and punishment. Other States do not accept the criminal liability of legal persons, but they may establish civil or administrative liability to prevent or deter wrongful acts committed by or through legal persons. For example, article 10 of the United Nations Convention against Transnational Organized Crime requires States to adopt measures to establish the liability of legal persons for participation in serious crimes involving an organized criminal group and for the offences defined in the Convention. Paragraph 2 states that, “subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative”.



Tool 1.16 Liability of legal persons

- Can legal persons be held criminally responsible for wildlife and forest offences?
- Does the prosecution of the corporation prejudice the prosecution of individuals?
- What types of sanctions can be imposed on corporations?
- If corporate criminal liability does not exist, is it possible to impose civil or administrative sanctions on corporations?

3. Wildlife and forest offences

Wildlife and forest crime comprises a myriad of diverse and sometimes overlapping offences from illegal logging and hunting, processing, exporting and importing, trafficking, supplying, to receiving, possessing and consuming wild fauna and flora. It also covers associated offences, such as document fraud (including fraudulent marking and stamping), money-laundering, tax evasion and corruption. However, there is a simple taxonomy for understanding the nature of criminal activities that may have a significant impact on the environment. These activities involve illegal products, illegal places and illegal practices. Wildlife and forest crime can occur equally in countries of origin, at transit points and in countries of destination.

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 also assists in identifying access points for law enforcement investigations and other government interventions. Also important in effectively preventing wildlife and forest offences is identifying all links in the supply chain and understanding driving factors that may lie beyond wildlife and forest areas.

The table below presents a non-exhaustive overview of the categories of criminal offences in countries of origin, at transit points and in countries of destination, as well as a list of associated offences. Each category is further explored in sections 3.1 to 3.6 and section 4 below. It has to be noted that there is significant overlap among the offences as countries often play more than one role, in that they are, for instance, simultaneously the source of the plant or animal and the place in which plant or animal material is further processed and perhaps also consumed.

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

	Wildlife offences	Forest offences	Associated offences
Origin	Poaching (illegal hunting) Use of prohibited hunting equipment or methods Taking of restricted prey (breeding females, young, protected species) Violation of seasonal restrictions Illegal possession Illegal processing of animal material Illegal export	Illegal logging and harvesting Illegal possession Illegal processing of plant material Illegal export	Corruption Tax evasion and non-payment of fees Document fraud Money-laundering
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
Destination	Illegal import Illegal processing Illegal possession Illegal supply and sale Illegal consumption	Illegal import Illegal processing Illegal possession Illegal supply and sale Illegal consumption	Corruption Tax evasion and non-payment of fees Document fraud Money-laundering

One of the principal obstacles in wildlife and forest crime investigations is the fact that, in many countries, criminal offences pertaining to the wildlife and forestry sectors are not clearly defined. The definition and scope of legality may depend on government policies and administrative regulations, and these are easily changeable by local or national governments. Many undesirable and environmentally unsustainable practices in the wildlife and forestry sectors may in fact be legal under existing laws in an effort to maximize short-term revenues.⁷³ The legalization and criminalization of certain activities in the wildlife and forestry sectors are driven by a great range of political, economic and environmental factors, many of which are beyond the wildlife and forestry sectors and therefore beyond any analysis of the criminal justice system. Part four of the *Toolkit* offers tools to analyse some of these factors, as well as preventive interventions to address them.

Neither is there consensus among countries about the exact scope and elements of wildlife and forest offences. What may be illegal in one country may be perfectly legal in neighbouring countries. In analysing the relevant criminal offences and developing recommendations for reform, it is important to avoid creating marked imbalances between countries. If one country has very strong, well-defined wildlife and forest legislation, then a relatively wide spectrum of wildlife and forestry activities may be illegal. In contrast, in a neighbouring country with weaker legislation, the same

⁷³ Cf. Duncan Brack, Kevin Gray and Gavin Hayman, "Controlling the international trade", p. 13.

type of activities may be in compliance with the law. Purely national-level concepts of “legality” therefore have the potential to create disparities between countries when controls are applied at the international level.⁷⁴

3.1 Illegal logging and harvesting

The term “illegal logging” is used very broadly to describe a great range of activities associated with the felling of trees. While the term has widespread use, it is largely void of technical meaning and it is not defined in international law. In summary, illegal logging usually refers to one or more of the following activities:⁷⁵

- 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.

Logging of protected species

Illegal logging frequently involves the felling of trees that belong to a protected species. Most countries have protected tree species of conservation concern under domestic laws and prohibit their logging. Illegality may thus arise if trees are logged 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 is carried out in geographical areas that are placed under environmental protection, such as national parks or conservation areas. Most countries 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 outside concession boundaries or in particularly vulnerable areas, such as steep slopes, river banks or water catchments. It may also involve instances in which public or protected forests are illegally occupied and converted to land for agricultural use or cattle ranching.

⁷⁴ Ibid., p. 14.

⁷⁵ Andreas Schloenhardt, “The illegal trade in timber and timber products in the Asia-Pacific region”, Research and Public Policy Series, No. 89 (Canberra, Australian Institute of Criminology, 2008), pp. 47-49; Cf. Alison Watson, “The proposed New Zealand approach towards addressing illegal logging and associated trade activities, MAF Discussion Paper, No. 2006/01 (Wellington, Ministry of Agriculture and Forestry, 2006), pp. 17-18; Duncan Brack, “Illegal logging and the illegal trade in forest and timber products”, *International Forestry Review*, vol. 5, No. 3 (2003), p. 195; Duncan Brack, Kevin Gray and Gavin Hayman, “Controlling the international trade”, p. 7.

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 countries with little, if any, capacity to take inventories of their forests, so there is no ready way to identify excess harvests.

Logging without permits or with fraudulent 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. Another involves the duplication of permits. In areas where surveys are carried out more frequently, the use of fake permits or duplications of real permits are more common.⁷⁶

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, corruption, 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 the corruption of government officials are particularly widespread in the forestry sector of many countries and equally affect the harvesting, processing, transportation, export and import stages of the timber trade.⁷⁷

Non-payment of taxes and other forest fees

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 the operator harvests additional trees, other fees remain unpaid. The arrears can in some cases become a huge drain of public resources and revenue.

Damaging forest ecosystems

The final type of 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. There have been numerous reports of loggers taking advantage of this legal loophole by damaging forests deliberately to necessitate their removal. Once a tree is removed from its original place, it becomes difficult if not impossible to distinguish legally sourced timber from illegally damaged trees.⁷⁸

⁷⁶ Abt Associates, "Illegal logging: a market-based analysis of trafficking in illegal timber", final report for the National Institute of Justice, Washington, DC, 2006, p. 46.

⁷⁷ See further part one, sections 3.3 to 3.5 of the *Toolkit*.

⁷⁸ Abt Associates, "Illegal logging", p. 43.

Some reports, especially those issued by non-governmental organizations (NGOs), use the term “illegal logging” more loosely to refer to any kind of unsustainable forest activity. The term has also been used to describe harvesting activities that may infringe on the customary rights of indigenous people and local communities. These types of activities are further explored in part four of the *Toolkit*.

Many countries are relatively effective at prosecuting illegal logging offences, especially those with tightly regulated forestry sectors. A few even extend the criminal offences available for the illegal taking of trees to other plants. The illegal harvesting of plants, the taking of plants from protected or prohibited areas and so forth are, however, equally damaging to the environment and can contribute to the extinction of species, as well as fuel other criminal offences further down the trade chain.



Tool 1.17 Illegal logging and harvesting

- Are the following activities criminalized pursuant to domestic law?
 - Logging protected timber species;
 - Harvesting (as well as theft and other taking) of protected plant species;
 - Logging and harvesting without valid authorization (including no permit, expired permits and forged permits);
 - Logging and harvesting in protected areas (including natural reserves and national parks);
 - Logging and harvesting in prohibited areas (such as steep slopes, river banks and catchment areas);
 - Logging and harvesting outside concession boundaries;
 - Illegal occupation and use of forest lands;
 - Logging and harvesting above concession quotas;
 - Removing under- or oversized trees, damaging trees, using slash and burn practices, girdling and ringbarking;
 - Obtaining logging and harvesting concessions illegally; and
 - Underreporting and misreporting logging and harvest activities or quotas.
- Pursuant to which legislation are these activities criminalized? Are these criminal offences or administrative offences?
- What types of offences are included?
- 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)?
- Do the offences criminalize incidental illegal logging and harvesting (when the result is incidental to some other activity)?
- What are the penalties for these offences?

3.2 Illegal hunting (poaching)

Illegal hunting or poaching 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 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. Hunting may also be illegal if it occurs outside designated areas. Several countries designate specific lawful methods of hunting in relation to specific species. For example, a minimum calibre of firearm may need to be used to hunt “big game”. In some instances, the use of crossbows, bow and arrows, or snares or traps may be prohibited. Using such methods would be regarded as poaching and result in violations of national law.

A further type of poaching involves activities that exceed allocated quotas. Other hunting activities are illegal because the person or organization carrying out the hunting does not hold a valid licence to do so. This is the case if hunting licences were never obtained, are invalid, have expired or have been forged. Hunting licences may also be void because they have been obtained by way of coercion or corruption.⁷⁹



Tool I.18 Illegal hunting (poaching)

- Are the following activities criminalized pursuant to domestic law?
 - Killing or capturing protected animal species;
 - Killing or capturing wild animals without valid authorization (including no permit, expired permits and forged permits);
 - 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;
 - Hunting outside of season or at other unauthorized times;
 - Obtaining a hunting licence illegally;
 - Use of unauthorized hunting devices or hunting methods (including traps and explosives);
 - Interference with other people’s hunting or trapping; and
 - Underreporting and misreporting hunting activities or quotas.
- Pursuant to which legislation are these activities criminalized? Are these criminal offences or administrative offences?
- What types of offences are included?

⁷⁹ Cf. Arlene Kwasniak, “Enforcing wildlife law”, Canadian Wildlife Law Project Paper, No. 2 (Calgary, Canada, Canadian Institute of Resources Law, 2006), pp. 6-7.

- 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)?
- Do the offences criminalize incidental illegal logging and harvesting (when the result is incidental to some other activity)?
- What are the penalties for these offences?

3.3 Illegal processing of animal and plant material

In the chain of illegal activities associated with wildlife and forest crime, the steps that follow illegal logging, harvesting and poaching are the processing of plant and animal material (such as milling or slaughtering) and the manufacturing of plant and animal products. The illegal processing of wildlife and forest products is one of the most complex steps in the supply chain as it is used to disguise the origin of the material used and of the types of species involved so that the final product becomes indistinguishable from products involving materials obtained legally.

The use of illegally obtained plants or animals often 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 ramin, or of food items and medicines that contain protected plant or animal material. Illegal processing and manufacturing also involves activities such as processing without a licence, with a fake licence or with illegally obtained licences.⁸⁰



Tool I.19 Illegal processing of animal and plant material

- Are the following activities criminalized pursuant to domestic law?
 - Processing illegally obtained or protected plant or animal material;
 - Processing without documentation verifying the legal origin of the material;
 - Manufacturing of prohibited goods made from wild fauna or flora; and
 - Operating processing facilities for timber (or other plant or animal material) without a licence.
- Pursuant to which legislation are these activities criminalized? Are these criminal offences or administrative offences?
- What types of offences are included?
- 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)?
- What are the penalties for these offences?

⁸⁰ Duncan Brack, "Illegal logging and the illegal trade", p. 195.

3.4 Trafficking, trade, sale and supply

Offences relating to trafficking cover a range of commercial activities involving wild fauna and flora, and activities relating to their transportation. For example, domestic law may criminalize the sale, supply and offering for sale of protected species and illegally obtained wildlife and animal material, or may otherwise prohibit the trade in and transport of such material. Offences relating to exports, imports and other cross-border transactions are set out separately in part one, section 3.5, below.



Tool 1.20 Trafficking, illegal trade, sale and supply

- Are the following activities criminalized pursuant to domestic law?

Selling wild 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 in defiance of trade restrictions or national control measures.

- Pursuant to which legislation are these activities criminalized? Are these criminal offences or administrative offences?
- What types of offences are included?
- 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)?
- What are the 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 the *Toolkit*, but they can be integrated into wider strategies to stop wildlife and forest crime.

3.5 Import and export offences

Export offences involve a range of illegal cross-border activities, including the transportation of wild fauna and flora without authorization, the export of illegally obtained wildlife and forest products, the illegal export of protected species and the misclassification of exports, as well as export with fraudulent documents, excessive export and the declaring of lower values and volumes, clandestine export, export without permits and illegally obtaining export permits.⁸¹

⁸¹ Alison Watson, "The proposed New Zealand approach", pp. 17-18; Duncan Brack, 'Illegal logging and the illegal trade', p. 195.

Similar to these export offences, the import of wild fauna and flora into a country may be illegal because of violations of Customs and other border control requirements. In particular, illegality may arise in the following cases:

- The import involves protected species;
- An import ban from that particular source is in place;
- The import is not declared;
- Documentation requirements are not complied with;
- False declarations are made or papers used; and
- The import exceeds the limit.

In most countries, 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 legislation usually applies to a great range of contraband ranging from wild fauna and flora to illegal drugs, weapons, pornography, explosives and other banned items. Often, these laws contain no measures specifically tailored for animals and plant material, which are listed along with other prohibited goods. Moreover, some countries have quarantine laws that ban the import of certain species of wild 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.

CITES, in contrast, 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.⁸² 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 domestic 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.⁸³

⁸² Cyrille de Klemm, "Guidelines for legislation to implement CITES", p. 60.

⁸³ David Favre, *International Trade in Endangered Species: A Guide to CITES* (Dordrecht, Netherland, Martinus Nijhoff Publishers, 1989), pp. 215-216.



Tool 1.21 Import and export offences

- Are the following activities criminalized pursuant to domestic law?
 - Export and import of protected species (protected under domestic law or protected in the CITES Appendices);
 - Export and import of wild fauna and flora without valid permits (including no permit, invalid permits and forged permits);
 - Export and import of wild fauna and flora above set quotas or above documented quotas;
 - Export and import of wild fauna and flora in contravention of national bans; and
 - Other export and import of wild fauna and flora not in consistency with valid permits.
- Pursuant to which legislation are these activities criminalized? Are these criminal offences or administrative offences?
- What types of offences are included?
- 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)?
- What are the penalties for these offences?

3.6 Acquisition, possession and consumption

The demand for and consumption of wild fauna and flora is one of the most integral drivers of the illegal trade. While many of the criminal aspects associated with wildlife and forest crime are carried out in source and transit countries, these offences would not occur if it were not for the continuing demand in the main consumer countries.

Jacqueline L. Schneider notes:

“[W]hatever illegal property is demanded, illegal suppliers will strive to fulfil the demand. Thieves (or poachers) acquire the goods because they know there are avenues through which they can sell them—there is an opportunity to sell the demanded property to those who either use it themselves or are willing and able to sell it on to their final consumers.”⁸⁴

The demand for rare species or cheap material is the single most important reason for widespread illegal activities in the wildlife and forestry sectors. 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. As such, demand constitutes a driving factor for wildlife and forest crime. This subject is discussed further in part four of the *Toolkit*.

Any strategy aimed at eliminating the illegal trade in wild fauna and flora must address the demand for illegal animals and plants, dead or alive, including products and derivatives. However, most

⁸⁴ Jacqueline L. Schneider, “Reducing the illicit trade in endangered wildlife”, pp. 274-286.

countries, especially those with the highest consumption, have only recently introduced mechanisms to address, let alone prohibit, the demand for illegal wild fauna and flora. The major importing countries of wildlife products have made few reforms. While some mechanisms exist to control the trade in species protected under CITES, these measures address only a small aspect of the trade and not the wider issues.

In comparison to other aspects of trade in wild fauna and flora, demand and consumption are the least researched and the least regulated aspects. There are generally no requirements to hold permits to obtain or purchase certain material unless protected species are involved. In addition, few countries 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 wild fauna and flora are immune from any penalties, prosecutions and seizures. 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.



Tool 1.22 Offences relating to possession

- Are the following activities criminalized pursuant to domestic 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 wild fauna and flora.
- Pursuant to which legislation are these activities criminalized? Are these criminal or administrative offences?
- What types of offences are included?
- 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)?
- What are the penalties for these offences?

3.7 Penalties

There are considerable differences among countries as to the nature and level of penalties that may be imposed for wildlife and forest offences. In some countries, only small fines and short prison terms are handed out. In others, fines can be very severe and prison terms can be long. In extreme cases, wildlife and forest offences can attract life imprisonment or even capital punishment.⁸⁵

CITES 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. In several countries, the penalties may be limited to fines, and few countries have lengthy periods of imprisonment included in possible penalties. In other countries, the penalties are

⁸⁵ Cyrille de Klemm, "Guidelines for legislation to implement CITES", p. 65.

purely administrative. In general, the deterrence factor for criminal offences is significantly lessened if courts cannot, or do not, impose realistic fines or other forms of punishment. Low or inadequate penalties may also restrict the use of 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 also 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 the penalties incurred so that some perpetrators could be more easily deterred if they knew they would face the prospect of similar penalties wherever they operate.⁸⁶ States should also ensure that pecuniary penalties remain relevant and keep their deterrent power over time, for example by indexing them to inflation rates where appropriate.⁸⁷

Calls for sanctions for wildlife and forest crime to be greatly increased and to be made mandatory for all detected illegal activities should, however, be answered with caution. Particularly severe penalties should be reserved for serious offences that are committed intentionally, for second or multiple offences, and for offences that cause harm or death to another person. While it is necessary to ensure that offenders are fairly and systematically convicted, it is important to note that increasing the fines and 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. Stiffer penalties will thus only act as a deterrent where overall governance of the wildlife and forestry sectors is improved.⁸⁸

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. It is, of course, impossible to recommend specific penalties as this is a matter that should be clearly left to the judgement of individual jurisdictions. 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 often feel bound not to apply them.⁸⁹

The following tool is designed to identify the types of penalties available as well as the maximum and minimum penalties provided for wildlife and forest offences in the legislation. 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 three, section 4, below.

Some of the consequences of wildlife and forest offences may not be “penalties” in the strictest sense of the word. For example, in Liberia, the 2005-2006 concession review assessed all alleged logging concessions to analyse whether they met legal requirements and were established through the proper legal process. The result was that none of the concessions was found to have been awarded in compliance with the legislation. As a result, each and every concession agreement was declared null and void—not cancelled in the legal sense—with notable economic loss to the alleged concessionaires.⁹⁰

⁸⁶ Ibid.

⁸⁷ FAO and ITTO, *Best Practices for Improving Law Compliance*, p. 47.

⁸⁸ Ibid.

⁸⁹ Cyrille de Klemm, “Guidelines for legislation to implement CITES”, p. 103.

⁹⁰ Arthur G. Blundell, “The financial flows that fuel war”, in *Forests, Fragility and Conflict*, Program on Forests (Washington, DC, World Bank, 2010).



Tool 1.23 Penalties for wildlife and forest offences

- What types of sanctions are provided for wildlife and forest offences in the statute (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 adequately reflect the severity of the harm 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?
- Is there an appropriate recurrent process to review the compliance of concession and other utilization agreements with national legislation?

4. Related offences

In addition to the specific offences explored in section 3 above, wildlife and forest crime frequently involves a range of other associated offences that are used to facilitate the principal offence or that are committed in the aftermath of a wildlife and forest crime. The *Toolkit* does not examine the myriad of offences that can conceivably be associated with wildlife and forest crime. Instead, the following sections focus on those offences that are most frequently connected to wildlife and forest crime. These include document fraud (the omission of material facts, with the intention to mislead), money-laundering, corruption and bribery, tax evasion and the non-payment of fees and tariffs, as well as participation in criminal organizations.

4.1 Document fraud and related matters

Document fraud is frequently used to disguise the authenticity, legality, quantity, volume, origin and destination of wild fauna and flora. Fraud takes place at the source points, at transit points and destination points. Fraud may be committed by filling in a document with false information or by forging the document itself. There are a myriad of ways in which genuine documents can be tampered with and in which false documents can be created.

Document fraud involves not only paper-based fraud; it can involve the removal, alteration, defacing or erasure of marks 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 similarly undermine the system.

The overreliance on documents, marks and stamps is seen by many as a fundamental vulnerability of trade in wild fauna and flora. The documents, marks and stamps themselves are often traded illegally and recycled in multiple transactions. At the international level, CITES and other organizations also lack a comprehensive and independent system for monitoring and verifying the issuance and use of permits and the central reporting of data.⁹¹

The ingenuity of those engaging in the ever-changing patterns of document fraud needs to be matched by penalties that are, on the one hand, general enough to capture the great diversity of criminal conduct and, on the other hand, specific enough to adequately penalize particularly serious forms of document fraud. 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 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.⁹²

Pursuant to Economic and Social Council resolution 2004/26 of July 2004, the United Nations Office on Drugs and Crime commissioned a study on fraud and the criminal misuse and falsification of identity,⁹³ which was released in 2007 as a result of the work of an open-ended intergovernmental expert group. The findings of the study were based on the information provided by 46 Member States. The study tackled differences and deviations in definitional and conceptual approaches at the national level with regard to the criminal misuse and falsification of identity, and shed light on various aspects revealing the complexity of the problem and its criminal diversity.



Tool I.24 Document fraud and related offences

- Are the following activities criminalized pursuant to domestic 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;

Violation of the conditions attached to permits and licences related to wildlife and forests;

Unauthorized removal, defacement, erasure and alteration of stamps and marks;

Falsification of records and failure to keep records;

Omission of material facts;

Carrying out fraud to deprive citizens or the government of the honest and faithful services of its employees.

⁹¹ Brack Duncan, Kevin Gray and Gavin Hayman, "Controlling the international trade", p. 16.

⁹² Cyrille de Klemm, "Guidelines for legislation to implement CITES", p. 103.

⁹³ United Nations, Economic and Social Council, "Results of the second meeting of the Intergovernmental Expert Group to Prepare a Study on Fraud and the Criminal Misuse and Falsification of Identity", report of the Secretary-General, 2 April 2007 (E/CN.15/2007/8 and Add.1-3).

- Pursuant to which legislation 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?
- Does liability for the offences cover intentionally, knowingly or negligently (without due care) engaging in the prohibited conduct? What are the applicable evidentiary standards for the prosecution of such offences?
- 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 penalties for these offences? Do such offences include criminal or administrative sanctions or both?
- Are there sufficient data, statistics or other information to effectively and conclusively prove a case of fraud or identity-related crime?

4.2 Money-laundering

Wildlife and forest products can generate vast amounts of profit that need to be laundered to disguise their illegal origin. There are many examples of how wildlife and forest crime is linked to money-laundering and to the avoidance of currency control and other financial regulations. In few countries are wildlife and forest offences predicate (or underlying) offences for money-laundering. To date, there have been very few attempts to “follow the money trail” by freezing and ultimately confiscating the proceeds of wildlife and forest crime, and identifying and criminalizing those who fund wildlife and forest offences or profit from them. Moreover, most of these attempts have been in relation to illegal logging and have thus far only been made within one country and not internationally.

Most countries now have laws against money-laundering that directly or indirectly criminalize the transferring, receiving, concealing and possession of proceeds of a crime. In some countries, however, these laws are not well developed, not often used and frequently overlooked as a tool to prevent and suppress wildlife and forest crime. On the other hand, other countries have set up creative ways to specifically target the proceeds from activities such as illegal logging, the illegal processing of timber, the export and import of illegal logs, and other activities related to wildlife and forest crime.

A number of international frameworks can be utilized to criminalize and investigate the laundering of wildlife and forest crime proceeds. The Convention against Transnational Organized Crime, 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.⁹⁴ Article 23 of the United Nations Convention against Corruption includes a money-laundering offence that is modelled after the Convention against Transnational Organized Crime. In simplified form, Article 6, paragraph 1, of the Convention against Transnational Organized Crime and Article 23, paragraph 1, of the United Nations Convention against Corruption 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...;

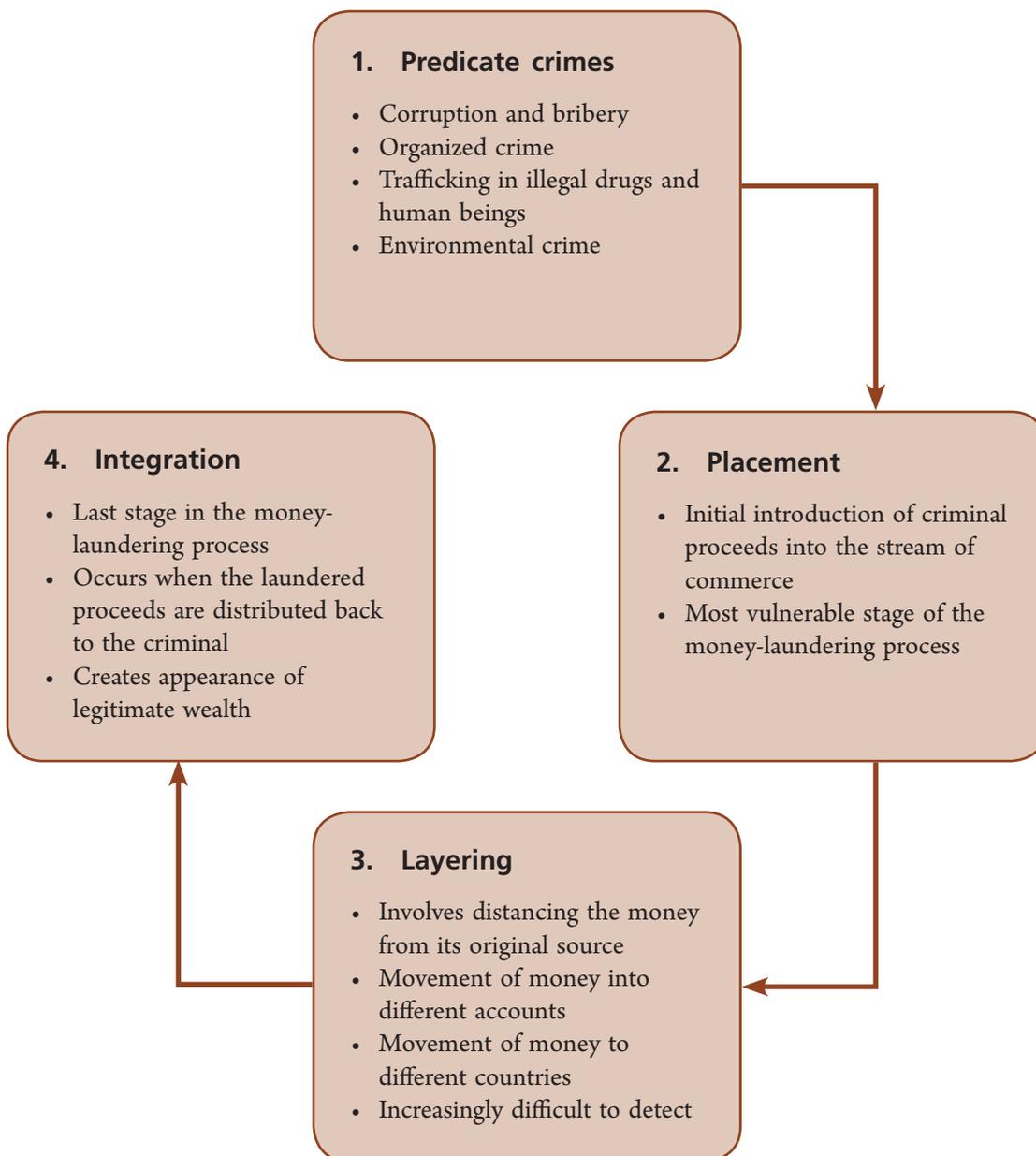
⁹⁴ United Nations Convention against Transnational Organized Crime, art. 6 and art. 7. See further David McClean, *Transnational Organized Crime*, pp. 68-108.

(a) (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;

(b) (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.⁹⁵

Figure III. Money-laundering circle



⁹⁵ United Nations Convention against Transnational Organized Crime, art. 6, para. 1 (b) (ii); United Nations Convention against Corruption, art. 23, para. 1 (b) (ii). See also UNODC, *Criminal Justice Assessment Toolkit* (New York, United Nations, 2006), pp. 5-6.



Tool 1.25 Money-laundering offences

- Does domestic 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 domestic 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^a 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, both objective and subjective (*mens rea*)?
- Does liability for the offences cover intentionally, knowingly or negligently (without due care) engaging in the prohibited conduct? Can the offences be prosecuted without proof of fault?
- 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?
- What are the penalties for these offences?
- 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?

^a 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.”

Additional tools relating to financial investigations and the seizure of assets are explored in part two, sections 5.8 and 5.9.

Financial Action Task Force Recommendations

The Financial Action Task Force (FATF) was set up in 1989 as an intergovernmental body specifically to address the problem of money-laundering and to enhance multilateral judicial assistance in that field. FATF currently has a membership of 34 States and two regional organizations, which together represent most major financial centres in the world. It has now been recognized by 170 countries, of which 110 have established Financial Intelligence Units (FIUs). These countries have agreed to enact domestic laws to implement the FATF Recommendations and to be assessed against them. More than 120 assessments have been carried out against the June 2003 revised Recommendations. FATF is currently engaged in another revision process of its standards. Based on the continuous assessment of the scale and methods of money-laundering and terrorist financing,

FATF offers 40 Recommendations and 9 Special Recommendations to comprehensively combat money-laundering and terrorist financing.⁹⁶ These Recommendations, while not legally enforceable, have found nearly global 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 offences. To assist countries in their efforts to assess and enhance domestic anti-money-laundering laws, FATF, in partnership with international financial institutions (the World Bank and the International Monetary Fund), has developed a detailed handbook on anti-money-laundering and counter-terrorism financing evaluations and assessments.⁹⁷

A number of regional organizations have been set up to complement the work of FATF. These are referred to as “FATF-style regional bodies”, and they include the Asia/Pacific Group on Money Laundering, the Caribbean Financial Action Task Force, the Eastern and Southern Africa Anti-Money Laundering Group, the Eurasian Group on Combating Money Laundering and Financing of Terrorism, the Inter Governmental Action Group against Money Laundering in West Africa, the Middle East and North Africa Financial Action Task Force, and the Financial Action Task Force of South America against Money Laundering. The Gulf Cooperation Council, the Council of Europe, the Economic Community of West African States and other regional organizations also have regional initiatives, including treaties, with a focus on money-laundering.



Tool 1.26 FATF 40 Recommendations

- Is the country a member of FATF?
- Is the country a member of another regional anti-money-laundering group?
- Has the country undergone a mutual evaluation by its peers (in the context of FATF or an FATF-style regional body)? If so, when was the assessment carried out and what was its outcome? What deficiencies were identified and what steps have been taken to remedy these deficiencies?

Reporting of suspicious transactions

Reporting requirements placed on financial institutions, especially on banks, are of particular importance in detecting the laundering of the proceeds of crime, including assets derived from wildlife and forest crime. The FATF 40 Recommendations and many domestic laws that comply with the international standards mandate that financial institutions exercise care in the conduct of financial transactions, and require the reporting of suspicious transactions to designated government agencies and to the relevant FIUs.⁹⁸ Non-compliance with such reporting obligations may be punished in a number of countries.⁹⁹

⁹⁶ FATF, *FATF Standards: 40 Recommendations* (Paris, 20 June 2003, incorporating the amendments of 22 Oct 2004). Available from www.fatf-gafi.org/dataoecd/7/40/34849567.PDF (accessed 30 Mar 2010); FATF, *FATF Standards: FATF IX Special Recommendations* (Paris, 2003, incorporating the amendments of 22 Oct 2004). Available from www.fatf-gafi.org/dataoecd/8/17/34849466.pdf (accessed 20 May 2010).

⁹⁷ FATF, *AML/CTF Evaluations and Assessments: Handbook for Countries and Assessors* (Paris, Organization for Economic Cooperation and Development, 2009). Available at www.fatf-gafi.org/dataoecd/7/42/38896285.pdf (accessed 30 March 2010).

⁹⁸ FATF, *FATF Standards: 40 Recommendations*, Recommendations 5, 7, 11, 12 and 13; See further, Bambang Setiono and Yunus Hussein, “Fighting forest crime and promoting prudent banking for sustainable forest management: the anti-money-laundering approach”, CIFOR Occasional Paper, No. 44 (Bogor, Indonesia, Center for International Forestry Research, 2005), pp. 15-17.

⁹⁹ Cf. FATF, *FATF Standards: Forty Recommendations*, Recommendation 17.

Article 14, paragraph 1 (a), of the United Nations Convention against Corruption requires that States 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;
- A mechanism for the reporting of suspicious transactions.

This means that reporting entities doing business with forestry or hunting companies should be aware of the general scale of their client's legitimate operations, and should be properly suspicious when transactions are conducted that are inconsistent with the client's normal, customary and legitimate business operations. Thus, a logging enterprise depositing revenues from wood sales that are far in excess of what would seem consistent with the company's licensed harvest volume ought to generate suspicion by a responsible bank.¹⁰⁰

FATF Recommendation 6 on politically exposed persons (PEPs) may be useful as it provides a further mechanism for enhanced due diligence by financial institutions conducting transactions on behalf of senior government officials, who may include wildlife and forestry officials. On this basis, financial institutions should, in relation to PEPs and in addition to performing normal due diligence measures:

- Have appropriate risk management systems to determine whether the customer is a PEP;
- Obtain senior management approval for establishing business relationships with such customers;
- Take reasonable measures to establish the source of wealth and source of funds; and
- Conduct enhanced ongoing monitoring of the business relationship.

According to the interpretative note of this Recommendation, the requirements of Recommendation 6 should be extended to individuals holding "prominent public functions in their own country".

Furthermore, under article 52, paragraph 1, of the United Nations Convention against Corruption, States Parties are required to take the necessary measures, in accordance with their domestic law, to oblige financial institutions within their jurisdiction:

- To verify the identity of customers;
- To take reasonable steps to determine the identity of beneficial owners of funds deposited into high-value accounts; and
- To conduct an enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have been, entrusted with prominent public functions and their family members and close associates.

Such enhanced scrutiny must be reasonably designed to detect suspicious transactions for the purpose of reporting to competent authorities and should not be so construed as to discourage or prohibit financial institutions from doing business with any legitimate customer.

¹⁰⁰ Bambang Setiono and Yunus Hussein, "Fighting forest crime", pp. 14-15.

Moreover, in accordance with article 58 of the United Nations Convention against Corruption, States Parties must cooperate with one another for the purpose of preventing and combating the transfer of proceeds of offences established in accordance with the Convention and of promoting ways and means of recovering such proceeds. To that end, article 58 requires States Parties to consider the establishment of an FIU to serve as a national centre for the collection, analysis and dissemination of reports of suspicious financial transactions to the competent authorities.



Tool 1.27 Reporting of suspicious transactions

- What customer due diligence measures do reporting institutes 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? Such an obligation applies to, inter alia, the following:
 - Proceeds of all offences that are required to be included as predicate offences under Recommendation 1 of the FATF 40 Recommendations;
 - Funds suspected to be linked or related to terrorism purposes; and
 - All suspicious transactions, including attempted transactions, regardless of whether the transaction involves tax matters.
- Has the country established an FIU?
- Does the FIU have, on a timely basis, access to financial, administrative and law enforcement information to achieve its objectives in assessing the suspicious transaction?
- Are the reporting entities required to report any suspicious transactions to the FIU?
- Does the FIU provide them with adequate guidance or instructions on reporting a suspicious transaction? (See FATF Recommendations 13, 14 and 26.)
- Are enhanced customer due diligence measures in place for dealings with PEPs? If so, are domestic or international PEPs covered?
- 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?

4.3 Other corruption-related offences

Corruption may occur prior to operation (granting permits, certificates, quotas or licences), during operation (control of activity) and after operation (granting permits and licences for the export or commercialization of products).¹⁰¹

¹⁰¹ Debra J. Callister, "Corrupt and illegal activities in the forest sector", p. 8.

Corruption can involve low-ranking game wardens and forest officials who accept bribes and then turn a blind eye to illegal wildlife and forest activities.¹⁰² However, it can also reach the highest levels of government officials who are involved in policy decisions and law-making in the wildlife and forestry sectors. High-level or “grand” corruption is the most damaging form of corruption as it causes significant financial losses and encourages petty corruption at the lower levels of government.¹⁰³ The Food and Agriculture Organization of the United Nations and the International Tropical Timber Organization also note that, in some cases, corruption in the forestry sector may be an intrinsic part of the patronage systems that sustain the power of a country’s ruling elite.¹⁰⁴ Political manipulation is a major issue in persistent illegal activities in the wildlife and forestry sectors, and it often leads to a breakdown of law and order and hampers private and foreign investment in these sectors.

Further encouraging corrupt behaviour is the fact that the risk of being caught is often low. Most of the relevant crimes are committed far from public view, in remote regions where monitoring and media scrutiny are low. Another generating factor is the absence of effective and dissuasive sanctions; it has been observed that the penalties are commonly minimal compared with the potential returns. Furthermore, a lack of transparency in public forest administration 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.

There are numerous ways in which bribes can be offered and paid in the wildlife and forestry sectors, not only to government officials but also to commercial enterprises and individuals that exercise control over areas such as industries and materials. Generally, corruption in the wildlife and forestry sectors involves:

- Payment of bribes to government officials or politicians for preferential treatment (for example, the award of a procurement contract, a logging or hunting concession, or a subsidy);
- Extortion by officials from operators to artificially legalize illegal operations (such as transportation permits, harvesting and hunting licences, forest land-use conversion);
- Official decisions that favour certain groups (for instance, when allocating logging or hunting concessions with the tacit understanding that the group will eventually repay the favour);
- Hunting groups or timber companies evading national regulations with relative impunity, thanks to the protection of powerful patrons;¹⁰⁵ and
- Bribing Customs or other border control officials to ignore smuggling or facilitate trafficking.

While most, if not all, countries have laws that criminalize corruption and bribery, these laws are not often an adequate deterrent because (a) they are rarely enforced, (b) prosecutions are not often successful due to, among other things, difficulties in gathering adequate evidence and (c) penalties are low. Elsewhere, domestic offences do not cover the bribery of foreign officials. As long as the risk of being caught and sanctioned is low, those working in the wildlife and forestry sectors—in official or private capacities—have little to lose from corruption.

¹⁰² See further Nalin Kishor and Richard Damania, “Crime and justice in the Garden of Eden: improving governance and reducing corruption in the forestry sector”, in *The Many Faces of Corruption: Tracking Vulnerabilities at the Sector Level*, J. Edgardo Campos and Sanjay Pradhan, eds. (Washington, DC, World Bank, 2007), pp. 89-99.

¹⁰³ See further Debra J. Callister, “Corrupt and illegal activities in the forest sector”, pp. 9-10; Nalin Kishor and Richard Damania, “Crime and justice in the Garden of Eden”, pp. 89-97.

¹⁰⁴ FAO and ITTO, *Best Practices for Improving Law Compliance*, p. 12; Cf. Esa Puustjärvi, *Proposal for Typology of Illegal Logging*, p. 24.

¹⁰⁵ *Ibid.*, p. 11; Nalin Kishor and Richard Damania, “Crime and justice in the Garden of Eden”, pp. 89-97.

Article 15 of the United Nations Convention against Corruption defines bribery of national public officials as follows:

- (a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that that official act or refrain from acting in the exercise of his or her official duties.
- (b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

Apart from the bribery of national public officials, this Convention sets out a comprehensive set of other criminalization provisions to combat corruption more efficiently and effectively and to foster international cooperation in this field.¹⁰⁶ The Convention requires that States Parties adopt legislation and other measures to establish as criminal offences activities related to corruption. These could then be used across all government sectors and be adapted to the unique characteristics of corruption in the wildlife and forestry sectors. These offences include:¹⁰⁷

- 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);
- Trading in influence (article 18);
- Abuse of functions (article 19);
- Illicit enrichment (article 20);
- Bribery in the private sector (article 21);
- Embezzlement of property in the private sector (article 22);
- Laundering of proceeds of crime (article 23);
- Concealment (article 24); and
- Obstruction of justice (article 25).

Moreover, article 26, paragraph 1, of the Convention requires that States Parties adopt such measures as may be necessary, consistent with their legal principles, to establish the liability of legal persons for participation in the offences established in accordance with the Convention. States Parties are required to include in their legislation the liability of legal entities, to the extent that this is consistent with each State's legal principles. Subject to these legal principles, the liability of legal persons may be criminal, civil or administrative (article 26, paragraph 2), which is consistent with other international initiatives that acknowledge and accommodate the diversity of approaches adopted by different legal systems. Thus, there is no obligation to establish criminal liability, if this is inconsistent with a State's legal principles. In those cases, a form of civil or administrative liability will be sufficient to meet the requirement. Article 26, paragraph 3, provides that this liability of legal entities must be established without prejudice to the criminal liability of the natural persons who have committed the offences. The liability of natural persons who perpetrated the acts is therefore in addition to any corporate liability and must not be affected in any way by the latter. When an individual commits crimes on behalf of a legal entity, it must be possible to prosecute and sanction them both. The Convention requires States Parties to ensure that legal persons held liable in accordance with article 26 are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions (article 26, paragraph 4).

¹⁰⁶ See further part one, section 1.3.

¹⁰⁷ United Nations, *Treaty Series*, vol. 2349, No. 42146. Adopted on 31 October 2003, entered into force on 14 December 2005.

To assist countries in their efforts to curb corruption across all sectors of society, the United Nations Office on Drugs and Crime, in 2004, released *The Global Programme against Corruption: UN Anti-Corruption Toolkit*. The *Anti-Corruption Toolkit* provides an inventory of measures for analysing the nature and extent of corruption, for deterring, preventing, and combating corruption, and for integrating the information and experience gained into successful national anti-corruption strategies.¹⁰⁸

Tool I.28 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 combat the corruption of prosecution services and the judiciary, are explored in other parts of the present *Toolkit*.¹⁰⁹



Tool I.28 Corruption and bribery offences

- Are the following activities criminalized pursuant to domestic law? If so, under which laws are these activities criminalized (penal code, specific laws or other)? What types of offenses are included, both objective and subjective (*mens rea*)?

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 in the private sector; and

Obstruction of justice.

- Are there special offences pursuant to wildlife and forestry sector laws to criminalize the following?

Payment of bribes to government officials and politicians for preferential treatment (for example, 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;

Financial extortion by wildlife and forestry officials;

Favouritism (that is, favourable decisions by wildlife and forestry officials with the tacit understanding that the favour will be returned, financially or otherwise);

¹⁰⁸ UNODC, *The Global Programme against Corruption: UN Anti-Corruption Toolkit*, 3rd ed. (Vienna, 2004).

¹⁰⁹ See further part two, section 9, and part three, section 1.5.

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.

- 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?
- What are the penalties for these offences?
- Is the liability of legal persons for the relevant offences established domestically? What is the nature of such liability?
- Has the country become a Party to the United Nations Convention against Corruption?

4.4 Tax evasion and non-payment of duties and other fees

Tax evasion, and the non-payment of duties, tariffs and other fees are common phenomena that are not unique to the wildlife and forestry sectors. Isolated instances of such activities may seem insignificant and tolerable. However, when seen in context and in combination, the failure to pay the relevant duties, taxes and fees deprives governments and local communities of important revenues and can seriously undermine economic development. 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.



Tool 1.29 Tax evasion and non-payment of fees

- Are the following activities punishable pursuant to domestic law? Are they punishable as criminal or administrative offences? Pursuant to which laws are these crimes punishable (penal code, specific criminal laws, administrative laws or regulations, or other)? What are the elements of these offences?

Declaring animal and plant material or products below market prices or value;

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 penalties for these offences?

4.5 Criminal organizations

Many forms of wildlife and forest crime are directly or indirectly associated with organized crime. Some criminal organizations systematically engage in illegal activities in the wildlife and forestry sectors and employ many assistants in their criminal undertakings. They frequently operate across borders, giving rise to the term “transnational organized crime”.

The traditional extensions of criminal liability, such as inchoate offences and secondary liability,¹¹⁰ are often ill-suited to criminally charge individuals in criminal organizations, especially those who direct and lead criminal groups without physically executing any criminal offences. In the case of larger syndicates, some individuals may make contributions to the group generally, and may well be aware that the group regularly engages in criminal activities, but they have no specific knowledge about individual offences. A person may, for instance, deliberately provide a criminal organization with firearms, other equipment or funds, but may not be aware of the specific individual offences these would be used for. Participants of this kind do not meet the threshold required for accessorial liability.

In addition, conspiracy charges cannot be used against low ranking members of criminal organizations who are not privy to the conspiracy and are not involved in the planning of criminal activities. Furthermore, some criminal organizations engage in a diverse range of illegal transactions that cannot be tied together as a single common conspiracy. In some jurisdictions, it is difficult, if not impossible, to target high ranking members of criminal organizations who mastermind and finance the criminal activities, but who are not involved in executing their plans and thus do not engage in any overt acts: leaders of organizations create a “corporate veil to insulate them from liability”.¹¹¹

Typically, those at the higher end of the hierarchy will attempt to dissociate themselves from direct participation in criminal activity, especially crimes which carry a high risk of arrest. As these higher-echelon figures often receive much of their income from taxes, tribute, or dues paid by their subordinates, they are effectively insulated from indictment.¹¹²

To address these problems and widen the scope of criminal liability, the United Nations Convention against Transnational Organized Crime sets out a separate offence for participating in an organized criminal group. Article 5, paragraph 1 (a) (ii), of the Convention attaches liability to deliberate, purposeful contributions to criminal organizations. The application of this offence is significantly broader than existing inchoate offences as it allows for the criminalization of persons who are more remotely connected to criminal activities.

This offence described in article 5, paragraph 1 (a) (ii), requires that an accused must have taken “an active part in” certain activities of an organized criminal group.¹¹³ The participation has to be “active” in the sense that it makes an actual contribution to the group’s activities and is not completely

¹¹⁰ Explored in part one, section 2.3.

¹¹¹ Christopher L. Blakesley, “The criminal justice system facing the challenge of organized crime” *International Review of Penal Law*, vol. 69 (1999), p. 78.

¹¹² Peter B.E. Hill, *The Japanese Mafia: Yakuza, Law, and the State* (Oxford, Oxford University Press, 2003), pp. 148-149. See further Andreas Schloenhardt, *Palermo in the Pacific*, pp. 15-23.

¹¹³ Organized criminal group is defined in article 2, paragraph (a), of the United Nations Convention against Transnational Organized Crime.

unrelated to them. The participation of the accused may be (a) in the group's criminal activities or (b) in other, non-criminal activities if the accused knows that his/her contribution would contribute to achieving a criminal aim.¹¹⁴ Proof of membership or of any ongoing role in the organization is not required for the activity to be considered an offence.

Pursuant to article 5, paragraph 1 (a) (ii), liability is restricted to persons who intentionally participate in the above-mentioned activities and who have actual knowledge of the aims and activities or the criminal intentions of the organized criminal group. This excludes from liability any person who may unwittingly contribute to a criminal organization or who is recklessly indifferent about the nature and activities of the group.¹¹⁵ Article 5, paragraph 2, facilitates the proof of the mental elements as the intention and knowledge required under article 5, paragraph 1 (a) (ii), may be inferred from objective factual circumstances.¹¹⁶

This legislation, which has found widespread acceptance among Parties to the Convention, covers a great variety of criminal activities. This is a useful tool to target those who lead, direct, finance or help in other capacities criminal organizations involved in wildlife and forest crime.



Tool I.30 Participation in criminal organizations

- Does the country criminalize participation in a criminal organization or other organized criminal group? If so, under which legislation 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 domestic law?
- Does this offence extend to those who lead, direct, finance or help in other capacities criminal organizations?
- Does liability for this offence extend to attempting to, aiding, abetting, facilitating and counselling the commission of this offence?
- What are the penalties for this offence?

5. Regional and specialized initiatives

In addition to the international frameworks and bilateral treaties discussed in part one, section 1 of the *Toolkit*, there have emerged specialized initiatives that seek to tackle specific aspects of wildlife and forest crime, or that focus on particular geographical areas.

¹¹⁴ Roger S. Clark, "The United Nations Convention against Transnational Organized Crime" *Wayne Law Review*, vol. 50 (2004), pp. 161-172.

¹¹⁵ Parties are, however, at liberty to lower the *mens rea* requirement and expand liability to recklessness, negligence or even strict liability without proof of a fault requirement (art. 34, para. 3); cf. David McClean, *Transnational Organized Crime*, p. 62.

¹¹⁶ See further Andreas Schloenhardt, *Palermo in the Pacific*, pp. 50-54.

5.1 Forest Law Enforcement and Governance

Forest Law Enforcement and Governance (FLEG) processes are regional initiatives coordinated by the World Bank and organized in cooperation with governments and consumer countries. The first regional FLEG initiative was launched in South-East Asia in 2001, and similar processes have since been developed in Africa, Europe, Latin America and North Asia.

The objectives of the FLEG processes are to improve governance in the forest sector and to foster international dialogue and cooperation to fight illegal logging and trade between wood producer and consumer countries by improving linkages and harmonizing regulations. Broadly speaking, the FLEG processes emphasize support for developing an understanding between producing and consuming countries and for developing schemes designed to ensure that only legal timber enters the markets of consumer countries. 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.^{117, 118}

The regional FLEG processes have been widely recognized for mobilizing political commitment to undertake remedial actions in the countries participating in the processes. They created partnerships between various donors and development agencies sharing a common concern with improving forest governance. This has led to country action by national governments, the private sector and civil society, often with support from bilateral and multilateral donors. These actions are often integrated into other national and regional development processes. The ministerial processes and global attention paid to forest sector legality has led to a situation in which FLEG issues are no longer seen as a separate item but are embedded as integral parts of sustainable forest management.

The FLEG Declarations are “soft legislation”, that is, aspirational policy declarations. However, several countries have introduced national legislation to address the issue. In consumer countries, the best known examples are the revised Lacey Act in the United States in 2008 and the European Union’s FLEGT Action Plan, which ultimately led to European Union legislation in 2010 and binding agreements with producer countries.

All FLEG processes define priority issues of forest law enforcement and governance and a list of actions to address both illegal logging and illegal timber trade throughout the respective regions.¹¹⁹ In summary, the FLEG processes have led to a number of concrete, albeit nascent, outcomes, including:

- Multi-stakeholder technical meetings where experiences with FLEG issues are shared;
- Intergovernmental negotiations for the drafting of a ministerial declaration and action plan to improve forest governance and combat illegal logging and associated trade; and
- Other regional stakeholder meetings both prior to and as a follow-up to the ministerial declarations.¹²⁰

A number of governments of countries with an important role in the forest products production and 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 export products to less environmentally sensitive markets or they are used for domestic consumption. Much more needs to be done to fully capitalize on the opportunities available under FLEG.¹²¹

¹¹⁷ European Forest Institute, FLEGT Team, *Forest Law Enforcement, Governance and Trade*; and Nalin Kishor and Richard Damania, “Crime and justice in the Garden of Eden”, pp. 89-107.

¹¹⁸ See part four of the *Toolkit* for further information.

¹¹⁹ FAO and ITTO, *Best Practices for Improving Law Compliance*, pp. 69 and 106.

¹²⁰ World Bank, “Strengthening forest law enforcement and governance”, p. 19.

¹²¹ *Ibid.*, p. 20.

South-East Asia

The first regional FLEG process was launched in South-East Asia with the Forest Law Enforcement and Governance East Asia Ministerial Conference, held in Bali, Indonesia, from 11 to 13 September 2001. This Conference resulted in a Ministerial Declaration that pledges to fight forest crime by strengthening bilateral, regional and multilateral collaboration. The Declaration broke the traditional reticence to discuss the problems of illegal logging and trade. The programme of regional and national activities represents an innovative, comprehensive and integrated effort to tackle illegal logging and trade practices.¹²²

The Declaration expresses, *inter alia*, the need to:

- Take immediate action to intensify national efforts, and to strengthen bilateral, regional and multilateral collaboration to address violations of forest law and forest crime, in particular illegal logging, associated illegal trade and corruption, and their negative effects on the rule of law;
- Develop mechanisms for effective exchange of experience and information;
- Undertake actions, including cooperation among law enforcement authorities within and among countries, to prevent the movement of illegal timber; and
- Explore ways in which the export and import of illegally harvested timber can be eliminated, including the possibility of a prior notification system for commercially traded timber.

The indicative list of actions for the implementation of the Declaration further recommends the development of harmonized Customs commodity codes, protocols for sharing export/import data, and prior notification systems.

In 2002, the Regional Task Force and Advisory Group proceeded to analyse concrete ways to give operational meaning to the Ministerial Declaration.

The Bali Declaration and the follow-up discussions it spawned have led to agreements on the specific national and regional efforts needed to address forest threats. The Association of Southeast Asian Nations (ASEAN) has established regional bodies and work programmes to implement the Declaration. While progress in the field has been slow in some cases, this clearly demonstrates regional ownership. In addition, several bilateral agreements have been signed to address the issues.¹²³ In May 2011, Indonesia signed a VPA with the European Union, and negotiations or pre-negotiation technical work is ongoing with a number of countries in the region.

Africa

The Africa Forest Law Enforcement and Governance Ministerial Conference took place in October 2003 in Yaoundé, Cameroon, and resulted in the Africa Forest Law Enforcement and Governance Declaration and Action Plan. In the Declaration, governments pledged to mobilize financial resources for FLEG, promote cooperation between law enforcement agencies within and among countries, involve stakeholders in decision-making, and explore means of demonstrating the legality and sustainability of forest products. The Africa Forest Law Enforcement and Governance Support Group of active producer, consumer and donor governments was established in May 2004, with the purpose of maintaining momentum for action to implement the Declaration, especially through national-level

¹²² FAO and ITTO, *Best Practices for Improving Law Compliance*, p. 106.

¹²³ One example is an MOU between Indonesia and the United Kingdom to improve FLEG and combat illegal logging and international trade in illegally logged timber. Other examples are MOUs between Indonesia and Japan, between Indonesia and Malaysia, and between Indonesia and China, with similar objectives.

action plans.¹²⁴ However, since then, most action has taken place at the national or subregional level (for example, in the Congo Basin).

The first countries to sign VPAs with the European Union were in Africa (Cameroon, the Central African Republic, the Congo, Ghana and Liberia).

Latin America

In 2005, the World Bank, in collaboration with the European Union, initiated a similar FLEG process in Latin America. However, the process in this region did not lead to a ministerial declaration as it did in other regions. In Latin America, most FLEG work has been done through national action (for example, in Brazil) or with the support of international organizations at both the country and subregional levels, particularly in Central America. CITES has been active in the region due to the importance of the sustainable management of mahogany and its role in international trade.

Europe and North Asia

Concerned about rampant illegal logging, the Russian Federation announced in May 2004 its interest in initiating a FLEG process for Europe and North Asia in collaboration with regional partners. An international steering committee was established to provide advisory inputs to the process. A preparatory conference on FLEG was held in June 2005, and a ministerial conference was held in November of that year.¹²⁵

Much of the implementation of FLEG in Europe and North Asia has been supported by the European Union through a collaborative arrangement with national Governments and other stakeholders, the World Bank, the International Union for Conservation of Nature and the World Wildlife Fund.



Tool 1.31 Regional FLEG processes

- Does the country participate in any of the regional FLEG processes?
- Have declarations and other resolutions by the regional FLEG processes been taken into account in domestic policies, laws, regulations and so forth?

5.2 Wildlife enforcement networks

A number of regional wildlife enforcement networks have emerged to facilitate cross-border cooperation among agencies involved in preventing and suppressing wildlife crime. These include the North American Wildlife Enforcement Group and the European Union Wildlife Trade Enforcement Group.

In South-East Asia, the ASEAN Wildlife Enforcement Network coordinates the regional response to illegal trade in protected species, which threatens biodiversity, endangers public health and undermines economic well-being. It provides a mechanism by which countries can share information and learn best practices from each other. Through annual meetings, workshops and training sessions, the ASEAN Wildlife Enforcement Network facilitates increased capacity and the better coordination

¹²⁴ FAO and ITTO, *Best Practices for Improving Law Compliance*, p. 106; Nalin Kishor and Richard Damania, "Crime and justice in the Garden of Eden", pp. 89-108.

¹²⁵ Nalin Kishor and Richard Damania, "Crime and justice in the Garden of Eden", pp. 89-108.

and collaboration of law enforcement agencies among South-East Asian countries, regionally and globally. Links with CITES offices, INTERPOL, the United States Fish and Wildlife Service, the United States Department of Justice and other wildlife law enforcement groups have broadened the Network's reach.¹²⁶

The South Asia Wildlife Enforcement Network was formally launched in January 2011. A network for Arabic-speaking countries is under construction, as is one for Central America.

The Lusaka Agreement on Co-operative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora is intended to encourage and facilitate wildlife law enforcement in Africa. It currently has six signatory Parties, primarily in East Africa. The Agreement has a task force of officers seconded by Parties, which is based in Nairobi.¹²⁷



Tool 1.32 Regional wildlife enforcement networks

- Does the country participate in any of the regional wildlife enforcement networks?
- Have the declarations and best practice guidelines developed by regional wildlife enforcement networks been integrated into domestic policies, laws, regulations, administrative procedures and so forth?

5.3 Certification systems and schemes, and private and voluntary standards

The forestry sector in particular has several private and voluntary standards that are used to demonstrate to consumers of wood products that the product is of legal origin or is produced in a sustainable way. The best known schemes are voluntary sustainability standards, such as the Forest Stewardship Council or the Programme for the Endorsement of Forest Certification, which are international umbrella organizations that have endorsed certification schemes for sustainable forest management.¹²⁸

Certification systems help to identify, document and prove the sustainability of the certified forest products. Certified forests are considered to be sustainably managed, and consequently, environmental, social and economic values are maintained.¹²⁹ According to the World Wildlife Fund and World Bank Global Forest Alliance, certification and accreditation has to be in compliance with international frameworks and compatible with global applicable principles that balance economic and ecological dimensions. Additionally, major stakeholder groups should participate in governance and standard setting, which has to be based on objective and measurable performance standards that are adapted to local conditions. To ensure support from local communities and main stakeholders, certification and accreditation procedures need to be transparent and disclosed to the public.¹³⁰

Sustainable forest management standards are aimed at a level higher than what is required by legislation by introducing elements to verify social and environmental sustainability. Other sets of standards deal with the legality of wood and wood products. There are also different levels of compliance

¹²⁶ For further information visit www.asean-wen.org (accessed 1 Apr 2010).

¹²⁷ Further information can be obtained from the task force's website: www.lusakaagreement.org/.

¹²⁸ For more information, see www.pefc.org/ and www.fsc.org/.

¹²⁹ The website of the Forest Stewardship Council can be visited at www.fscus.org/.

¹³⁰ WWF and World Bank Global Forest Alliance, *Forest Certification Assessment Guide (FCAG): A Framework for Assessing Credible Forest Certification Systems/Schemes* (2006), p. iii.

ranging from verified legal origin to more extensive legality verification. The Rainforest Alliance, a provider of forest-related verification services, defines the concepts as follows:

Verification of Legal Origin

The Verification of Legal Origin 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. Suppliers of such timber must follow and maintain documented chain-of-custody systems.

Verification of Legal Compliance

Verification of Legal Compliance 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.

It is important to recognize that “legal origin” is not the same as “legal compliance”. Legal origin refers to meeting the administrative requirements of permitting, planning, taxes or fees, and harvesting in defined areas. 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.”¹³¹

In recent years, there has been a proliferation of public and private initiatives to improve and verify the sustainability or legality—or both—of forest production. A recent mapping by the Dutch NGO Tropenbos found 127 different initiatives launched by the public or private sector or by NGOs. Their number has grown exponentially in the past 10 years; in 2000, there were less than 40 schemes.¹³²



Tool I.33 Certification systems and schemes, and private and voluntary standards

- Does the country 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?
- Do certification systems cause unnecessary obstacles to trade?
- 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?
- Do complaint and appeal mechanisms exist?
- Is there adequate national certification capacity to implement sustainable forest management certification?
- Are voluntary and private standards known and widely applied?

¹³¹ See www.rainforest-alliance.org/forestry/verification/legal (accessed on 15 July 2011).

¹³² Jinke Van Dam and Herman Savenije, *Enhancing the Trade in Legally Produced Timber: A Guide to Initiatives* (Wageningen, Netherland, Tropenbos International, 2001).



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Enforcement

Law enforcement can be one of the main tools to reduce wildlife and forest crime. Enforcement involves any government action or intervention taken to determine or respond to non-compliance. It is the most immediate and often the most visible way to suppress wildlife and forest crime. It influences the costs to 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, and border control services are prerequisites for the proper functioning and positive perception of justice.¹³³

The enforcement of natural resource law is best understood as an extension and integral part of resource management. Therefore, all those involved in resource management—from the setting of management objectives for specific resource systems, to the conduct of resource assessments and inventories, to the design and support of regeneration systems and habitat restoration works, and to the specific investigation and pursuit of criminal violators—are components of an enforcement system. The specific roles and responsibilities of the many actors vary among different systems of public administration and they can be structured in many different ways to take into consideration local needs and circumstance. However, the underlying continuity and inclusiveness of the enforcement system need to be recognized.

Wildlife and forest crime often involves complex offences comprising a multitude of criminal elements, with incidents frequently crossing national borders. This can make appropriate and effective enforcement challenging. Investigating wildlife and forest crime involves different proactive, disruptive and reactive investigation methods. These are time- and resource-intensive processes that often require domestic and international cooperation among different agencies, as well as parallel financial (and sometimes environmental) investigations.

Approaches to law enforcement vary greatly among different jurisdictions. Policing the wildlife and forestry sectors frequently involves a myriad 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 in these sectors is delivered depends on a host of variables, including the prevailing political, economic and cultural doctrines, as well as the social infrastructure and local tradition.¹³⁴ 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.¹³⁵

1. Enforcement agencies

The role policing agencies play in the enforcement of wildlife and forest laws and regulations requires analysis and understanding if better practices and policies are to be developed. Before such analysis is possible, it is necessary to identify the role and responsibility of different stakeholders, both nationally and locally.¹³⁶ Therefore, the first step in analysing law enforcement capacities in relation to wildlife and forest crime involves an understanding of law enforcement macro-structures. It is

¹³³ UNODC, “Public safety and police service delivery”, in *Criminal Justice Assessment Toolkit*.

¹³⁴ *Ibid.*

¹³⁵ *Ibid.*

¹³⁶ Kevin Tomkins, “Police law enforcement and the environment”, *Current Issues in Criminal Justice*, vol. 16, No. 3 (March 2005), p. 294.

important to bring clarity to the “who is who” and “who does what” in wildlife and forest law enforcement as doubts about who has authority to enforce the relevant laws may lead to difficulties, discrepancies or duplication.¹³⁷

Wildlife and forest crime is a phenomenon that usually involves a variety of government sectors. Accordingly, in most jurisdictions, there is more than one entity with responsibility for enforcing the many aspects of the relevant wildlife, forest, Customs and other criminal laws. There are often several national agencies, organizations or institutions and 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, forestry and Customs officials may have no enforcement power under criminal law at all, and must hand suspects and contraband over to the police as soon as they are apprehended. By contrast, in other countries, Customs officials are authorized to exercise the powers of police, or vice versa. There may also be a mixture of public and private policing services, where private companies franchise certain functions from the State.¹³⁸

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 inter-State implications. Import and export offences, including those involving wildlife and plants (dead or alive), also usually fall into this category. However, 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.¹³⁹



Tool II.1 Law enforcement structures

- How is law enforcement structured nationally?
- Which agencies have responsibility for national, state/provincial and local policing?
- Are there any inter-agency task forces or other agencies that work on environmental or related offences?
- Which government ministries are involved in law enforcement?

1.1 Enforcement mandates

Once the macrostructures of law enforcement have been identified, it is necessary to explore the various agencies charged with combating the relevant wildlife, forest, Customs and other criminal offences.¹⁴⁰ In some jurisdictions, the general police force 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. The enforcement of legislation established in accordance with the Convention on International Trade in Endangered Species of Wild

¹³⁷ Cyrille de Klemm, “Guidelines for legislation to implement CITES”, p. 10.

¹³⁸ UNODC, “Public safety and police service delivery”, in *Criminal Justice Assessment Toolkit*.

¹³⁹ Ibid.

¹⁴⁰ Cf. Ibid.

Fauna and Flora (CITES) is sometimes vested in Customs services and, elsewhere, in other specialized agencies.¹⁴¹ 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 enforcement functions are delegated or outsourced to private security firms.¹⁴²

General police agencies are constrained by limited budgets and may not be able to adequately prioritize the investigation of wildlife and forest offences vis-à-vis, for instance, homicide or other violent crime.¹⁴³ As a general point, the presence of specialized wildlife and forest crime enforcement units is crucial to ensure that wildlife and forest offence investigations receive levels of attention similar to those of mainstream criminal investigations. Creating specialist teams of enforcement personnel also allows for the pooling of resources and expertise into small units rather than attempting to achieve a broad and general level of enforcement across the country.

In this context, the CITES Secretariat also encourages the creation of specialized, multiagency wildlife law enforcement units to combat illegal trade in CITES-listed species,¹⁴⁴ a view that is supported by many experts and scholars in this field.¹⁴⁵ To that end, CITES offers “guidance for specialized wildlife law enforcement units”.¹⁴⁶ In some countries, primary responsibility for the enforcement of CITES has been assigned to the CITES Management Authority itself.¹⁴⁷



Tool II.2 Enforcement mandates

- Which organizations, agencies or bodies are involved in investigating wildlife and forest offences? Is the jurisdiction of each agency clear or is there disjuncture?
- What are the duties and responsibilities of each agency? 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?
- Are the agencies part of one government ministry or several? Which ministries are involved?
- How are the agencies financed? Are the budgets they receive sufficient to carry out their functions?
- Who has control over these agencies? Who examines their function?
- If specialized agencies or departments exist, are they made up of individuals from a number of different agencies?

¹⁴¹ Cf. Andreas Schloenhardt, “The illegal trade in timber”, p. 22.

¹⁴² UNODC, “Public safety and police service delivery”, in *Criminal Justice Assessment Toolkit*.

¹⁴³ Adrian Linacre, “Nature of wildlife crimes, their investigations and scientific processes”, in *Forensic Science in Wildlife Investigations*, Adrian Linacre, ed. (Boca Raton, Florida, CRC Press, 2009), pp. 1-2.

¹⁴⁴ CITES Secretariat, “Notification to the Parties concerning: CITES Tiger Enforcement Task Force”, Notification, No. 2001/047 (9 July 2001).

¹⁴⁵ Jonathan P. Kazmar, “The international illegal plant and wildlife trade: biological genocide?” *University of California Davis Journal of International Law and Policy* (Winter 2000), pp. 105-125; Sara Oldfield, ed., *The Trade in Wildlife: Regulation for Conservation* (London, Earthscan Publications, 2003), p. xxi.

¹⁴⁶ CITES Secretariat, “Notification to the Parties”, CITES Resolution Conf. 12.5 (Rev. CoP 15), annex 3.

¹⁴⁷ Cyrille de Klemm, “Guidelines for legislation to implement CITES”, p. 61.

- Are there agencies dedicated exclusively to wildlife and forest crime, including the enforcement of CITES, or do they also have responsibilities for other types of crime (for example, illegal drugs, organized crime or money-laundering), or non-tariff commodities?
- Are there any unofficial or private groups or organizations involved in delivering a policing role in the wildlife and forestry sectors? If so, what do they do? How are they perceived by official policing agencies? To whom are they accountable?

In countries with a federal system, additional questions may arise about how state/provincial and local investigators cooperate with federal law enforcement officers. Are there clear agreements or protocols that define the respective jurisdictions? How often do they combine their investigations? Who has precedence? How often do national-level investigators take over investigations that began at the local level?¹⁴⁸

Generally, the mandate for policing is set out in legislation or ordinances that assign the enforcement of certain laws to the relevant agencies. For example, a Customs statute may empower border and Customs administration, the department of homeland security or similar agency with enforcing actions against border offences.¹⁴⁹



Tool II.3 Legislation for enforcement mandates

- Is there legislation assigning the responsibilities of policing wildlife, forest and related crimes to specific agencies?
- Does the legislation assign and distinguish between the roles of different agencies in delivering policing?

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. If border, Customs, wildlife and forest offences are concerned, agencies outside the traditional criminal justice sphere may have special investigative authority.¹⁵⁰ In some countries, these stipulated duties may not exist or may not be endorsed by the government, depending on the political and social context of the country.¹⁵¹

¹⁴⁸ UNODC, “Crime investigation”, in *Criminal Justice Assessment Toolkit*.

¹⁴⁹ UNODC, “Public safety and police service delivery”, in *Criminal Justice Assessment Toolkit*.

¹⁵⁰ UNODC, “Crime investigation”, in *Criminal Justice Assessment Toolkit*.

¹⁵¹ UNODC, “Public safety and police service delivery”, in *Criminal Justice Assessment Toolkit*.



Tool II.4 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 unambiguous 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 handed over the case in question?

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. Specifically, the Convention requires that, at the time of accession to CITES, Parties identify the relevant agencies (CITES article IX). This information is then made available to the Secretariat and to all other Parties, thus creating a directory.

Article IX, paragraph 1 (a), specifies that each Party to the Convention is required to designate 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.

The way in which the Management and Scientific Authorities are designed and designated is left to the discretion of the individual Party. In most countries, they have been appointed by a simple administrative decision, while some countries have established these authorities through legislation.¹⁵² In some countries, the CITES Management Authority is also charged with the enforcement of law and regulations relating to species protection, but in most countries, CITES enforcement remains within the jurisdiction of Customs services. Elsewhere, other wildlife and forestry agencies carry out the CITES management functions.

¹⁵² See further Cyrille de Klemm, "Guidelines for legislation to implement CITES", pp. 22-24.



Tool II.5 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?
- How does the CITES Management Authority operate with other enforcement agencies and ministries?

1.2 Community policing

Community policing has emerged in recent years as an effective and productive strategy for enforcing law at the local level. Especially 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 prevent wildlife theft and to protect native fauna and flora.¹⁵³

One of the characteristics of community 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 offences affecting the local area. Community 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 directly and indirectly 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 gathering, and can facilitate the investigation of crime. Law enforcement structures may require adaptation to become more consultative and inclusive to ensure that close relationship.¹⁵⁴

As a strategy to prevent and suppress wildlife and forest offences, community policing is not a universal panacea. However, it 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 policing helps to eliminate misunderstandings, suspicion and conflict among industry, law enforcement officers and the communities in which they operate.¹⁵⁵

¹⁵³ See further Kevin Tomkins, “Police law enforcement and the environment”, pp. 294-302.

¹⁵⁴ See further FAO and ITTO, *Best Practices for Improving Law Compliance*, p. 60; Jacqueline M. Drew and Lorraine Mazerolle, “Eras of policing”, in *Policing in Context*, Roderic Broadhurst and Sara E. Davies, eds. (Melbourne, Oxford University Press, 2008), pp. 32-41.

¹⁵⁵ UNODC, “Public safety and police service delivery”, in *Criminal Justice Assessment Toolkit*.



Tool II.6 Community policing

- Is there a community policing strategy related to wildlife and forest offences? If so, what is included in it? Are local priorities and performance measures set?
- Are there formally defined mechanisms in place by which the public, 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?
- How is community policing perceived by other criminal justice agencies and the public?

1.3 Partnerships

The investigation of wildlife and forest offences is a challenge for a whole community and is not limited to law enforcement agencies. It usually involves a great variety of government departments, private industry and civil society organizations, each of which helps to bring an additional dimension to the response. Accordingly, dealing with wildlife and forest offences in isolation, especially without the buy-in of enforcement agencies such as police and Customs, affects the ability to efficiently address the causes and consequences of this phenomenon.

It is crucial that key stakeholders consult one another and build partnerships to combat wildlife and forest offences effectively. An environment should be created where seizures and arrests for wildlife and forest offences do not end in themselves but are linked to the wider fight against serious criminality. This requires close collaboration between wildlife and forestry officials and the wider law enforcement community dealing with both criminal intelligence and the criminal justice system as a whole.

Collaboration among various agencies—often with conflicting or opposing mandates and objectives—is not always easy. Organizations and agencies are sometimes reluctant to help law enforcement because of concerns that they may alienate their constituents, because their priorities may be different, because sufficient resources may not be available or because there are legal constraints (for instance, in the case of classified information and data protection).¹⁵⁶

Consultation and partnership building can occur at various levels and may be formalized in memorandums of understanding (MOUs) or committees. They may also be ad hoc and informal, based on changing needs and developments. In some jurisdictions, interdepartmental committees have been set up to coordinate control and enforcement measures across government sectors. Elsewhere, regular meetings between government and industry representatives take place to consider commercial and other economic interests in enhancing law enforcement. Some communities organize local events that bring together concerned individuals, community groups, local administrators and representatives of central authorities to consult with law enforcement agencies about the best ways to prevent and suppress local wildlife and forest offences.

¹⁵⁶ UNODC, “Crime investigation”, in *Criminal Justice Assessment Toolkit*.



Tool II.7 Partnerships

- What partnerships to prevent and suppress wildlife and forest offences currently exist (a) among law enforcement agencies and (b) between enforcement agencies and other public service departments?
- Are there mechanisms in place to enable and facilitate cooperation among wildlife and forestry administration, law enforcement officers, prosecutors' offices and judicial entities?
- Are there partnerships with other formal groupings in the public, private or non-governmental sector?
- How do these partnerships work in practice? Are there written protocols, MOUs, committees and so forth? Does collaboration operate without undue delay?
- Are there concerns that the relevant units or individuals 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?
- Are resources shared in partnership arrangements? Are joint operations undertaken?
- Are there public-private partnerships that provide financial, logistical or other support for the suppression of wildlife and forest offences?
- Are there legal provisions permitting cross-deputation?
- Can joint task forces be convened?
- Does the military play any role in law enforcement in the wildlife and forestry sectors?

2. Human resources

Adequate training and staffing levels are essential to control and curtail wildlife and forest offences. A lack of law enforcement personnel and the poor training of staff may result in many wildlife and forest offences going unnoticed, with offenders evading detection and arrest. Furthermore, salaries must be commensurate with the workload and responsibilities of enforcement officers. Recruitment processes need to be fair and transparent in order to prevent corruption and nepotism and to ensure that staff feel responsible and motivated.

2.1 Staffing

In many countries, agencies charged with enforcing wildlife and forest laws lack the human resources to fulfil their diverse duties. In other countries, the relevant agencies suffer from severe staff shortages; posts remain unfilled for years, and salaries and allowances may be months overdue. In some cases, agencies are purposely underfunded so that they fail in undertaking their tasks and functions.

An assessment of enforcement capacities requires a basic stocktaking of the human resources available to police wildlife and forest offences. This involves identifying staffing levels, locations and hierarchies.¹⁵⁷



Tool II.8 Staffing levels

- How many individuals work in the units charged with enforcing wildlife and forest laws? Are staff drawn from multiple agencies or are they recruited independently?
- Are agencies sufficiently staffed? Do staff receive appropriated training?
- Do the police units tasked with enforcing wildlife and forest laws have a full complement of staff? If not, what reason is given for this?
- 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 more than 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? Is there an appropriate balance between staff working in the field and those working in central offices?
- Is there a tenure system in which staff are moved to different departments or agencies after a set period of time?
- Is there provision for drawing upon other agencies to supplement staff needs for operational requirements or during times of shortages?
- Are there funds to travel, hire experts and purchase equipment (such as vehicles, radios and electronic surveillance equipment)?

Salaries and benefits

The salaries and other entitlements of enforcement officers need to be reflective of their seniority, responsibilities, education and experience. Inadequate salaries, or the failure to pay salaries regularly, may reduce staff motivation. If pay is low, especially in relation to the crucial duties that law enforcement officers perform, the likelihood of corruption increases. While reforms such as salary increases can be costly, public officials in all the relevant agencies must be assured of an adequate standard of living, and their status and salary levels should be commensurate with their workloads, functions and levels of responsibility.¹⁵⁸

Associated with salaries and benefits are issues of parity. Few of the forest guards, game wardens, game scouts, wildlife wardens and others working in wildlife and forest law enforcement enjoy parity

¹⁵⁷ UNODC, "Public safety and police service delivery", in *Criminal Justice Assessment Toolkit*.

¹⁵⁸ UNODC, *The Global Programme against Corruption*, p. 245.

with their counterparts in agencies such as Customs and the police. This applies in relation to pay but also in relation to authority and powers provided in domestic legislation, training and equipment. Wildlife and forestry officials are often regarded as “second class” enforcement officers by their counterparts. This regularly 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 their presenting an image of limited deterrence to criminals.

Some countries operate reward schemes for enforcement officers as incentives for apprehensions and seizures relating to wildlife and forest offences. These schemes have the potential to raise detection rates for wildlife and forest offences and may also dilute the influence of corruption. They may be problematic, however, as they may create the risk of evidence being planted and some suspects being unduly targeted.¹⁵⁹



Tool II.9 Salaries and benefits

- What is the salary structure for 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?
- Are salary levels adequate or do enforcement officers engage in additional employment or private enterprise to supplement their income?
- Are salary levels commensurate with the responsibilities and risks involved?
- Do wildlife, forestry and police officers and other staff receive their pay? Do they receive it on time?
- What is the expected workload for wildlife, forestry, and police officers and unsworn staff in the relevant units?
- Do reward schemes for seizures and arrests exist? How do they operate?

2.2 Recruitment

Recruitment procedures for enforcement personnel 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.¹⁶⁰ 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.

¹⁵⁹ Cf. FAO and ITO, *Best Practices for Improving Law Compliance*, p. 55.

¹⁶⁰ UNODC, “Public safety and police service delivery”, “The integrity and accountability of police” and “Crime and investigation”, in *Criminal Justice Assessment Toolkit*.



Tool II.10 Recruitment

- 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?

2.3 Training

A recent report noted that, in some countries, “poachers, smugglers, and dealers are likely to be better armed, better equipped, better educated, better paid, and better organized than many wildlife enforcement officers.”¹⁶¹ In short, it is crucial that staff at all levels be 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 be compromised, with potential implications for subsequent prosecutions and trials.¹⁶²

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 so forth. To assist in the training of enforcement officers working in wildlife, forestry and other sectors, the CITES Secretariat, with the support of the European Commission, created in 2008 a computer-based course for enforcement officers and an information module for prosecutors and the judiciary. This course, which can be taken in multiple languages, is designed to build awareness about CITES, to outline the resources available in the Convention and to provide law enforcement officers with practical advice. A separate guide for enforcement officers entitled “Combating ivory smuggling” was also produced as a DVD by the Environmental Investigation Agency in conjunction with the CITES Secretariat. Since 2007, the World Customs Organization (WCO) has also been providing an Internet-based interactive “Customs and fauna and flora” e-learning programme to enable the self-directed learning of Customs officers.

Some agencies may also offer opportunities for secondments to other agencies, professional development and higher education outside the agency, thus enhancing their knowledge base and skill set.¹⁶³ Training programmes can also be designed to build new enforcement networks and partnerships if

¹⁶¹ John M. Sellar, “Illegal trade and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)”, in *Forensic Science in Wildlife Investigations*, Adrian Linacre, ed. (Boca Raton, Florida, CRC Press, 2009), pp. 11-16.

¹⁶² UNODC, “The integrity and accountability of police”, in *Criminal Justice Assessment Toolkit*; Adrian Linacre, “Nature of wildlife crimes”, pp. 1-2.

¹⁶³ UNODC, “Public safety and police service delivery” in *Criminal Justice Assessment Toolkit*.

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 offences, which involves multiple government departments and spans international borders.

Furthermore, even where comprehensive training programmes exist, it is important that syllabuses and curricula be reviewed regularly to ensure they remain up to date and keep pace with the ever-changing nature of wildlife and forest offences.¹⁶⁴

While those specifically tasked with responding to wildlife offences may very well require specialized training, it is equally important that the primary law enforcement agencies in each country, 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 offences in the curricula of basic training courses for new recruits. Seaport and airport security personnel would also benefit from receiving such awareness-raising as they are ideally placed to discover the smuggling of wildlife 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 the awareness and understanding of the different links in the wildlife and forest crime chain.



Tool II.11 Training: delivery

- What basic training is given to persons joining the relevant wildlife and forestry enforcement units?
- 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 syllabuses for the training? Do partner agencies contribute to syllabus development?
- When were training programmes last updated?
- Does the training involve participants from multiple agencies (domestic and foreign)? How is new staff introduced to counterparts in partner agencies?
- Is there any 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)?

¹⁶⁴ UNODC, “Crime investigation”, in *Criminal Justice Assessment Toolkit*.

- What training on the relevant wildlife and forest crime issues is available for Customs and police agencies? Is the subject of wildlife offences included in the basic training of all Customs and police officers?
- Is the subject of wildlife smuggling included in seaport and airport security staff training?
- Is there a cross-agency training programme?

Law enforcement in the wildlife and forestry sectors requires an understanding of the relevant investigative powers and procedures, as well as technical knowledge of the operation of these sectors, environmental issues, land and property rights, and commercial and trade issues. Moreover, personnel at border control points have to be familiar with import, export and CITES requirements, species identification, Customs and quarantine procedures, and the relevant international obligations.

The content of the available training programmes necessarily varies among jurisdictions and depends on the level and type of staff trained, and their seniority and duties. 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.



Tool II.12 Training: content

- 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
 - Investigation techniques, procedures and the handling of seized wildlife
 - 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.
- Does the training involve elements related to accountability, ethics, human rights, integrity and corruption?
- Is the training supplemented by manuals summarizing these issues?

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

3.1 Intelligence gathering and exchange

Information gathering and the exchange of intelligence among the relevant authorities are crucial to the success of measures aimed at curtailing wildlife and forest offences. To be of maximum value, information gathering 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 offences at local, national and international levels. Strategic intelligence facilitates law reform, international cooperation, and the development of prevention strategies, education and awareness campaigns.
- Tactical intelligence supports national and local managers of front-line units in planning activities and deploying resources to achieve operational objectives.
- Operational intelligence is intelligence on the activities of specific individuals or groups. It can help to identify criminals, provide advance information about their activities, and help to plan proactive, disruptive and further intelligence-led investigations. In the context of wildlife and forest offences, operational intelligence can involve issues such as methods of sourcing wildlife and plants, methods of transportation, methods of document fraud, means of communication, financial transactions, motives, markets, prices and so forth.

While it is important to gather information from a wide range of sources, it is likely that the information will vary in quality, and the sources will vary in reliability and motivation. It is essential that information be subjected to some form of analysis and processing before it is disseminated or used.

The gathering of information is not in itself sufficient. It is essential that, once gathered and analysed, intelligence be transmitted to the individuals and departments that are able to use it. A vital factor in the expeditious and effective exchange of intelligence is the speed at which material can be transmitted to the relevant agencies or investigators who may be in a position to respond to it. Even excellent intelligence is of little consequence unless its consumers or users believe in its accuracy and usability.

Figure IV. Sources of information

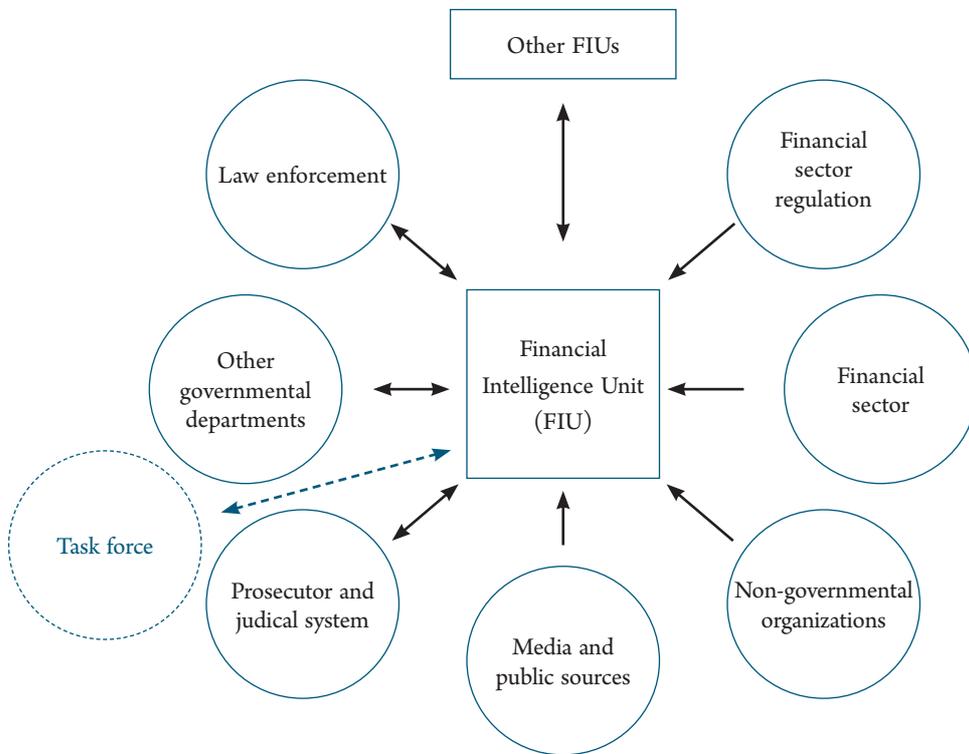
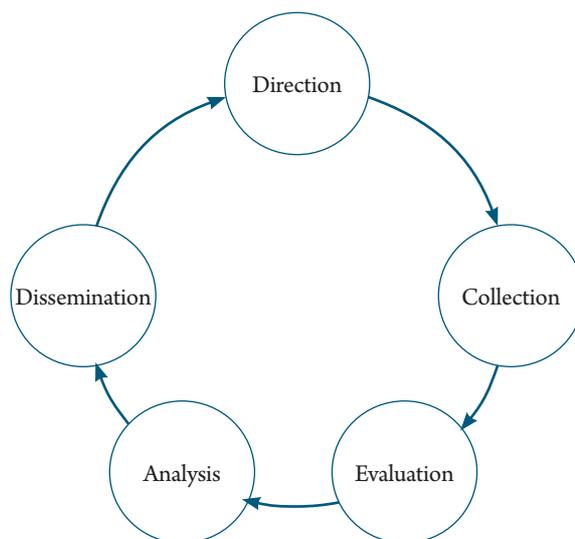


Figure V. Intelligence cycle



Source: World Bank. Combating money laundering and the financing of terrorism: a comprehensive training guide. Workbook Part 4: Building an Effective Financial Intelligence Unit, p. 6.



Tool II.13 Intelligence gathering

- Is there legislation or other (written) frameworks on the gathering, storage, analysis and dissemination of criminal information or intelligence for the purpose of enforcing wildlife and forest laws?
- What do existing laws and frameworks allow? What are the constraints and limitations?
- Who gathers information? How is it gathered?
- Who oversees how information and intelligence is gathered, managed and exchanged?
- Where and how is intelligence and information stored? Are specific national or regional databases and analysis tools used? Is information recorded manually or electronically?
- How is information recovered, analysed and disseminated?
- Are officers encouraged to collect information, write reports and file them in a central location? If not, why not?
- Are agencies allowed or required to exchange information and intelligence with other countries?

3.2 Covert techniques

In the investigation of wildlife and forest offences, which are often very sophisticated and frequently involve a great number of criminal elements, covert investigation techniques may be extremely useful and, in some cases, the only method of investigation. They may involve, for instance, the controlled delivery of prohibited plant or animal material, the use of false company identities, or the use of technical, photographic and video surveillance. 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 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.¹⁶⁵ Furthermore, in 2006, the International Cooperation Review Group, as a new surveillance process adopted by the Financial Action Task Force, was set up to identify, examine and engage with vulnerable jurisdictions that fail to implement effective anti-money-laundering and counter-terrorist financing systems.¹⁶⁶

Routine surveillance of the Internet is an additional and emerging method to uncover wildlife and forest offences. This usually involves an examination of online advertisements for fauna and flora, including animal and plant parts and material. Internet surveillance has shown that online websites are frequently used to sell or seek contraband that is not otherwise available legally. It often involves examining popular websites where private individuals offer new or used goods for sale, or post advertisements for sought-after items.¹⁶⁷

Covert surveillance is, however, a particularly intrusive method for collecting evidence. The use of covert investigation techniques involves the careful balancing of a suspect's right to privacy against

¹⁶⁵ United Nations Convention against Corruption, art. 50; United Nations Convention against *Transnational Organized Crime*, art. 20. See further David McClean, *Transnational Organized Crime*, pp. 241-247.

¹⁶⁶ Financial Action Task Force, *Financial Action Task Force Annual Report 2008-2009* (2009), p. 25.

¹⁶⁷ Erika Alacs and Arthur Georges, "Wildlife across our borders", pp. 147-151.

the need to investigate serious criminality. Consequently, 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, and that essential evidence cannot be secured by less intrusive means. Judicial or independent oversight is common and is required under international human rights law.



Tool II.14 Covert investigation techniques

- Do investigators use covert investigation techniques? If so, which ones?
- Are investigators of wildlife and forest offences aware of the use of covert investigation techniques, including the following techniques?

Interception of telecommunications, e-mail traffic and post/mail

Listening devices, and tracking and positioning devices

Mobile surveillance teams, and photographic and video surveillance

False personal and company identities

Covert search of premises, letters, packages, containers and vehicles

Simulated or test-purchase of an item

Internet surveillance

Simulation of a corruption offence or “integrity test”

Covert real time monitoring of financial transactions

Undercover infiltration of networks through operatives posing as criminals or buyer

- Are investigators permitted to use such methods?
- 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?
- Do investigators run undercover “buying” operations in which they pose as criminals? If so, how and how often is this done? In which cases is this permitted? Is there a legal concept of entrapment?
- Is there training in the use of undercover techniques? Are there guidelines for the use of undercover officers (for example, guidelines concerning the Federal Bureau of Investigation undercover committee)? If so, are these guidelines public?

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. However, 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.¹⁶⁸

¹⁶⁸ INTERPOL and CITES Secretariat, *Controlled Deliveries: A Technique for Investigating Wildlife Crime* (Lyon, France, and Geneva, 2007), p. 7.

A controlled delivery is a covert investigation technique used by law enforcement to track the route of a commodity to identify persons connected with criminal activities and to gather evidence against them. This method has been employed extensively in relation to trafficking in narcotics, but it can be used equally with regard to wildlife and forest offences.¹⁶⁹ In some countries, legislation covers the use or prohibition of controlled deliveries, although it may not relate specifically to wildlife and forest offences.¹⁷⁰ 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.¹⁷¹

As with other covert investigation techniques, particular responsibilities are required of agencies that engage in controlled delivery operations. These responsibilities differ depending upon 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.¹⁷² Controlled deliveries require careful coordination and cooperation particularly when several agencies and countries are involved.

The International Consortium on Combating Wildlife Crime is implementing a project entitled “Establishing national controlled delivery units” in over 20 countries with funding support from the World Bank’s Program on Forests (PROFOR). Activities include a workshop, experimental controlled delivery operations and the establishment of national controlled delivery units within participating countries. The spin-off and knock-on benefits for each country in terms of all other forms of trafficking and organized crime could also be significant. Experiences gained through the project will be replicated in a global network of controlled delivery in the future.



Tool II.15 Controlled delivery

- Is there a legal basis to conduct controlled delivery operations? If so, is this law specific to investigations of wildlife and forest offences?
- Are investigators of wildlife and forest offences permitted to conduct controlled deliveries, based on national legislation?
- Have investigators undertaken controlled deliveries?
- In the absence of a legal basis, is it possible to conduct controlled delivery operations with the agreement of prosecution authorities?
- Does the 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 the 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 operation procedures been developed to support speedy and efficient controlled deliveries?

¹⁶⁹ Ibid., p. 5.

¹⁷⁰ Ibid., pp. 10-11.

¹⁷¹ United Nations Convention against Corruption, art. 50; United Nations Convention against Transnational Organized Crime, art. 20. See further David McClean, *Transnational Organized Crime*, pp. 241-247.

¹⁷² INTERPOL and CITES Secretariat, *Controlled Deliveries*, p. 11.

3.3 Informants

The information provided by informants can be vital—and sometimes the only way—to prevent or solve a crime. The effective recruitment and handling of informants can prove significantly more resource- and cost-effective compared with other covert methods of investigation. Indeed, the CITES Secretariat encourages the development of a network of informants. This can be facilitated by means of reward schemes and confidential information hotlines to allow the supply of information.¹⁷³

However, many informants are themselves criminals with a variety of motivations for providing information and they therefore require careful management. It is thus important to examine the systems employed for using, managing and supervising informants, and the payments made to them.



Tool II.16 Informants

- To what extent are informants used by authorities in the investigation of wildlife and forest offences?
- 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?
- Are there standard operating procedures on the handling of informants?

3.4 Patrols and checkpoints

Forests and wildlife habitats are often remote, large and inaccessible areas that are difficult, if not impossible, to patrol regularly and comprehensively. Forestry officials, game wardens, park rangers, police and other law enforcement officials can usually patrol only small areas and, as a result, rarely see wildlife and forest offences in progress or are rarely the first to observe evidence of criminal activity in these areas.

Risk management and systematic patrols with routes set out to optimize the coverage of those areas are basic methods to improve intelligence gathering and detection. In addition, checkpoints along

¹⁷³ CITES Secretariat, “Notification to the Parties”, CITES Resolution Conf. 12.5 (Rev. CoP 15), annex 3..

main roads, rivers, trade routes and interchanges, and at seaports, airports, and key entry points to national parks and other protected areas can also assist in detecting and preventing wildlife and forest offences.



Tool II.17 Patrols and checkpoints

- How are wildlife habitats and forests patrolled? How frequently?
- Who patrols these areas (forestry officials, game wardens, police or others)?
- What system is used to determine patrol routes and the frequency of patrols?
- Are there specific checkpoints along main trade routes, roads, rivers, ports, natural sites or others?
- How are these checkpoints staffed and what inspections are carried out at these checkpoints?

3.5 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. It is also a method used in response to intelligence regarding ongoing or planned criminal activity. In such cases, the methodologies for investigators remain similar to those for other forms of investigation, but the offences are identified through research and intelligence gathering. Proactive investigations are particularly useful against organized crime and may be of great assistance in curtailing wildlife and forest offences.



Tool II.18 Proactive investigations

- Are wildlife and forest offence investigators deployed (individually or in teams) to investigate pre-identified targets, individuals or groups rather than in response to crime reports?
- Do investigators use analysis and profiling to build a case against a target? If so, how are targets chosen?
- Is there a criminal intelligence cell or unit that collects, collates and analyses information related to wildlife and forest offences and criminals?
- Is there a written requirement that all investigations and prosecutions be properly predicated on the law and lawfully obtained evidence?

4. Enforcement powers

For law enforcement to be meaningful, investigators of wildlife and forest offences, and the police, Customs, and other agencies need to be equipped with the powers that enable them to conduct searches, interview witnesses and suspects, enter premises, seize assets and make arrests.¹⁷⁴ In some countries, 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. Elsewhere, wildlife and forestry enforcement officers are sworn officers with statutory authority to conduct investigations, carry firearms, make arrests, and execute and serve warrants.¹⁷⁵ As these powers are intrusive and may violate another person's rights, they need to be limited and monitored in order to prevent abuse of power and unnecessary infringements of human rights and civil liberties.

Investigation tools relating to wildlife and forest offences are set out in the following sections. Data and other performance management information pertaining to the number of investigations, arrests, seizures and so forth are further explored in part five of the *Toolkit*.

4.1 Sources of enforcement powers

Law enforcement functions, powers and procedures are usually set out in—and limited by—statute. Usually, police authorities under statutes have broader powers that at times overlap or support the enforcement legislation applicable to other agencies. Relevant legislation 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 force, particularly in the public order realm. Police powers relating to criminal investigation are likely to be found in the domestic criminal procedure code.¹⁷⁶

Even in jurisdictions where general or codified police legislation has been enacted, these statutes are usually not the sole source of enforcement powers. New statutes are continuously enacted in response to emerging issues (such as offences related to the environment or organized crime); they often give additional or expanded powers to law enforcement in order to assist them in dealing with these issues or to clarify their roles.¹⁷⁷

If other agencies and specialized units are involved in the investigation of wildlife and forest offences, such as wildlife enforcement units, forestry departments, Customs, serious crime agencies and so forth, their investigative powers are equally set out in the relevant statutes, such as a wildlife, forestry or Customs statute.

The 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. With the power to investigate and recover goods illegally exported and imported, Customs agencies can be of significant value to wildlife and forest offence investigations.

¹⁷⁴ Cf. CITES Secretariat, *Model Law on International Trade*, p. 4.

¹⁷⁵ Kevin Tomkins, "Police law enforcement and the environment", pp. 294-299.

¹⁷⁶ UNODC, "Crime investigation", in *Criminal Justice Assessment Toolkit*.

¹⁷⁷ Nigel Stobbs, "Police power and duties", in *Policing in Context*, Roderic Broadhurst and Sara E. Davies, eds. (Melbourne, Oxford University Press, 2009), pp. 69-76.



Tool II.19 Sources of enforcement powers

- Is there legislation that empowers an agency in the investigation of wildlife and forest offences?
- Are the relevant enforcement powers set out in a forestry and wildlife statute or legislation, Customs law or other special legislation, or are they set out in general criminal procedure laws or police law?
- What laws, rules or regulations exist to govern the powers and conduct of law enforcement officers?
- When were the relevant laws last updated?
- Who oversees the proper application of enforcement powers?
- Are there differences in rules of evidence or procedures when the money-laundering law is used?

4.2 Types of investigative powers

In some cases, enforcement agencies rely on coercive powers to demand compliance with the relevant wildlife and forest laws. Accordingly, the enforcement powers of officers should 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, and covert operations (such as surveillance, controlled delivery and undercover activities). In some instances, special investigative powers have been created for the investigation of wildlife and forest offences.¹⁷⁸



Tool II.20 Types of investigative powers

- Are agencies involved in enforcing wildlife and forest laws 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;

Investigate wildlife and forest offences; and

Carry firearms or other weapons.

¹⁷⁸ Cf. Cyrille de Klemm, "Guidelines for legislation to implement CITES", p. 102.

- Are these powers sufficient to prevent or disrupt wildlife and forest offences?
- Is it an offence to obstruct wildlife and forest crime officers?
- What is admissible as evidence, and what is the procedure for having evidence admitted (for example, photographs, summary documents, computer evidence, DNA evidence and charts)?

4.3 Exercise of power, and checks and balances

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.¹⁷⁹ It has been noted that:

An appreciation of the nature and limits of particular [enforcement] powers is obviously necessary if police are to act fairly, effectively, and according to law. An inappropriate or unlawful exercise of power can result in the conviction of innocent people, the acquittal of people who have in fact committed offences, and erosion of public confidence in the administration of justice. The effectiveness of law enforcement agencies in societies that are governed by the rule of law depends to a large degree on the extent to which that society trusts those who are tasked with enforcing and applying the law. The intersection of public confidence and trust and the lawful exercise of power are thus particularly important for a stable society.¹⁸⁰

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.¹⁸¹



Tool II.21 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?

¹⁷⁹ UNODC, “Public safety and police service delivery” and “The integrity and accountability of police”, in *Criminal Justice Assessment Toolkit*; Mark Findlay, *Introducing Policing: Challenges for Police and Australian Communities* (Melbourne, Oxford University Press, 2004), pp. 70-85; Nigel Stobbs, “Police power and duties”, pp. 69-76.

¹⁸⁰ Nigel Stobbs, “Police power and duties”, pp. 69-70.

¹⁸¹ *Ibid.*, pp. 69-80.

4.4 Facilities and equipment

Powers and responsibilities assigned to government agencies in the wildlife and forestry sectors often bear little relationship to their ability to fulfil their responsibilities. Investigators of wildlife and forest offences require certain basic facilities and may also need special equipment to carry out their tasks. Their requirements may include the very basics (such as offices, stationery, transportation, access to motor vehicles and handcuffs) or more sophisticated equipment (such as computers, radios for communication, equipment for forensic procedures, laboratories and firearms). Investigators also require sufficient funding to carry out day-to-day functions as well as specialized operations.¹⁸²

The facilities and equipment that are available or needed vary greatly among jurisdictions and agencies. A needs assessment would have to take into account the role, training, responsibility and seniority of investigating officers and their units. The availability of the facilities and equipment also depends on the local socio-economic conditions, available resources, and access to financial aid and technical assistance.



Tool II.22 Facilities and equipment

- What are the physical facilities of the relevant units? Where are they accommodated? Are the buildings structurally sound?
- Is there a steady and reliable source of electricity? Is there a working backup generator?
- Is the office equipment (furniture, stationery, photocopiers and so forth) adequate?
- Does the public have access to these offices?
- Is the supervisor or manager of the unit located in the facility or nearby? If prosecutors lead the investigation, where are they located? Do they have easy access to the investigators?
- What communication and word-processing technology is available (such as computers, the Internet, telephones, mobile telephones, walkie-talkies and fax machines)?
- Can seized property and other assets be stored securely?
- Other than Customs, the police or other enforcement agencies, who assists in handling and storing seized fauna and flora (alive or dead)?
- Are front-line officers adequately funded, sufficiently equipped and trained in equipment use?
- Do officers have access to personal protective equipment such as batons, handcuffs, Tasers, firearms or other weapons? Are they issued and stored in a secure manner?
- Do investigators have access to vehicles, vessels and other means of transport? How many vehicles or vessels are available? Are they marked or unmarked? Are they armoured? Is there sufficient fuel available?
- Are there other non-operational demands placed upon these resources (such as shared vehicles)?
- What maintenance and replacement provisions are in place for the equipment?

¹⁸² UNODC, "Crime investigation", in *Criminal Justice Assessment Toolkit*.

5. Investigation procedures and techniques

Investigating wildlife and forest offences and the management of investigations may be complex and require a variety of methods and approaches. The following sections set out some core elements of investigation procedures and techniques; the list is, however, by no means exhaustive.

5.1 Reporting offences

The initial reporting of an offence and the action taken immediately thereafter are considered extremely important. The commission of a wildlife and forest offence can come to the attention of the police or other enforcement unit in a number of ways. For example, they may be reported by victims or witnesses, they may be referred by another agency, or they may be detected during routine patrols or inquiries. Complicating the process is the fact that various agencies have some responsibility in relation to the wildlife and forestry sectors, and that it may take time for reports to go to the relevant investigation unit.

To increase the number of reports, some countries have instituted reward schemes, sometimes referred to as “whistle blower schemes”, as an incentive for individuals to furnish information about wildlife and forest offences. Such systems have thus far received only mixed support, with many critics arguing that rewards increase only the quantity and not the quality of crime reporting, as well as create the danger of false allegations.¹⁸³

Some countries and some local communities have established “watch groups” as an alternative avenue to improve and increase the reporting of wildlife and forest offences. These systems, which are modelled after the Neighbourhood Watch schemes operating in many countries, 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 individuals, neighbours and communities for preventing, reporting and reducing wildlife and forest offences.

As with other criminal offences, it is essential that any reports about wildlife and forest offences be accurately and comprehensively recorded. To that end, the CITES Secretariat has developed a preliminary report form to be used for reporting incidents of wildlife crime, illegal trade, the poaching of endangered species or significant intelligence.¹⁸⁴

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.¹⁸⁵

¹⁸³ Arnoldo Contreras-Hermosilla, “Law compliance in the forest sector”, p. 22; Jonathan P. Kazmar, “The international illegal plant and wildlife trade”, pp. 105-127.

¹⁸⁴ CITES Resolution Conf. 12.5 (Rev. CoP15), annex 1.

¹⁸⁵ UNODC, “Crime investigation”, in *Criminal Justice Assessment Toolkit*.



Tool II.23 Reporting offences

- How do wildlife and forest offences come to the attention of authorities?
- Is contact information (such as telephone numbers, fax numbers and e-mail 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?
- 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?

5.2 Information and evidence gathering

The outcome of a criminal case depends on the quality and the weight 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 at the scene, thus jeopardizing further investigations and prosecution. Accordingly, it is important that evidence be collected and recorded thoroughly and systematically.

The rules of evidence adopted by a justice system may preclude some types of information from being considered by the trier of fact if the evidence’s prejudice to the defendant (and its tendency to bias the trier of fact assessing the evidence) may outweigh its usefulness (probative value). Other types of evidence, such as hearsay, may be precluded because they are considered by some systems to be inherently unreliable.¹⁸⁶



Tool II.24 Information and evidence gathering

- 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?

¹⁸⁶ Ibid.

5.3 Wildlife and forest crime scene work

In wildlife and forest crime scene work, as in other forms of forensic endeavours, it is vital that the investigations be meticulous, that detailed records be kept and that a proper chain of custody (the continuity of evidence) be maintained for each item of evidence. Such a chain minimizes the chance of loss, contamination or substitution of material, and helps to prove the origin and veracity of specimen or exhibits.

Wildlife and forest crime scene work involves proper preparation for and rapid preservation of the wildlife and forest crime scene. It requires special equipment, ranging from protective clothing to specimen containers, as well as personnel familiar with crime scene management and record keeping. Complicating the work further is that fact that many wildlife and forest offences take place away from urban centres, where enforcement agencies are usually based and where laboratory and scientific expertise are most likely be found.¹⁸⁷



Tool II.25 Wildlife and forest crime scene work

- Are there special laws or operating procedures for wildlife and forest crime scene work?
- Are there specialist personnel for wildlife and forest crime scene management?
- Are all staff aware of the importance of securing and preserving a crime scene in order to facilitate a thorough examination of it?
- Are the relevant staff properly trained in establishing a crime scene, forensic evidence gathering, 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?

5.4 Identification of suspects

The investigation process is aimed at identifying the perpetrator of a crime, and a case will be greatly strengthened by strong identification evidence. However, 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 and to all resulting evidence being ruled inadmissible.¹⁸⁸

¹⁸⁷ See further John E. Cooper, Margaret E. Cooper and Paul Budgen, "Wildlife crime scene investigation", pp. 1-6.

¹⁸⁸ UNODC, "Crime investigation", in *Criminal Justice Assessment Toolkit*.



Tool II.26 Identification of suspects

- Which laws and procedures are in place to enable and facilitate the identification of suspects? Are there special procedures for perpetrators of wildlife and forest crime?
- Do investigators have the means to take fingerprints and DNA from suspects of 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?

5.5 Interviewing

Interviewing is a cornerstone of any investigation—and this skill is lacking in wildlife and forest investigations. For that reason, the CITES Secretariat, the International Criminal Police Organization (INTERPOL) and WCO have published an interview guide for wildlife and forest crime investigators, intended to assist them when questioning smugglers.

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 are therefore more adversarial and may require skilful techniques.¹⁸⁹

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.



Tool II.27 Interviewing

- Do investigators of wildlife and forest crime receive training in interviewing techniques? If so, what does the training consist of?
- Are interviews of the persons affected, witnesses and suspects recorded? If so, where and how?
- What are the rules for the interviewing of witnesses? Does the interviewer inform the witnesses of their right to freedom from self-incrimination during the interview? Does a witness have the right 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?

¹⁸⁹ See further UNODC, “Crime investigation”, in *Criminal Justice Assessment Toolkit*.

- Are there guidelines or codes of practice for interviewing suspects? Do these guidelines reflect international standards?
- Are suspects entitled to refuse to answer questions? Is there protection from self-incrimination? Do suspects have the right to have a lawyer present during the interview? Are suspects informed of that right?
- 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, or is there evidence that inappropriate interviewing techniques or torture is used?

5.6 Witness and victim protection

Many witnesses and victims of wildlife and forest offences 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), or when the offender is part of an organized criminal group. 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.

Hence, it is important that effective measures be taken to protect the safety of victims, witnesses and their families. Ensuring the protection of the privacy of victims and witnesses is another concern.¹⁹⁰

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.¹⁹¹ These provisions, however, extend only to those offences involving organized criminal groups and do 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.¹⁹²



Tool II.28 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)?
- What capacity is there to offer effective physical protection to victims and witnesses?

¹⁹⁰ UNODC, “Victims and witnesses” and “International cooperation”, in *Criminal Justice Assessment Toolkit*.

¹⁹¹ United Nations Convention against Transnational Organized Crime, arts. 24-26. See further David McClean, *Transnational Organized Crime*, pp. 259-274.

¹⁹² United Nations Convention against Corruption, art. 32.

- 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, protecting the anonymity of the person giving evidence?

5.7 Forensics and crime scene investigation

The use of science and technology is a vital part of investigating wildlife and forest offences. These offences are “essentially no different from any other form of criminality, and the full range of forensic science, expertise, and support can potentially be brought to bear from one end of the illicit trade chain to the other”.¹⁹³ Knowledge of the use of forensic techniques in wildlife and forest offence investigations can also have relevance to crime prevention as it may deter some would-be offenders.¹⁹⁴ Unfortunately, few officials charged with enforcing wildlife and forest laws in developing countries have access to forensic support or are even aware of it.

The provision of forensic services is affected by the legal framework in place and includes issues related to the entering of the crime scene, the conducting of the investigation, the handling, analysis and disposal of evidence and others.¹⁹⁵

Broadly speaking, for wildlife and forest offences, the use of forensics can be divided into two areas: forensic techniques to assist in the identification or origin of species; and forensic techniques to link suspects or physical items to a crime.

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. Identification and morphological studies can be used to determine the species of a particular animal by using bones, hair, feathers, scales, and other organs and tissues. 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.¹⁹⁶

Illegal logging and other forms of illegal land clearance, including felling protected trees, can be monitored through satellite technology. Land clearance and compliance with—or transgression of—logging restrictions, for example, can be subjected to aerial surveillance and satellite remote sensing.¹⁹⁷

¹⁹³ John M. Sellar, “Illegal trade”, pp. 11-14.

¹⁹⁴ Rob White and Santina Perrone, *Crime, Criminality and Criminal Justice* (Melbourne, Oxford University Press, 2010), pp. 341-342.

¹⁹⁵ UNODC, “Policing, forensic services and infrastructure”, in *Criminal Justice Assessment Toolkit*.

¹⁹⁶ Adrian Linacre, “Nature of wildlife crimes”, pp. 1-4. See further John E. Cooper, Margaret E. Cooper and Paul Budgen, ‘Wildlife crime scene investigation’, pp. 1-8; John M. Sellar, “Illegal trade”, pp. 11-15; Duncan Brack, Kevin Gray and Gavin Hayman, “Controlling the international trade”, p. 60; Erika Alacs and Arthur Georges, “Wildlife across our borders”, pp. 147-156.

¹⁹⁷ FAO and ITTO, *Best Practices for Improving Law Compliance*, p. 81; Robyn L. Bartel, “When the heavenly gaze criminalises: satellite surveillance, land clearance regulation and the human-nature relationship”, *Current Issues in Criminal Justice*, vol. 16, No. 3 (March 2005), pp. 322-324; Robert Douglas White and Santina Perrone, *Crime, Criminality and Criminal Justice*, p. 342.

A number of techniques can be used to link suspects or physical items to a crime. Bullets recovered from carcasses can be linked to firearms seized from suspects through ballistics. 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 or on items connected to the scene of a crime, 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.

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 storage devices. These can reveal valuable links among individuals, financial transactions and Internet-surfing history.

The types of examinations that can be conducted further depend on the capability of the forensic scientist involved and the available laboratory facilities and equipment. If, for instance, the laboratory does not have equipment for DNA testing then such testing cannot be performed. 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.¹⁹⁸ Consequently, in locations where requisite forensic experts, or 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 countries, Customs laboratories have also started to support frontline enforcement with their forensic examination. Several organizations, as well as the world's leading wildlife forensic laboratory (operated by the United States Fish and Wildlife Service), have offered to provide forensic science support, but so far relatively few countries have made use of it. INTERPOL, through its Environmental Crime Programme, can also assist in providing access to international forensic capabilities.¹⁹⁹



Tool II.29 Forensics and crime scene investigation

- What is the situation in the country with respect to forensic examination? Are dedicated crime scene investigation services available?
- Whom is called first when a potential offence is discovered?
- Do investigators preserve crime scenes so that they remain suitable for forensic examination?
- 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?
- Are satellite images of illegal logging and land clearance activities available? If so, who uses them and how?
- What other forensic support is available (for example, microscopy, ballistics, isotopic profiling, morphology, pathology and toxicology)?

¹⁹⁸ Adrian Linacre, "Nature of wildlife crimes", pp. 1-3.

¹⁹⁹ INTERPOL, *Environmental Crime Programme*, p. 5.

- Are forensic staff trained in the mechanisms of prosecutions and the presentation of evidence in court?
- Which agency conducts 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?

5.8 Financial investigations

Financial investigation plays a crucial role in the successful investigation of wildlife and forest offences. The financial aspects of the crime present themselves in at least two distinct ways, as described below.

- Wildlife and forest offences are driven by financial gain. 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 the profits are essential parts of wildlife and forest offences.
- Wildlife and forest offences, especially if conducted regularly, can become a lifestyle crime. Lifestyle pursuits such as travel, luxury items (for example, cars and jewellery), and leisure activities (for example, restaurants and casinos), all require means and methods of purchase.

Consequently, the investigation of financial transactions and the analysis of the results provide important information that can be used to ensure that the operation progresses efficiently.²⁰⁰ For example, an investigation of the purchase of travel tickets can reveal details of travel arrangements, and an analysis of credit card expenditure can reveal details about airlines, hotels, restaurants or other venues regularly used by perpetrators. This information can be the basis for the allocation of surveillance resources and may be valuable evidence.

It is possible to coordinate the arrest phase with financial sequestration procedures in order to arrive at the optimal situation of a synchronized arrest of offenders and a confiscation of their assets.

Many countries, however, still do not have adequate legislation to conduct thorough financial investigations and to combat money-laundering effectively. A number of international instruments can guide and assist such nations in creating and improving the relevant mechanisms. The United Nations Convention against Transnational Organized Crime, for example, advocates instituting adequate financial regulations, including enforcement measures, to deter and detect all forms of money-laundering.²⁰¹

²⁰⁰ Cf. Bambang Setiono and Yunus Hussein, "Fighting forest crime", pp. 17-18.

²⁰¹ United Nations Convention against Transnational Organized Crime, art. 7. See further David McClean, *Transnational Organized Crime*, pp. 92-108.



Tool II.30 Financial investigation

- Does the jurisdiction have a Financial Intelligence Unit (FIU)? What are its resources? How does it operate? To which agencies does it disseminate information?
- Have measures been implemented to establish a regime for banks and financial institutions to deter and detect money-laundering?
- Are there special anti-money-laundering provisions in relation to wildlife and forest offences?
- Are wildlife and forest offence investigators authorized, trained and equipped to conduct financial investigations? Do they cooperate with FIUs?
- 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?
- Have other measures been implemented to detect and monitor cross-border cash flows?

6. Border control and Customs

Land border crossings, seaports and airports play a crucial role in the trafficking of wildlife, dead or alive. Many borders are porous; archipelagic coastlines and mountainous and remote borders are difficult to patrol and are thus easily penetrated by international traffickers. Remote border crossing points without routine patrols can be easily exploited by traffickers. At the same time, border crossings and ports can constitute important points for intervention by Customs and other law enforcement officers.

Customs administrations are tasked with enforcing a large number of national laws covering physical movement across borders. On the one hand, they are faced with the rising volume and growing complexities of international trade, increased security threats and organized crime, while on the other hand, they have to facilitate the cross-border trade, including wild fauna and flora. Awareness and basic knowledge in botany and zoology are imperative to enforce wildlife and forest legislation. Customs officers also need to be familiar with the various types of fraud and irregularities that are currently being carried out. Many officers lack experience in checking whether international standards and CITES requirements on the humane treatment of live specimen during transport are actually complied with.²⁰² Accordingly, it is crucial that Customs authorities and other border control agencies are adequately equipped and trained to detect and disrupt the cross-border trafficking of wild fauna and flora. It is also crucial that they have access to the practical assistance of experts from CITES Management Authorities.

It has to be remembered that even well-trained and highly resourced border and Customs authorities can physically inspect only a small fraction of the enormous volume of shipments and number of

²⁰² Cyrille de Klemm, "Guidelines for legislation to implement CITES", pp. 52-56.

persons that cross international borders. It is therefore important that Customs and other border control agencies operate on a targeted risk management basis by acting on information or suspicions that suggest that illegal commodities are being shipped.²⁰³ This approach requires comprehensive data and intelligence systems, and timely information exchange among agencies and with other countries, which is explored elsewhere in the *Toolkit*.²⁰⁴



Tool II.31 Border control and Customs

- 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 regulations?
- Are there formalized cooperation agreements between Customs and wildlife and forestry agencies? What is the daily working relationship between them?
- Are Customs officers and other border officers trained in CITES requirements, the identification of specimen and so forth?
- What percentage of shipments is inspected prior to export or import?
- Are shipments and passengers in transit also targeted and 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 wildlife shipments? Are risk indicators related to wildlife and forests developed and integrated into risk assessment systems?

Cooperation between Customs and CITES

On 4 July 1996, an MOU was signed to increase cooperation between WCO and the CITES Secretariat in fields such as staff training and information exchange. To foster closer collaboration

²⁰³ Duncan Brack, Kevin Gray and Gavin Hayman, "Controlling the international trade", pp. 28-29.

²⁰⁴ See further part two, section 3, and part five, section 2.

between national Customs authorities and CITES Management Authorities, WCO and the CITES Secretariat encourage their members to set up an MOU programme as part of their overall strategy for combating wildlife and forest offences. To that end, the *Guidelines on Co-operation between Customs Administrations and CITES Management Authorities Managing the Trade in Animals and Plants (CITES)* were developed.

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 to help the Management Authority by indicating the existence of suspicious circumstances or consignments. 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.



Tool II.32 Cooperation between Customs and CITES Management Authority

- 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)*?

ENVIRONET

On 5 June 2009, WCO launched ENVIRONET as a new global real-time communication tool for use in the fight against cross-border environment-related offences. ENVIRONET provides a secure, Internet-based platform for Customs officials, other law enforcement authorities and international organizations, as well as their regional networks, to cooperate with one another and share information in the course of their daily operations. Information related 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 wild fauna and flora, and issues such as ozone-depleting substances, hazardous waste and materials, pesticides, chemical weapons and living modified organisms.



Tool II.33 ENVIRONET

- Do Customs and other law enforcement agencies have access to ENVIRONET?
- Do Customs 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?

Customs Enforcement Network

Since July 2000, WCO has been operating the Customs Enforcement Network (CEN), which is a global network for gathering Customs-related data and information. CEN enables Customs officers around the world to exchange information on Customs offences and to share intelligence in a timely, reliable and secure manner with direct access available 24 hours per day. CEN is Internet-based and uses effective database protection norms. It relies on encryption technology to protect communication and data transfers.

Currently, the following features are available on CEN:

- The CEN database records Customs seizures and offences classified under 13 different headings covering the main fields of Customs enforcement activity, including the trade in endangered species of wild fauna and flora under CITES. Pictures illustrating concealment methods and X-ray images are also available. All pictures can be downloaded and used for training purposes.
- The CEN website contains alerts on enforcement-related issues, as well as intelligence needed by Customs services. It comprises a reference system, alert messages, situation sheets, dedicated pages for regional liaison offices, links to other organizations and so forth.
- The communication application is a tool that facilitates the exchange and use of any information in a timely, reliable and secure manner.

The CEN system electronically links Customs administrations through the WCO network of regional intelligence liaison offices. WCO members and regional intelligence liaison offices can report seizure information to the CEN database. They in turn benefit by being able to use the database to conduct national, regional and interregional analysis and publish alerts. Each participating WCO member nominates a national contact point that acts as a hub between the national Customs administration and the relevant regional intelligence liaison offices.

The success of CEN rests squarely on its ability to function as a vital enforcement resource. This is only possible, however, if WCO members regularly provide quality information, particularly statistics relating to all seizures, and any relevant pictures and intelligence. This will strengthen CEN, making it an essential resource for all users.²⁰⁵



Tool II.34 WCO Customs Enforcement Network

- Do Customs agencies report seizures to CEN and make use of information exchanged via CEN?
- Has a national contact point been nominated to liaise between the national Customs administration and the relevant regional intelligence liaison office?
- How and by whom is CEN used? What have the outcomes and experiences been?

²⁰⁵ See further WCO, *CEN: Sharing Information for a More Effective Network* (2009). Available from www.wcoomd.org/home_wco_topics_epoverviewboxes_tools_and_instruments_epcengien.htm (accessed 8 Feb 2010).

7. International cooperation in criminal matters

Wildlife and forest offences transcend national borders. While law enforcement is generally confined to one country, criminals are not. The trade in plants and animals—dead or alive, legal or illegal—frequently involves multiple countries. The globalization of trade and travel, and, more specifically, the emergence and expansion of transnational crime create new challenges for law enforcement systems. Criminal offenders are mobile and often seek to evade detection, arrest and punishment by operating across international borders. They avoid being caught by taking advantage of those borders and playing on the frequent reluctance of law enforcement authorities to engage in complicated and expensive transnational investigations and prosecutions. The weak capacity of any one country to address some of these threats effectively translates into an overall weakness in the international regime of criminal justice cooperation. For countries with a relatively limited criminal justice capacity, these challenges can sometimes appear insurmountable.²⁰⁶ Accordingly, many instances of wildlife and forest offences remain undetected, and many offenders are never prosecuted.

For these reasons, comprehensive, multiagency and flexible cross-border 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. As discussed in part one of the *Toolkit*, this demands national efforts to comply with new international standards and to encourage the convergence and compatibility of respective national legislation. Avenues for international judicial cooperation are discussed in part three. The United Nations Convention against Transnational Organized Crime, apart from providing international cooperation mechanisms, can also serve as a basis for law enforcement cooperation and information sharing.

Effective international cooperation may also require complex procedural reforms to develop greater investigation and prosecution capacity at the national level. For some countries, building capacity for international cooperation within their own criminal justice system is difficult, especially if they lack the necessary human resources, expertise or other resources.²⁰⁷

Nevertheless, 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 countries to seek legal assistance, extradition, the transfer of prisoners, the transfer of proceedings in criminal matters, and cooperation for the purposes of the confiscation of criminal proceeds and assets,²⁰⁸ which is discussed in part three. Cooperation opens avenues to obtain additional evidence, access information, recover assets, freeze funds, confiscate property, and arrest and return fugitives that would otherwise be immune to prosecution.

7.1 Legal frameworks

International cooperation—judicial or between law enforcement authorities—requires domestic or international frameworks that provide a legal basis for seeking assistance from another country and articulate the ways in which such assistance may be sought. Most jurisdictions have domestic laws that identify the requirements and mechanisms for mutual legal assistance in criminal matters, extradition, the transfer of prisoners and so forth.²⁰⁹ Bilateral treaties may be in place to make requests to or receive requests from particular countries. While at present there is no specific international

²⁰⁶ UNODC, “International cooperation”, in *Criminal Justice Assessment Toolkit*.

²⁰⁷ *Ibid.*

²⁰⁸ *Ibid.*

²⁰⁹ UNODC, “Crime investigation”, in *Criminal Justice Assessment Toolkit*.

treaty to prevent and suppress wildlife and forest offences, instruments such as the United Nations Convention against Corruption and the Convention against Transnational Organized Crime may serve as platforms for seeking assistance in matters involving organized criminal groups or bribery.²¹⁰

The absence of domestic and international frameworks for cooperation may encourage some offenders to relocate themselves, their activities and their assets to those countries. This may protect them from prosecution and shelter their assets from confiscation. An analysis of wildlife and forest offence 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 II.35 Frameworks for international cooperation

- Is there legislation concerning the investigation of crimes with international components? If so, does this legislation cover wildlife and forest offences?
- Is the country a party to bilateral or multilateral treaties that make it possible to seek enforcement cooperation or take enforcement requests from another country?
- Is the country 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)?^a
- With which countries are there no formal (or informal) avenues for international cooperation?

^a UNODC, “Crime investigation”, in *Criminal Justice Assessment Toolkit*.

7.2 INTERPOL

INTERPOL is in a unique position to facilitate cross-border law enforcement and assist countries in gathering evidence and locating offenders and their assets. Moreover, INTERPOL has established a range of tools designed specifically to combat wildlife and forest offences. INTERPOL currently has 188 Member States, most of which have established a national central bureau to act as a focal point for cooperation with the General Secretariat and other national central bureaux. These bureaux can also act as liaison points between national wildlife and forest enforcement units and the General Secretariat of INTERPOL.²¹¹

As early as 1976, an INTERPOL resolution was adopted to combat the illegal traffic in wild fauna and flora. The Environmental Crime Programme of INTERPOL, established in 1992, is designed to assist Member States in the effective enforcement of national and international environmental laws and treaties. The Environmental Crime Programme also works towards enhancing and developing the abilities of INTERPOL Member States at the national level concerning, for example, the deterrence, apprehension, investigation and prosecution of environmental criminals. The Programme helps to coordinate the actions of multiple countries in cases with international implications.²¹²

²¹⁰ See further part one, section 1.

²¹¹ See INTERPOL and CITES Secretariat, Wildlife Crime Working Group, *Practical Guide for the Use of the CITES Management Authorities in Collaboration with the International Criminal Police Organization (INTERPOL)* (2005), pp. 1-7 and 23.

²¹² INTERPOL, *Environmental Crime Programme*, p. 2; Cf. Kevin Tomkins, “Police law enforcement and the environment”, pp. 294-296.

The INTERPOL Wildlife Crime Working Group (formerly the Subgroup on Wildlife Crime) focuses on the expertise and experience of law enforcement officers on the poaching, trafficking or possession of legally protected wild fauna and flora. The Working Group carries out measures to improve the exchange of information on:

- Persons or companies involved in illegal trade in wild fauna and flora;
- Organizations involved in illegal trade in wild fauna and flora; and
- Methods of illegal trade in wildlife, including the use of false CITES documents, forgery, means of transport, organized crime, and activities related to organized crime (such as money-laundering and trafficking in narcotics) and associated trends.

Participation in the Wildlife Crime Working Group is open to all INTERPOL Member States and regional representatives, as well as observers from the CITES Secretariat and WCO.²¹³ The Conference of the Parties of CITES has also encouraged its Parties, if they have not already done so, to nominate officials from the relevant national enforcement and prosecution agencies to participate in the INTERPOL Wildlife Crime Working Group.



Tool II.36 INTERPOL

- Is the country a member of INTERPOL? Has it established a national central bureau?
- Does the country participate in the Wildlife Crime Working Group and Environmental Crime Programme? Do representatives from the relevant wildlife, forestry and law enforcement agencies attend the Working Group meetings?
- Are the country's agencies responsive to requests made through INTERPOL?

Ecomessage

In the 1990s, the INTERPOL Wildlife Crime Working Group developed a system called Ecomessage, the standard format for reporting cases related to illegal trade in endangered species, other infractions of CITES, and other forms of environmental crime. Ecomessage was developed as a tool to assist investigators in collecting information from widely scattered sources, to create uniform reporting methods and to assist in identifying which law enforcement agencies or persons to contact in other countries. The purpose of Ecomessage is to improve the exchange of information on international environmental crime cases, including wildlife and forest offences, and to enhance the collection, storage, analysis and circulation of such information.

Within INTERPOL, the General Secretariat in Lyon, France, acts as the central collection and dissemination point for information supplied by the national central bureaux using Ecomessage. Ecomessage is a standard form that can be either transmitted over the INTERPOL I-24/7 global communication system network or sent by mail or fax. The General Secretariat has prepared guidelines for using Ecomessage to ensure that the relevant information is entered and exchanged as accurately and expeditiously as possible.²¹⁴

²¹³ INTERPOL and CITES Secretariat, Wildlife Crime Working Group, *Practical Guide*, p. 9. See further Rosalind Reeve, *Policing International Trade in Endangered Species*, pp. 227-229.

²¹⁴ *Ibid*, p. 10. See also Duncan Brack, Kevin Gray and Gavin Hayman, "Controlling the international trade", p. 37; and Rosalind Reeve, *Policing International Trade in Endangered Species*, pp. 228-229.



Tool II.37 Ecomessage

- Does the country's INTERPOL national central bureau use Ecomessage to share information on wildlife and forest offences? If not, why not?
- Are the relevant staff adequately trained in using Ecomessage?
- What are the country's experiences in using Ecomessage? What obstacles have been encountered?
- Does the country use an alternative method of exchanging information on wildlife and forest offences?

7.3 Operation, procedures and administration

Effective and efficient international cooperation requires a consistent and clear operational and administrative system to issue and receive requests for cooperation to and from foreign jurisdictions.²¹⁵ In most countries, departments of justice and attorneys-general act as the central authority to manage criminal justice cooperation with other countries. In the wildlife and forestry sectors, it is also conceivable that the relevant ministries, government departments, and specialized agencies and units liaise directly with their counterparts abroad. This may be the case, for instance, among national CITES Management Authorities. Multilateral cooperation is also often conducted via international frameworks such as those of INTERPOL and WCO.

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 opportunities involved in international cooperation.²¹⁶



Tool II.38 Procedures for international cooperation

- Does the country have a central authority for international cooperation? Has another agency been delegated this responsibility?
- Are there special arrangements for wildlife and forestry departments and their enforcement units to liaise directly with their foreign counterparts?
- Do the central authority and other agencies involved in international cooperation have sufficient resources to achieve their mandates (skilled and trained staff, communication equipment, ongoing training and so forth)? Are they able to collaborate and exchange information with other central authorities abroad?
- Within the relevant agencies, who manages wildlife and forest cases that involve an international criminal dimension?
- Are investigators aware of how to request assistance from law enforcement and judicial authorities in other countries?

²¹⁵ UNODC, "International cooperation", in *Criminal Justice Assessment Toolkit*.

²¹⁶ UNODC, "Crime investigation", in *Criminal Justice Assessment Toolkit*.

7.4 Law enforcement cooperation and information sharing

International law enforcement cooperation can be enhanced through the development of more effective systems of information sharing at the bilateral, regional and international levels. The United Nations Convention against Transnational Organized Crime²¹⁷ and the United Nations Convention against Corruption²¹⁸ contain specific provisions to facilitate law enforcement cooperation for the offences these treaties cover.

In many instances, international cooperation is hindered by the absence of clear channels of communication. In other cases, 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 *modus operandi*). The largest obstacle, however, may be the strict limitation to information exchange with foreign countries in the national legislation for the sake of privacy protection, or that of commercial interest.

The establishment of joint investigative teams represents a major new trend in the development of effective capacity to investigate and prosecute transnational crimes of all sorts, including wildlife and forest offences. The United Nations Convention against Corruption and the Convention against Transnational Organized Crime also encourage States Parties to conclude bilateral or multilateral agreements to establish cross-jurisdictional joint investigative bodies.²¹⁹ This offers one of the most promising new forms of international cooperation, even if there are some remaining issues in terms of making them fully functional on a broad scale. There are legal issues, as well as issues of attitude and trust among law enforcement agencies, and procedural questions. In addition, some practical problems exist in the organization of joint investigations, including a lack of common standards and accepted practices, issues regarding the supervision of the investigation, and the absence of mechanisms for quickly solving these problems. For joint investigative teams to become an effective tool for international cooperation, States must put into place the required legal framework, at both the national and international levels, although such a framework need not necessarily be very complicated.

Another effective form of international cooperation is engagement in regional or international joint operations with specific targets, such as illegal trade in wild fauna and flora for a certain period of time. Apart from increasing the number of seizures, participating agencies may also benefit from enhanced mutual understanding, trust, the establishment of effective mechanisms of cooperation and the capacity-building of officers.

More and more countries have law enforcement officials stationed in their embassies and high commissions around the world. Such officials may be Customs officers, drug enforcement officers, police liaison officers or legal attachés. 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 liaison among law enforcement agencies in the States involved. When the legal systems of the States concerned are very different, liaison officers can also 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 country, to all agencies in that country with the relevant responsibilities.²²⁰ At the same time, they can be

²¹⁷ United Nations Convention against Transnational Organized Crime, arts. 26 and 27.

²¹⁸ United Nations Convention against Corruption, art. 48.

²¹⁹ United Nations Convention against Corruption, art. 49; and United Nations Convention against Transnational Organized Crime, art. 19. See also David McClean, *Transnational Organized Crime*, pp. 238-240.

²²⁰ UNODC, "International cooperation", in *Criminal Justice Assessment Toolkit*.

very good resource personnel for training activities held in the host countries, as many of them are highly experienced officials in their respective areas.

Regarding Customs, most mutual assistance is administrative in nature, under the framework of, or in line with the principles of, the International Convention on Mutual Administrative Assistance for the Prevention, Investigation and Repression of Customs Offences (Nairobi Convention).²²¹

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, participation in investigations abroad and so forth.



Tool II.39 Law enforcement cooperation

- Does the country have the capacity to establish joint investigation teams with other countries? Is this possible in the field of wildlife and forest crime? If not, what are the obstacles?
- Does the country have arrangements with other countries for the exchange of police liaison officers?
- Is the country involved in arrangements with other countries for the exchange of information and intelligence? If so, which ones?
- Have law enforcement agencies been involved in international joint investigation teams? If so, what was the experience?
- Has the country entered into bilateral or multilateral agreements on law enforcement cooperation?
- Has the country participated in regional or international joint operations? If so, what were the results?
- Does the country have law enforcement liaison officers in other countries?
- Are there foreign police liaison officers in the country? If so, from what country or countries? How do they work with the national police? What is their view on the quality of the existing law enforcement cooperation with the country?
- Does the national police cooperate (formally and informally) with police agencies in other countries in the collection, exchange and analysis of criminal intelligence information?
- Do specialized wildlife and forest law enforcement units cooperate effectively at the bilateral, regional and international levels?

²²¹ Adopted at Nairobi on 9 June 1977. The International Convention on Mutual Administrative Assistance in Customs Matters (Johannesburg Convention) was adopted by the WCO Council in June 2003 but has yet come into force due to poor ratification numbers by countries. Available from www.wcoomd.org/files/1.%20Public%20files/PDFandDocuments/Conventions/MAA%20Legal%20Text%20FINAL%20VERSION_publish%20E.PDF.

8. Technical assistance and aid

8.1 International and regional assistance

Many countries have limited resources to investigate thoroughly wildlife and forest offences and may not have the technical know-how, expertise or equipment to carry out some elements of an investigation. To assist nations with technical equipment, expert personnel or financial aid, international and regional organizations, along with individual donor countries, offer avenues through which countries can request assistance, training and aid.²²² In recent years, a number of schemes have been created to offer technical assistance and aid specifically in relation to wildlife and forest offences. Furthermore, the United Nations Convention against Transnational Organized Crime²²³ and the United Nations Convention against Corruption²²⁴ contain provisions on economic development and technical assistance regarding the offences covered by these treaties.



Tool II.40 International and regional assistance

- What type and level of technical assistance and aid is available from international and regional organizations to enhance the enforcement of wildlife and forest offences?
- How can this assistance and aid be requested? Have requests been made in the past? Were they successful? If not, why not?
- Are there (or have there been) initiatives funded by international or regional organizations 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?
- What difficulties have international and regional agencies typically encountered in trying to offer technical assistance? Are some kinds of assistance more problematic than others?

²²² UNODC, “Crime investigation”, *Criminal Justice Assessment Toolkit*.

²²³ United Nations Convention against Transnational Organized Crime, arts. 29 and 30. See further David McClean, *Transnational Organized Crime*, pp. 285-292.

²²⁴ United Nations Convention against Corruption, arts. 60 and 62.

8.2 Bilateral and multilateral donors

Several bilateral and multilateral donors support schemes to enhance enforcement efforts in the wildlife and forestry sectors. Donor agencies, such as the Australian Agency for International Development, those of the European Union and its Member States, the Norwegian Agency for Development Cooperation, regional development banks, United Nations agencies, the United States Agency for International Development and the World Bank, among others, play an important role in some countries and, along with other aid agencies and non-governmental organizations, can offer expertise, equipment, grants, financial aid or other forms of assistance to support national authorities. This can take place as a standalone activity or as part of other rural development and natural resource management projects and programmes.



Tool II.41 Bilateral and multilateral donors

- What type and level of technical assistance and aid are available from other countries (and their agencies) to enhance the enforcement of wildlife and forest laws and regulations?
- How can this assistance and aid be requested? Have requests been made in the past? Were they successful? If not, why not?
- Are there (or have there been) initiatives funded by bilateral or multilateral donors 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 (or have they been) achieved?
- Do (or did) these initiatives offer training? If so, are they training trainers to deliver cascade training programmes or are they training 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?
- What difficulties have agencies typically encountered in trying to offer technical assistance? Are some kinds of assistance more problematic than others?

8.3 Donor coordination

The provision of technical assistance and aid is not always unproblematic as it can sometimes create donor 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.²²⁵

²²⁵ UNODC, “Public safety and police service delivery”, in *Criminal Justice Assessment Toolkit*.



Tool II.42 Donor coordination

- How are the implementation, delivery and receipt of technical assistance and aid coordinated by the receiving country?
- Is there evidence of duplication?
- Are multiple donors providing the same or similar assistance, aid or equipment?
- 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?
- 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?

9. Accountability and integrity

Officers working in wildlife and forest law enforcement and other parts of wildlife and forest administration are responsible for protecting resources of high commercial value. They often work in remote areas, far from public scrutiny. In some systems, unsupervised wildlife and forestry officials have broad discretionary powers and a great deal of latitude. If they work for meagre salaries, they may be vulnerable to corruption or may otherwise collude with persons and organizations involved in illegal activities.²²⁶ 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. 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 analytic 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 and corruption, as well as a lack of integrity, may manifest themselves.²²⁷ Corruption clearly facilitates the illegal trafficking of wildlife across borders, which is an area that also requires further awareness-raising and capacity-building.

Project GAPIN (Great Apes and Integrity), a project implemented by WCO between October 2010 and March 2011, aimed to enhance the Customs integrity in 15 African countries regarding the enforcement of CITES. This was the first CITES-related project concerning issues of integrity. A

²²⁶ Nalin Kishor and Richard Damania, "Crime and justice in the Garden of Eden", pp. 89-93.

²²⁷ UNODC, "The integrity and accountability of police" and "Public safety and police service delivery", in *Criminal Justice Assessment Toolkit*.

few incidents of corruption were reported during the two-week joint operation GAPIN carried out early 2011. A follow-up Project GAPIN is being planned in collaboration with the original donor country.



Tool II.43 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 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?



Tool II.44 Corruption and bribery

- Are there any allegations that officials involved in wildlife and forest law enforcement take or solicit bribes to ignore the relevant offences?
- Are officials from wildlife and forestry agencies adequately paid?
- Do the relevant wildlife and forest laws contain specific provisions regarding corruption and bribery? If so, what are they and how are they enforced?
- 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 its being implemented, both nationally and locally?
- Are there allegations that enforcement officers receive unofficial payments or gratuities from business people in the community? If so, what reasons are given for this? What are the implied consequences if payments are not made?
- Are wildlife, forestry, Customs, and police 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 police staff permitted to accept gifts, benefits or rewards related to the work of that staff member? If not, how is this prevented?



Part three.

Judiciary and prosecution

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Judiciary and prosecution

Effective wildlife and forest law enforcement requires a well-functioning and efficient prosecution service and an independent judiciary, both to hold offenders accountable for their actions and to protect the legal rights of various stakeholders. It is important that prosecutors, judges and their support staff be properly trained and resourced and that their departments be adequately staffed. 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 requires measures to shield officers from corruption, nepotism and coercion.

The reality in many countries, however, is that prosecution authorities and courts function poorly for a variety of reasons. They are often understaffed and under-resourced, and face caseloads that greatly exceed their financial and human capacity to cope efficiently. The training of prosecutors and judges may be weak in general and does not usually involve specific training in wildlife and forest law.²²⁸ In some countries, corruption is rife, and prosecutors and judges operate under the influence of politicians or other branches of government.

It has to be noted that, in the context of wildlife and forest crime—and environmental crime in general—criminal prosecutions and the initiation of judicial proceedings are seen by most countries as a last resort. This is partly due to the high commitment of human and financial resources required for court action, partly because of the likelihood of penalties being imposed, and partly because it is often more efficient to reach a solution through negotiation and the use of administrative orders where necessary and possible.²²⁹

Part three, sections 1 to 3, of this *Toolkit* explores avenues designed to ensure the proper functioning, staffing and resourcing of prosecution authorities and the judiciary, and contains tools to protect their independence. The analysis then describes frameworks for international judicial cooperation in criminal matters. Measures relating to sentencing, including custodial and non-custodial punishment, are set out in part three, section 4. Tools relating to restitution and compensation for victims of wildlife and forest crime are identified in section 5.

1. Judiciary

A functioning court system is an integral part of any criminal justice system and is an important element of efforts to effectively prevent and suppress wildlife and forest offences. Even if the capacity to detect and investigate wildlife and forest offences is high, the potential deterrent effects of prosecutions are close to non-existent so long as the judicial system is weak and prone to corruption and delays.²³⁰ Accordingly, the management of the courts must be efficient and effective so that the criminal caseload can be adjudicated fairly, appropriately and promptly.

The judiciary is relevant to the prevention and suppression of wildlife and forest offences in two ways. First, the judiciary plays a significant role in protecting wild fauna and flora in relation to the enforcement of the relevant laws. Second, the judiciary has an inherent supervisory function to review the decisions of the executive where these threaten wildlife or forests.

²²⁸ FAO and IITD, *Best Practices for Improving Law Compliance*, p. 48.

²²⁹ Gerry Bates, *Environmental Law in Australia*, 6th ed. (Sydney, Lexis Nexis, 2006) para. 9.3.

²³⁰ Nalin Kishor and Richard Damania, "Crime and justice in the Garden of Eden", pp. 89-97.

An analysis of the judiciary usually involves a much broader approach than what is within the scope of this *Toolkit*. To that end, the *Criminal Justice Assessment Toolkit*, published by the United Nations Office on Drugs and Crime, provides the relevant assessment tools in two sections—“The courts”²³¹ and “The independence, impartiality and integrity of the judiciary.”²³²

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.

1.1 Structure and organization of the judiciary

Legal framework

An understanding of the legal and regulatory framework for the management of the courts is essential for any assessment of the judiciary. In most countries, the national constitution contains provisions delineating the general structure of the courts and the administration of justice. This is supplemented by legislation 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.²³³



Tool III.1 Judiciary: legal frameworks

- 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 document or policy documents provide information on the organization of the judiciary?

Criminal court system

For the criminal justice system, the principal focus of the analysis will be on the structure and operation of the criminal court system. This involves identifying and assessing the various levels of the court system charged with hearing primary cases, appeals, and judicial reviews involving wildlife and forest offences.²³⁴

²³¹ UNODC, “The courts”, in *Criminal Justice Assessment Toolkit*.

²³² UNODC, “The independence, impartiality and integrity of the judiciary”, in *Criminal Justice Assessment Toolkit*.

²³³ Ibid.

²³⁴ UNODC, “The courts”, in *Criminal Justice Assessment Toolkit*.



Tool III.2 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?
- Are there specialized courts provided for by statute or via administrative arrangement that bear any relevance for wildlife and forest offences (such as anti-corruption courts)?
- 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?

Independence of the judiciary

In some countries, a lack of separation of the State's judiciary function from the functions of the executive and legislative branches is a common problem, leading to widespread interference in the affairs of the judiciary and corruption at all levels, including in the wildlife and forestry sectors.²³⁵

While the relationship between the wildlife and forest law enforcement unit and a country's judiciary should be maintained at an appropriate distance, it is very important that the unit raise awareness among the judiciary about wildlife and forest offences and promote their participation in the appropriate sentencing and deterrent responses. The unit should also seek information and feedback from the judiciary on the relevant decisions and issues that have arisen in civil and criminal cases, as well as any problems with evidence or the manner in which investigations have been conducted.²³⁶



Tool III.3 Independence of the judiciary

- What is the relationship between the judiciary and the executive and legislative branches of government? Where are these relationships articulated? How clear are they?
- 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?

²³⁵ FAO and ITTO, *Best Practices for Improving Law Compliance*, p. 48.

²³⁶ CITES Secretariat, "Notification to the Parties", CITES Resolution Conf. 12.5 (Rev. CoP 15), annex 3.

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, and the following general guidelines can assist in such a process:

- Build broad support for reforms;
- Promote independent organizational and structural arrangements for the judiciary;
- Clarify the relationship between the judiciary and the rest of the government;
- Improve the terms and conditions and training of individual judges (see below);
- Ensure transparent procedures; and
- Promote accountability of the courts to the public.

It should be recognized that initiating or leading broad reforms to the judicial system are well beyond the mandate of wildlife and forestry governance institutions, but they can be effective lobbyists in such a process.²³⁷

1.2 Resources of the judiciary

The quality of the court system depends on, among other things, the human and material resources, such as staffing levels of judicial authorities, staff qualifications and training, facilities and equipment available to judges and their staff.

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. Many courts, however, lack the human resources to fulfil their duties. Elsewhere, judicial authorities 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, may reduce staff motivation and increase the risk of corruption.²³⁸



Tool III.4 Judiciary: staff and salaries

- How many judges are currently employed to hear criminal cases? Is the number sufficient to handle the caseload?
- 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?

²³⁷ FAO and ITTO, *Best Practices for Improving Law Compliance*, pp. 48-49.

²³⁸ UNODC, "The independence, impartiality and integrity of the judiciary", in *Criminal Justice Assessment Toolkit*; UNODC, *The Global Programme against Corruption*, p. 245.

- 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?

Recruitment and training

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.²³⁹

As with those involved in investigating and prosecuting wildlife and forest offences, it is crucial that judges and their staff be adequately 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.

To assist countries in their efforts to train judges and judicial officers for cases involving illegal trade in endangered species, the CITES Secretariat provides prosecutors and the judiciary with a training module that is available on CD-ROM.²⁴⁰



Tool III.5 Recruitment and training of judges

- 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? How are training needs assessed? How is training delivered?
- Does training involve participants from other agencies?
- Are there mechanisms in place to provide judges who come across cases of wildlife trafficking only occasionally with access to relevant expertise?

²³⁹ UNODC, “The courts”, in *Criminal Justice Assessment Toolkit*.

²⁴⁰ CITES Secretariat, “Interactive training course for enforcement officers and information module for prosecutors and the judiciary”, CD-ROM (Geneva, 2008).

Facilities and equipment

Judges and their support staff require certain basic facilities and may also need special equipment to carry out their tasks. Basic facilities include offices and stationery, and more specialized equipment include computers and legal databases. Judges and their staff require access to libraries, as well as sufficient funding 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. An analysis also depends on the local socio-economic conditions, the resources available, and access to financial aid and technical assistance. The *Criminal Justice Assessment Toolkit* contains additional tools to assess the adequacy and security of court facilities and equipment.²⁴¹



Tool III.6 Judiciary: facilities and equipment

- What are the facilities of the judiciary? Where are 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 and fax machines)?
- 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?

1.3 Information management

The recording, maintenance and storing of information, including case files, court reports and so forth, 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. A more comprehensive set of tools can be found in the *Criminal Justice Assessment Toolkit*.²⁴²

²⁴¹ UNODC, "The courts", in *Criminal Justice Assessment Toolkit*.

²⁴² Ibid.



Tool III.7 Court records and court reporting

- 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?
- How are files created, identified and kept up to date? Can files be tracked as they move about the court?
- 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?

1.4 Accountability and integrity of the judiciary

A serious impediment to the success of any effort to combat wildlife and forest offences is a corrupt judiciary. If the judges are corrupt, the legal and institutional mechanisms designed to curb wildlife and forest offences—however well targeted, efficient or honest—remain crippled. Moreover, judicial integrity is severely compromised if judges and judicial officers collude with individuals or organizations involved in illegal activities, or if their duties conflict with personal interests (for example, if relatives or friends are involved in the wildlife or forestry sectors or if they are accused of an offence).

It is thus important that all members of the judiciary be accountable for their decisions and their actions, and that clear codes be established to ensure the integrity of the judiciary.



Tool III.8 Accountability and integrity of the judiciary

- Does the current law establish mechanisms for the monitoring and oversight of the conduct and performance of judges and judicial officers? If so, what are those mechanisms? How is the performance of the judiciary evaluated?
- Are there clear codes of conduct and ethical guidelines for judges and judicial officers? If so, what is written in these codes and guidelines? How do they work? How are they enforced and implemented?
- Are there avenues for civilians to lodge complaints against judges? Is there independent oversight of the complaints system? How are allegations of misconduct handled? Who handles them?
- How is the judiciary viewed by other agencies and by the general public? Are judges trusted and well respected? If not, why not?
- Are there allegations that judges take or solicit bribes to ignore the relevant offences?
- Is there a national strategy or plan to combat corruption in the judiciary? If so, what measures does this strategy contain?

2. Prosecution

Public prosecutors play a unique role in criminal cases in that they appear on behalf of the government as the representative 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 a crime 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.²⁴³ 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.²⁴⁴

The design and delivery of prosecution services differ greatly among countries and are frequently influenced by common law, civil law or hybrid traditions. Due to the diversity of prosecution structures 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 criminal activities. The *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.²⁴⁵ Furthermore, the International Association of Prosecutors adopted the "Standards of professional responsibility and statement of the essential duties and rights of prosecutors",²⁴⁶ 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.

2.1 Source, organization and delegation of the prosecution authority

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 authority. In addition, laws and regulations usually contain additional details about the functions and operations of the prosecution authority. 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.

²⁴³ UNODC, "The prosecution service", in *Criminal Justice Assessment Toolkit*.

²⁴⁴ Mara E. Zimmerman, "The black market for wildlife", pp. 1657-1676.

²⁴⁵ UNODC, "The prosecution service", in *Criminal Justice Assessment Toolkit*.

²⁴⁶ International Association of Prosecutors, "Standards of professional responsibility and statement of the essential duties and rights of prosecutors" (April 1999). Available from www.iap-association.org/ressources/Standards_English.pdf (accessed 4 March 2010).



Tool III.9 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?

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 countries have specialized wildlife and forest crime prosecution units,²⁴⁷ very few systems have prosecutors that focus solely on these offences. Moreover, it is rare for countries to spell out specific procedures applicable exclusively to the prosecution of wildlife and forest offences. In their absence, the general procedures for the prosecution of criminal offences apply.²⁴⁸



Tool III.10 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?
- Pursuant to the law and the procedures of the criminal justice system, how does a criminal case involving violations of wildlife or forest laws proceed from the allegation or suspicion of an offence to advice to investigators, to formal charging, to adjudication and disposition?

In an effort to enhance the prosecution of wildlife and forest offences, some countries—albeit a very small number—place prosecutors within wildlife and forest law enforcement units. Even where a prosecutor is not included in the wildlife and forest law enforcement unit, 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

²⁴⁷ Cf. CITES Secretariat, “Interactive training course”, module II.2.

²⁴⁸ UNODC, “The prosecution service”, in *Criminal Justice Assessment Toolkit*.

training. Case reporting and evidential requirement standards should be established. Prosecutors can also assist in identifying priorities and targets for the unit.²⁴⁹



Tool III.11 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?



Tool III.12 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?
- 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?

2.2 Operation and workload of the prosecution authority

In many countries, the prosecution authority is significantly understaffed and ill-resourced to function properly. This can result in long delays and, in some instances, cases falling apart (if witnesses die, evidence disappears and so forth). In addition, prosecutors are often pressured to prioritize other serious offences over the prosecution of wildlife and forest offences.

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.²⁵⁰

²⁴⁹ CITES Secretariat, “Notification to the Parties”, CITES Resolution Conf. 12.5 (Rev. CoP 15), annex 3.

²⁵⁰ UNODC, “The prosecution service”, in *Criminal Justice Assessment Toolkit*.



Tool III.13 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?
- How many cases 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?
- 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?
- 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?

2.3 Resources of the prosecution authority

The effectiveness of prosecuting wildlife and forest offences depends, to a large degree, on the quality of prosecution services. That quality in turn depends, *inter alia*, on the available human and material resources, such as prosecution authority staffing levels, staff qualifications and training, and the facilities and equipment available to prosecutors.

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. Many prosecution units, however, 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, may reduce staff motivation and increase the risk of corruption.²⁵¹



Tool III.14 Prosecution: staff and salaries

- How many prosecutors are currently employed by the prosecution authority? Is the number sufficient to handle the caseload?
- 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?

²⁵¹ UNODC, "The prosecution service", in *Criminal Justice Assessment Toolkit*; and UNODC, *The Global Programme against Corruption*, p. 245.

- 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?
- 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? If so, do they receive it on time?

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.

As with those involved in investigating wildlife and forest offences, it is crucial that prosecutors be 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 backgrounds, techniques, processes and legal requirements, it is possible that the integrity of prosecutions may be compromised, with potential implications for trials and convictions.²⁵²

An analysis of prosecution capacities should therefore involve a comprehensive review of training programmes, including their delivery and contents, and of the types and depth of the training available to prosecutors. Furthermore, even where comprehensive training programmes exist, it is important that syllabuses and curricula be reviewed regularly. This must be done in order to ensure 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.

To assist countries in their efforts to effectively prosecute cases involving illegal trade in endangered species, the CITES Secretariat provides prosecutors and the judiciary with a training module, which is available on CD-ROM.²⁵³

²⁵² UNODC, "The prosecution service", in *Criminal Justice Assessment Toolkit*.

²⁵³ CITES Secretariat, "Interactive training course".



Tool III.15 Recruitment and training of prosecutors

- What are the selection processes and recruitment procedures for joining the prosecution authority? What level of qualification is needed? Are prosecutors required to hold law degrees?
- Where specialized units are charged with prosecuting wildlife and forest offences, 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? How are training needs assessed? How is training delivered?
- Are there mechanisms in place to provide prosecutors who come across cases of wildlife trafficking only occasionally with access to relevant expertise?
- Does training involve participants from multiple agencies (domestic and foreign), such as the police, judiciary or other?

Facilities and equipment

The responsibilities assigned to prosecution authorities often bear little relationship to their ability to fulfil them. Prosecutors of wildlife and forest offences require certain basic facilities and may also need special equipment to carry out their tasks. Basic facilities may include offices and stationery, and more specialized equipment may include computers and legal databases. Access to libraries and sufficient funding are also required to carry out day-to-day functions.²⁵⁴

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.



Tool III.16 Prosecution: facilities and equipment

- What are the physical facilities of the prosecution authority? Where are they located?
- Is the office equipment (such as furniture, stationery and photocopiers) adequate?
- Do prosecutors have easy access to the investigation agencies and to the courts?
- Which communication and word-processing technology is available (such as computers, the Internet, telephones, mobile telephones and fax machines)?

²⁵⁴ UNODC, "The prosecution service", in *Criminal Justice Assessment Toolkit*.

- Can files, evidence and electronic information be stored securely?
- 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?

2.4 Accountability and integrity

Prosecutors, as others involved in the criminal justice system, may be vulnerable to corruption or may collude with persons or organizations involved in illegal activities. Furthermore, conflicts of interest may arise if a prosecutor's duties conflict with his or her personal interests (for example, if relatives or friends are involved in the wildlife or forestry sector or if they are accused of an offence). It is thus important that prosecutors—as all government officials—be accountable for their decisions and their actions, and that clear codes be established to ensure the integrity of the prosecution authority and its staff. The International Association of Prosecutors' "Standards of professional responsibility and statement of the essential duties and rights of prosecutors" contains further guidelines pertaining to the accountability and integrity of prosecutors.²⁵⁵

Prosecutors 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, but, more importantly, they must be accountable for the way in which they exercise the powers and discretion entrusted to them.²⁵⁶



Tool III.17 Accountability and integrity of prosecutors

- Does the law establish mechanisms for the monitoring and oversight of the conduct and performance of prosecutors? If so, what are these mechanisms? How is the performance of prosecutors evaluated?
- Are there clear codes of conduct and ethical guidelines for prosecutors? If so, what do they say? How do they work? How are they enforced and implemented?
- Do prosecutors 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 required to undergo periodic training on codes of conduct and ethics?
- Are there avenues for civilians to lodge complaints against prosecutors? Is there independent oversight of the complaints system? How are allegations of misconduct handled? Who handles them?

²⁵⁵ International Association of Prosecutors, "Standards of professional responsibility".

²⁵⁶ UNODC, "The prosecution service", in *Criminal Justice Assessment Toolkit*.

- How are prosecutors viewed by other agencies and by the general public? Are they trusted and well respected? If not, why not?
- Are there allegations that prosecutors take or solicit bribes to ignore the relevant offences?

3. International cooperation in criminal matters

As discussed in part two, section 7, of the *Toolkit*, transnational wildlife and forest crime must be met with a criminal justice response that also crosses borders. A variety of tools pertaining to international cooperation between law enforcement agents are outlined in that section. This section explores modalities of international judicial cooperation in criminal matters, namely extradition, mutual legal assistance, cooperation for the purpose of confiscation, the transfer of proceedings and the transfer of sentenced persons. These modalities are defined in international treaties such as the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Corruption. For each country, the involvement of administrative authorities in the procedures described in this section may vary, and law enforcement agents are frequently involved in the execution of judicial orders following requests by competent authorities.

3.1 Extradition

Extradition is the process whereby one State (the requested State) will surrender 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.

Multilateral conventions dealing with extradition have been developed within the framework of various regional and other international organizations. The United Nations Convention against Transnational Organized Crime²⁵⁷ and the United Nations Convention against Corruption²⁵⁸ contain extradition provisions that may be used in relation to some wildlife and forest offence investigations. These conventions set basic minimum standards for extradition for the offences they cover and also encourage the adoption of a variety of mechanisms designed to streamline the extradition process.²⁵⁹

Furthermore, most jurisdictions have numerous bilateral treaties that enable extradition to and from selected countries. Domestically, in some countries, extradition acts or similar laws set out the requirements for the administration of extradition requests to and from other countries.

There are still numerous situations where existing legal instruments—domestic and international—are insufficient or do not encompass offences relating to wildlife and forest crime. 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

²⁵⁷ United Nations Convention against Transnational Organized Crime, art. 16. See further David McClean, *Transnational Organized Crime*, pp. 173-190.

²⁵⁸ United Nations Convention against Corruption, art. 44.

²⁵⁹ UNODC, “International cooperation”, in *Criminal Justice Assessment Toolkit*.

Treaty on Extradition, which was adopted by the General Assembly, have been made available to countries wishing to enter into new bilateral agreements. A Model Law on Extradition has also been developed.²⁶⁰



Tool III.18 Extradition

- Is there a national law governing extradition? If so, does it cover forest and wildlife offences?
- What bilateral extradition treaties has the country entered into? Are there countries not included but with which a treaty would be important?
- Do existing treaties cover offences relating to wildlife and forest crime, as well as offences described in the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Corruption (if the country is a State Party)?
- Does the country require a treaty, under domestic law, to extradite an individual? Is the lawful extradition of an individual to another country possible without a treaty?
- What are the main requirements of the country for granting an extradition request? Is there a dual criminality requirement under domestic law and bilateral treaties?
- Does the country recognize the legal value of arrest warrants of other countries?
- According to national legislation, on what grounds can extradition be refused? Are there exceptions based on certain types of offences or punishment, on the political nature of the offence or on the prohibition of extraditing nationals?
- Who or what agency deals with extradition requests? How is this process coordinated? Has the relevant personnel been trained in the legal requirements of extradition?
- What kind of response is the country currently receiving to its requests for extradition?
- Is the country typically able to ensure that requests for extradition are executed within the deadlines specified by the requesting State?

3.2 Mutual legal assistance

Mutual legal assistance is a mechanism that allows one State to provide another State with assistance during an investigation or a prosecution. The types of assistance that may be provided through mutual legal assistance are subject to applicable treaties and domestic laws, and may include compulsory or coercive measures.²⁶¹

²⁶⁰ See www.unodc.org/unodc/en/legal-tools/model-treaties-and-laws.html.

²⁶¹ For instance, article 18, paragraphs 3 and 8, of the United Nations Convention against Transnational Organized Crime sets out the types of mutual legal assistance that may be requested. They may include any other type of assistance that is not contrary to the domestic law of the requested Party. See article 18, paragraph 3 (i).

Mutual legal assistance may be conducted on the basis of multilateral or bilateral agreements, as well as national legislation that either gives full effect to the relevant treaties or enables mutual assistance in the absence of such treaties. International instruments such as the United Nations Convention against Transnational Organized Crime²⁶² and the United Nations Convention against Corruption²⁶³ include detailed provisions concerning mutual legal assistance.

Mutual legal assistance may be hindered by the fact that the procedural laws of cooperating countries 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 legal assistance has also been prepared.²⁶⁴



Tool III.19 Mutual legal assistance

- Are there national laws governing mutual legal assistance in criminal and administrative matters? If so, what are they? Do they cover relevant wildlife and forest offences?
- What bilateral treaties or agreements on mutual legal assistance does the country have with other countries? Are there countries with which there are no treaties but with which a treaty would be important?
- Do existing treaties cover offences relating to wildlife and forest crime, as well as offences described in the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Corruption (if the country is a State Party)?
- Pursuant to domestic law, does the country require a treaty for mutual legal assistance in criminal matters? Is assistance possible without a treaty?
- What are the country's main requirements for granting a request for assistance? Is there a dual criminality requirement under domestic law and bilateral treaties?
- Pursuant to national legislation, on what grounds can mutual legal assistance be refused?
- Who or what agency deals with mutual legal assistance requests? How is this process coordinated? Have the relevant personnel been trained in the necessary legal requirements?
- What kind of response is the country currently receiving to its requests for mutual legal assistance?
- Is the country usually able to ensure that requests for mutual legal assistance are executed within the deadlines specified by the requesting State?

In the absence of a treaty or agreement, or of national legislation providing otherwise, some countries use letters rogatory (sometimes referred to as *commissions rogatoire* or rogatory letters) as the customary method of obtaining assistance from abroad. A letter rogatory is a request from a court of one country to the judiciary of a foreign country requesting an action or information. Letters

²⁶² United Nations Convention against Transnational Organized Crime, art. 18; David McClean, *Transnational Organized Crime*, pp. 195-238.

²⁶³ United Nations Convention against Corruption, art. 46.

²⁶⁴ See www.unodc.org/unodc/en/legal-tools/model-treaties-and-laws.html.

rogatory may be used in countries where multilateral or bilateral treaties on assistance are not in force to effect service of process or to obtain evidence if permitted by the laws of the foreign country.²⁶⁵ This may be done on the basis of reciprocity or comity.



Tool III.20 Letters rogatory

- Who deals with letters rogatory for international assistance? Who 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?
- Are letters rogatory used in relation to wildlife and forest offences? If so, how and in which cases? If not, why not?

To identify the strengths and weaknesses of existing international cooperation measures, it may be helpful to review the patterns of international cooperation for individual jurisdictions. 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.²⁶⁶ An analysis of current case flows and the relevant data can assist in identifying best practices and in overcoming obstacles. It should be noted, however, that international cooperation is frequently influenced by geographical, historical and political factors that may be beyond the scope of the analysis.



Tool III.21 Patterns of international cooperation

- From which countries has international assistance most frequently been requested?
- How frequently, under which circumstances and for what offences have agencies been involved in seeking cooperation from another country in cases involving wildlife and forest offences?
- What were the results of these requests?
- What delays and difficulties have agencies typically encountered in trying to seek the assistance of other countries?

3.3 Confiscation of assets

Effective action against wildlife and forest offences 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 agencies, and judicial and prosecutorial authorities to identify, investigate, sequester and confiscate assets derived from wildlife and forest offences sends a message to criminals that this activity is not high profit.

²⁶⁵ UNODC, “Crime investigation”, in *Criminal Justice Assessment Toolkit*; United States, Department of State, “Preparation of letters rogatory”, available from http://travel.state.gov/law/info/judicial/judicial_683.html (accessed 13 Jan 2010).

²⁶⁶ UNODC, “International cooperation”, in *Criminal Justice Assessment Toolkit*.

Accordingly, most jurisdictions have mechanisms to enable the tracing, freezing, seizing and confiscation of assets and proceeds of crime. As a general rule, the 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. The costs incurred for the custody of seized specimen, for transporting and disposing of them, or for maintaining live animals or plants during the time of seizure should also be recoverable from the person who was in possession at the time, or from the owner, transporter, importer or exporter.²⁶⁷

Furthermore, it is important that seized items be 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 proceeds of the related offences, and the property or instrumentalities used in their commission are frequently located in two or more jurisdictions. As such, international cooperation for the purpose of confiscation is an essential tool. In these cases, it is very important that the States agree in advance about how any confiscated assets would be recovered or shared. Requests for international cooperation for the purposes of confiscation are essentially mutual legal assistance requests.

A number of international instruments, including the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Corruption, establish comprehensive regimes that permit asset recovery across borders.²⁶⁸ Article VIII, paragraph 1 (b), of CITES also seeks to ensure that endangered species traded illegally are confiscated or returned.²⁶⁹ In practice, this “is often the only punishment suffered by individuals for violation of CITES requirements”.²⁷⁰

There are considerable differences among domestic laws as to which authorities, whether administrative or judicial, can order the confiscation of assets, the respective powers of these authorities and the procedures they must follow. In some countries, for instance, confiscation may 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.²⁷¹



Tool III.22 Confiscation of assets

- What is the legal framework regarding criminal and non-criminal asset recovery, confiscation and forfeiture? Are there special provisions in relation to wildlife and forest offences?
- Do relevant forfeiture provisions authorize the confiscation of all illegally imported, exported, transported, sold, received, acquired or purchased wild fauna and flora?
- Is the seizure of specimens mandatory whenever there are reasonable grounds to believe a transaction is in violation of CITES?

²⁶⁷ Cyrille de Klemm, “Guidelines for legislation to implement CITES”, p. 62.

²⁶⁸ See further UNODC, “International cooperation”, in *Criminal Justice Assessment Toolkit*.

²⁶⁹ Cf. CITES Secretariat, *Model Law on International Trade*, p. 4.

²⁷⁰ David S. Favre, *International Trade in Endangered Species*, p. 215.

²⁷¹ Cyrille de Klemm, “Guidelines for legislation to implement CITES”, pp. 66-68.

- Do forfeiture laws also extend to the vessels, vehicles, aircraft and other equipment used to facilitate wildlife and forest offences?
- Are these frameworks adequate?
- 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?
- Are there any data on the confiscation of assets related to wildlife and forest offences? Are there any 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?
- Which multilateral treaties to which the State jurisdiction is a party create asset confiscation and forfeiture obligations?
- Has the country entered into bilateral treaties or other agreements in relation to asset sharing among countries involved in tracing, freezing and confiscating assets originating from wildlife and forest offences?

3.4 Transfer of proceedings

Having the option to transfer criminal proceedings from one country to another can increase the likelihood of the success of a prosecution when, for example, another country appears to be in a better position to conduct the proceedings. This can also assist the prosecution in a country that is initiating proceedings in lieu of extradition. Finally, it can be a useful method of concentrating the prosecution in one jurisdiction and thereby increasing its efficiency and the likelihood of its success in cases involving several jurisdictions.²⁷²

The United Nations Convention against Transnational Organized Crime and the United Nations Convention against Corruption also 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.”²⁷³

²⁷² UNODC, “International cooperation”, in *Criminal Justice Assessment Toolkit*.

²⁷³ United Nations Convention against Transnational Organized Crime, art. 21; United Nations Convention against Corruption, art. 47. See further David McClean, *Transnational Organized Crime*, pp. 248-251.



Tool III.23 Transfer of criminal proceedings

- Is the country a party to any treaty (multilateral or bilateral) that enables the transfer of proceedings in criminal matters to and from another country?
- Is the transfer of criminal proceedings to a foreign jurisdiction possible and permissible under domestic law? What restrictions does domestic law impose on such transfers?
- Does the country receive and make requests for the transfer of criminal proceedings? If so, do any of these requests involve wildlife and forest offences? How are these requests processed? What difficulties have been encountered?

3.5 Transfer of sentenced persons

The transfer of sentenced persons allows for a person who is convicted and sentenced in one State to serve his or her sentence in another State to which he or she has ties, usually by virtue of being a national of that State. The United Nations Convention against Transnational Organized Crime and the United Nations Convention against Corruption contain specific provisions to encourage 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 [the conventions]”²⁷⁴



Tool III.24 Transfer of sentenced persons

- Is the country a party to any treaty (multilateral or bilateral) that enables the transfer of sentenced persons to and from another country?
- Is the transfer of sentenced persons to a foreign jurisdiction possible and permissible under domestic law? What restrictions does domestic law impose on such transfers?
- Does the country receive and make requests for transfers of sentenced persons? If so, do any of these requests involve persons sentenced for wildlife and forest offences? How are these requests processed? What difficulties have been encountered?

4. Sentencing and sanctions

Wildlife and forest offences are seen by many, including investigators, researchers and, most importantly, perpetrators, as a high-profit, low-risk activity. This is because penalties for wildlife and forest offences are often lenient in relation to the crime committed. Accordingly, countries should take the

²⁷⁴ United Nations Convention against Transnational Organized Crime, art. 17; United Nations Convention against Corruption, art. 45. See further David McClean, *Transnational Organized Crime*, pp. 191-194.

measures necessary to ensure that the relevant offences (set out in part one, section 3, of the *Toolkit*) are punishable by effective, proportionate and dissuasive criminal penalties.²⁷⁵ Furthermore, convictions need to be followed by sentences that adequately:

- Punish the offender to an extent or in a way that is justified in all 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;
- Make clear that the community, acting through the court, denounces the sort of conduct in which the offender was involved; and
- Protect the community from the offender, where necessary.

In addition, the court, in imposing a penalty for a wildlife or forest offence, may also take into account:

- The extent of harm caused or is likely to be caused to the environment (including the natural habitat, species and biodiversity) by the commission of the offence;
- 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 and 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.²⁷⁶

4.1 Principles of sentencing

In determining sentences, the court should be guided by the gravity of the offence, which is determined by the harm caused, and the culpability of the offender. The harm may be reflected in the damage that is 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.

The severity of the sentence will be further determined by evidence of mitigating or aggravating circumstances presented to the sentencing judge(s). For example, the commission of an offence for financial gain or on behalf of a criminal organization is a common circumstance that may aggravate a sentence. Recurrent offenders also often face higher penalties. Repeated breaches of the law can also be followed by the “blacklisting” of companies.²⁷⁷

Another important factor is that the courts tend to be lenient if, in their subjective judgement, they believe that wildlife and forest offences are less serious offences than other types of crime. Some

²⁷⁵ See also part one, section 3.7.

²⁷⁶ Gerry Bates, *Environmental Law in Australia*, para. 9.30.

²⁷⁷ FAO and ITTO, *Best Practices for Improving Law Compliance*, p. 47.

organizations and individuals have recommended the requirement of minimum penalties as a possible way to counter this belief.²⁷⁸ These suggestions have, however, only very limited support as they may infringe upon the independence of the judiciary and limit the courts' ability to take into account all relevant circumstances when determining a sentence.



Tool III.25 Sentencing

- What sentences does the current law impose for wildlife and forest offences? What are the maximum terms of imprisonment and maximum fines for the relevant offences?
- Are there minimum penalties for wildlife and forest offences?
- 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?
- 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?

4.2 Sanctions

Most convictions for wildlife and forest offences presently result in the confiscation of illegally acquired property and assets, and the payment of fines and damages. Other types of sanctions include warnings, incarceration, territory bans, 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 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.²⁷⁹

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.

In determining the appropriate sentence, it is pertinent that courts consider the whole range of sanctions provided for under current laws. Imprisonment should be reserved for the most serious offences. The imposition of sentences involving corporal or capital punishment should be discouraged.²⁸⁰

²⁷⁸ Cf. Cyrille de Klemm, "Guidelines for legislation to implement CITES", p. 65.

²⁷⁹ Arlene Kwasniak, "Enforcing wildlife law", p. 9; Gerry Bates, *Environmental Law in Australia*, para. 9.34.

²⁸⁰ Cf. CITES Secretariat, "Interactive training course", module II.2; Cyrille de Klemm, "Guidelines for legislation to implement CITES", p. 65.

Administrative penalties (sanctions) are generally carried out 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.²⁸¹



Tool III.26 Sanctions

- What types of sanctions are permissible under domestic law (such as imprisonment, fines, corporal or capital punishment or community service)?
- What sanctions generally follow convictions for wildlife and forest offences?
- 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?

5. Restitution, compensation and restoration

Offenders should, where possible and appropriate, make restitution to victims. The restitution should include the return of property or 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 the context of wildlife and forest offences, restitution is particularly important where property rights of the victim(s) have been infringed or where environmental degradation has caused damage to the victim's property or reduced or destroyed the victim's legitimate source of income.

In many instances, restitution would be paid to the State on behalf of the wildlife or forest and not to a specific victim. In such cases, restoration should also be considered for the time and cost of the clean-up, and for the medical treatment 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 countries of origin. This, too, can be highly costly and courts should consider imposing orders requiring that the offender bear such expenses.

Courts in a number of countries require fines and other monetary penalties to be paid into funds established for this purpose, which are used for conservation purposes or to help subsidize enforcement activities. Courts should also consider handing the ownership of the items that were forfeited during sentencing to enforcement agencies for their subsequent use. This could include, for example, vehicles, boats or even aircraft.

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 traditional court or an alternative mechanism, such as a victim-offender mediation process, or other restorative justice process. Some jurisdictions also enable victims to commence civil suits against perpetrators of wildlife and forest offences.²⁸²

²⁸¹ UNEP, *Manual on Compliance with and Enforcement of Multilateral Environmental Agreements* (2006).

²⁸² See, for example, the Endangered Species Act of 1973 (US), 16 USC §1540 (g).

In some cases, when the offender does not have the means to pay restitution, it can be offered in kind or in the form of services offered to the victim or to the community. As with all measures, it is crucial that restitution orders be effectively enforced and that the offenders face consequences should they not comply with the restitution orders.²⁸³



Tool III.27 Restitution

- 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?

States should also endeavour to provide financial compensation where restitution or other compensation is not fully available from the offender or other source. 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 as a result of the victimization. Some States have adopted legislation and established special mechanisms for providing victim compensation.²⁸⁴

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.28 Restitution 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?

²⁸³ UNODC, "Victims and witnesses", in *Criminal Justice Assessment Toolkit*.

²⁸⁴ *Ibid.*



Part four.

Drivers and prevention

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Drivers and prevention

Wildlife and forest offences can be driven by a variety of factors, including rural poverty, food insecurity, unequal distribution of available agricultural lands, economic interests, legal markets of timber and non-timber products, as well as social upheavals such as war and famine.²⁸⁵ Engagement in illegal wildlife and forest trade can be a regular source of income for some, a safety net to meet sudden needs for others, and in some cases a lucrative opportunity to gain large profits.²⁸⁶ Although actions in the illegal activities are linked (for example, poor farmers that 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 for high profit.²⁸⁷ In developing countries, poverty can be a factor that drives wildlife and forest offences, and in many countries, traditional practices of agricultural slash and burn are condemned as arson. In this connection, formal criminalization can be harmful for people depending on wildlife and forest resources for their livelihoods.²⁸⁸ Keeping this in mind, social, political, economic, ecological, developmental and cultural dimensions need to be considered to design effective strategies to dissuade individuals from engaging in activities associated with wildlife and forest crime and to prevent wildlife and forest offences overall.

Effective law enforcement, credible penalties and a functional legal system are crucial to control and prevent wildlife and forest crime. However, the problems of wildlife and forest law enforcement cannot be solved by these mechanisms alone. They must be concurrent with an improvement in natural resource management, industrial restructuring, rural development services and poverty reduction for wildlife and forest-dependent communities.²⁸⁹ A special feature of crimes related to natural resource is that they can arise from underlying problems in resource policy and management and may best be managed as resource problems rather than as matters of criminal law enforcement alone.

In part four of the *Toolkit*, section 1 provides basic tools to assist users in identifying the factors that drive wildlife and forest crime. These tools can help users to better understand the scope of a given crime and to assist them in identifying access points for preventive interventions. Section 2 offers tools to assist users in analysing the existing capacities and effectiveness of natural resource management, particularly national wildlife and forest resources, and therefore provides a starting point for controlling illegal activities.

It is important to note, however, that this section cannot serve as a guideline for natural resource management or broad human development. Its primary objectives are awareness-raising and sensitization regarding the diverse factors and dynamics that drive wildlife and forest crime. Additionally, it provides references to relevant literature, guidelines and tools for the further analysis and design of specific and focused interventions.

²⁸⁵ World Bank, "Strengthening forest law enforcement and governance", p. 7.

²⁸⁶ TRAFFIC, "What's driving the wildlife trade? A review of expert opinion on economic and social drivers of the wildlife trade and trade control efforts in Cambodia, Indonesia, Lao PDR and Vietnam", East Asia and Pacific Region Sustainable Development Discussion Papers (Washington, DC, World Bank, 2008), p. 59.

²⁸⁷ Marcus Colchester and others, *Justice in the Forest*, p. x.

²⁸⁸ William B. Magrath and others, "Timber Theft Prevention. Introduction to security for forest managers". East Asia and Pacific Region Sustainable Development Working Paper. (Washington, DC, World Bank, 2007), pp. 6-7.

²⁸⁹ World Bank, "Strengthening forest law enforcement and governance", p. xiv.

1. Context analysis

The identification of the diverse actors involved in the illegal activities and the various illegal usages of wildlife and natural resources and products can help to explain the scope and causes of a particular offence.

This section offers tools to analyse and identify the different links and the main actors in the wildlife and forest products supply chain.

Experience has shown that significant quantities of illegal-origin timber are laundered through licensed concessions, authorized operators, sawmills, exporters and so forth. Each year, significant amounts of such timber are exported using CITES or other certificate of origin documents that have been obtained fraudulently or corruptly. To combat such fraud, and to demonstrably indicate that the timber comes from a licensed and sustainably operated concession, it is vital that an effective chain of custody be maintained. This will inevitably involve the use of marking systems, such as barcodes, special paints and indelible ink, stamps and laser marking.

Such marking systems should be combined with documentation showing licensed logging, transportation and first-stage processing. For example, enforcement staff should be posted in forest areas and either man checkpoints on exit roads or conduct random inspections at such locations, where marking and documents should be compared against the timber being moved. Similar inspections should be conducted at sawmills and at ports of export.

It is absolutely essential that the chain of custody be maintained from where a tree is felled to where it is exported, and at any processing points along the way, such as sawmills or treatment centres, where raw timber is converted to sawn logs, timber sheets, veneer and so forth.

Many of the existing schemes do not involve a strict chain of custody of the timber itself but rather focus on the sustainability of specific areas of forest or specific concession operations. While important, some of these schemes do little to exclude the possibility of the laundering of illegal-origin timber.

It is essential that national authorities strictly regulate the phases of trade relating to such “raw” products. Without very costly (and probably impractical) scientific processes such as DNA profiling, it is almost impossible to determine the legal origin of timber once it has become a picture frame, paintbrush handle or garden seat. The very same applies to many other forms of wildlife, such as a crocodile skin watch strap or an elephant ivory name seal.²⁹⁰

1.1 Actors in the wildlife and forest supply chain

As previously stated, wildlife and forest crime is a complex phenomenon that can occur equally in countries of origin, at transit points and in destination countries.²⁹¹ As a consequence, the wildlife and forest product supply chain involves a wide range of actors and stakeholders.²⁹² These actors and stakeholders include, among others, subsistence users, commercial hunters and forest concessions on the supply side, and trophy hunters, middlemen and end-users on the demand side. In this way, different values, views and interests are placed on the same natural resources.²⁹³

²⁹⁰ See also Dennis P. Dykstra and others, “Technologies for wood tracking: verifying and monitoring the chain of custody and legal compliance in the timber industry”, Environment and Social Development Department, East Asia and Pacific Region Discussion Paper (Washington, DC, 2003), p. 68.

²⁹¹ See further, part one, sections 3.1-3.6.

²⁹² TRAFFIC, “What’s driving the wildlife trade?”, p. ix.

²⁹³ Andrew Zakharenka and William B. Magrath, *Governance and Anti-corruption for Sustaining Wildlife in East Asia and the Pacific* (World Bank, 2009), pp. 7 and 12.

To prevent and combat wildlife and forest offences effectively, it is important to identify the various actors in the wildlife supply chain as well as the motivations that drive their activities. The following tools are meant to assist users in identifying the main actors and their roles in the wildlife and forest supply chain.



Tool IV.1 Actors in the supply chain

- What persons or organizations are involved in wildlife hunting?
- What persons or organizations are involved in forest harvesting or logging?
- What role do farmers and herders play in the activities under review?^a
- Are hunting and forest harvesting groups or organizations present in the activities under review?
- Do these actors work independently or do they have informal contracts with middlemen?^b
- Are landowners affected by the activities under review?
- Are commercial hunters and users involved?
- Does the country have sufficient and appropriate legislation to prevent these activities? Are government-sanctioned organizations active in the area of interest?^c
- Are the activities under review associated with conflicts? Are insurgent groups involved?
- Does the police or the military play a role in the activities under review, either in enforcing or in acting against the rules?

^a To enable a neutral and non-stigmatizing approach to understanding the motives of the various actors involved, the term “activity under review” is used in place of “offence”, “crime” or “criminal act”.

^b TRAFFIC, “What’s driving the wildlife trade?”, p. 26.

^c For the purpose of the *Toolkit*, the term “area of interest” is used to refer to the geographically or naturally defined area where (illegal) activities toward wildlife and forests have occurred or are presumed to occur.

Local communities and indigenous people

In developing countries, there is a high likelihood that indigenous groups and poor communities depend upon wildlife and forests for their livelihood. An estimated 350 million people worldwide live in and around forests, and in many regions, forest resources serve as safety nets for poor and marginalized communities during difficult times.²⁹⁴ Effectively, in all developing countries, the poorest and most vulnerable forest-dwelling communities depend largely or entirely on forest resources for their livelihoods and food security.²⁹⁵ These vulnerable groups are particularly impacted by wildlife and forest crime such as wildlife hunting, illegal logging and the removal of timber and non-timber products from forests.

²⁹⁴ World Bank, “Strengthening forest law enforcement and governance”, p. xi.

²⁹⁵ World Bank, *East Asia Region Forestry Strategy: Draft for Comment* (Washington, DC, 2006), pp. 42-43.

In many countries, current laws related to wildlife and forests limit the rights and livelihoods of 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, forest law enforcement measures often reinforce social injustice, limit rural livelihoods and in consequence exacerbate the non-sustainable use of forest and non-timber forest products.²⁹⁶

Against this background, the role and involvement of poor local communities and indigenous groups should be analysed properly. The criminalization of these groups will not prevent further wildlife and forest crimes. Here, a different approach, for example through addressing poverty and understanding traditional habits, may be more appropriate.

A concrete example of local use is the consumption of meat from wildlife—the so-called “bushmeat” that has long played an important role in the livelihoods of people living in tropical forests and savannahs in Central Africa, such as the Congo Basin, where bushmeat has been consumed for 40,000 years.²⁹⁷ Bushmeat has always been an important source of protein for rural people, and it is estimated that 80 per cent of Central Africans have a diet that includes bushmeat.²⁹⁸ Additionally, bushmeat is becoming a more and more important component of income generation because it supplies a flexible cash income from its sale to traders and local consumers.²⁹⁹ Criminalizing groups that depend on bushmeat is a quick way to address the issue. However, a sustainable approach needs to include development-oriented strategies and not law enforcement alone.

The same issue applies to other forest products as well. For example, chainsaw milling is often a form of micro- or subsistence enterprise, which may be legal or illegal, sustainable or unsustainable. It is essential that all enforcement operations take into account the livelihood and social impact of criminalizing the relevant activities.³⁰⁰ In a post-conflict situation (in Liberia, for example), chainsaw milling is also seen as alternative livelihood for ex-combatants.



Tool IV.2 Local communities and indigenous groups

- Which local communities live in the area of interest?
- Do indigenous groups live in the area of interest?
- What is the socio-economic situation of these communities and groups?
- What are the livelihoods and incomes of the local communities based on?
- To what extent do the livelihoods depend on wildlife and forest products?
- What is the food security situation of these communities and groups? What are their coping strategies to overcome food shortages?
- How do the communities and groups protect their wildlife and forest resources? Are there any community control and prevention initiatives for wildlife hunting and forest logging?

²⁹⁶ Marcus Colchester and others, *Justice in the Forest*, p. x.

²⁹⁷ See Serge Bahuchert, “History of the inhabitants of the central African rain forest: perspectives from comparative linguistics” in *Tropical Forests, People and Food: Biocultural Interactions and Applications to Development*, Claude M. Hladik and others, eds. (Pearl River, New York, Pantheon Publishing Group, 1993).

²⁹⁸ See Fred Pearce, “The protein gap”, *Conservation in Practice*, vol. 6, No. 3 (July 2005), pp. 117-123.

²⁹⁹ Environmental Ethics, “Wild meat and biodiversity” (March 2010). Available from <http://environmentalethics.posterous.com/wild-meat-and-biodiversity>.

³⁰⁰ Marieke Wit and others, “Chainsaw milling: supplier to local markets—a synthesis”, *ETFRN News*, No. 52 (December 2010).

- Does national legislation respect the local customs and (property) rights of local communities and indigenous groups? Do the communities and groups have access to wildlife and forests?
- Do local communities and indigenous groups participate in the decision-making and drafting legislation relevant to the wildlife and forests on which their livelihoods rely?
- Are social assessments of enforcement operations part of standard practice?

Insurgent groups

Insurgent and rebel groups may target wildlife to raise funds for their war activities. An example of this kind of activity has been reported in the Great Lakes region of Africa, where rebel groups often attack protected game parks and reserves to kill wildlife for food or “trophy” (animal parts and derivatives) they can sell in order to earn money to support the insurgency.³⁰¹ Revenues from illegal logging have also been used to finance armed insurgencies or repressive governments.³⁰²



Tool IV.3 Insurgent groups

- Are there any insurgent or rebel groups involved in illegal hunting and logging?
- To what extent are insurgents or rebel groups involved in trade in wildlife and forest products? What are the destinations of the trading chains?
- How are these groups equipped (such as guns and machinery)?

Police and military

In some regions, the police and military may be involved in illegal activities that negatively affect wildlife and forest resources or endanger protected species.



Tool IV.4 Police and military

- Are the police and military involved in the activities under review?
- What are their primary roles and responsibilities in the field of operation?
- What control and monitoring mechanisms have been enforced by the police and military?

³⁰¹ See The East African, “Militant groups fuel poaching in East Africa”, 14 October 2010. Available from www.theeastafrican.co.ke/news/-/2558/1033020/-/onjxouz/-/index.html.

³⁰² See Program on Forests, *Forests, Fragility and Conflict: Overview and Case Studies* (Washington, DC, World Bank, 2010).

Forest rangers and wardens

Enticed by lucrative gains or bribed, forest rangers and wardens may be active in enabling the illegal taking, trading or trafficking of wildlife and forest products.



Tool IV.5 Forest rangers and wardens

- Are there volunteers, forest rangers or wardens in the areas under review? If so, what are their roles and responsibilities?
- What control and monitoring measures have been enforced by forest rangers or wardens?
- How do they contribute to the control and prevention of the activities under review?

Commercial users

The demand and wealth of (urban) consumers of wildlife and forest products can be a strong driver of illegal wildlife and forest activities.³⁰³ This can be illustrated with the example of bushmeat in parts of Africa.³⁰⁴ While bushmeat constitutes subsistence for some, it has become a luxury item for others.³⁰⁵ Especially in urban areas, the consumption of bushmeat is associated with a higher socio-economic status.³⁰⁶ As a consequence, this increasing urban demand for bushmeat leads to both the extinction of vulnerable primate species and the starvation of people who depend upon a limited amount of bushmeat for protein.³⁰⁷



Tool IV.6 Commercial users

- Is there a high demand for wildlife and forest products for commercial use?
- What persons or commercial enterprises buy wildlife and forest products from local villagers or local communities?
- How do persons or commercial enterprises contact local villagers, local communities or indigenous groups?
- How do the villagers sell wildlife and forest products? How are wildlife and forest products delivered?
- Who are the end-users of the wildlife and forest products from the area of interest?
- What is the destination of the wildlife and forest products from the area of interest?
- Are wildlife and forest products sold in local markets or served in restaurants?
- To what extent are the wildlife and forest products traded across national borders?

³⁰³ TRAFFIC, “What’s driving the wildlife trade?”, p. xiv.

³⁰⁴ See further part four, section 1.1.

³⁰⁵ Elizabeth L. Bennett, “Is there a link between wild meat and food security?”, *Conservation Biology*, vol. 16, No. 3 (June 2002).

³⁰⁶ Evan Bowen-Jones, D. Brown and E.J.Z. Robinson, “Economic commodity or environmental crisis? An interdisciplinary approach to analyzing the bushmeat trade in central and west Africa”, *Area*, vol. 35, No. 4 (December 2003), pp. 390-402.

³⁰⁷ Environmental Ethics, “Wild meat and biodiversity”.

1.2 Uses of wildlife and forest resources

Wildlife and forest products are used in various ways and serve as the source of a wide range of goods, including food, medicine, cultural and household items, fashion and display, and industrial resins and extracts. Wildlife products may be used locally (for example, for direct consumption), or they may pass a complex processing and trade chain from supplier to end-user.³⁰⁸ Analysing the trail and the use of wildlife and forest resources can be helpful in identifying the factors that drive illegal activities related to wildlife and forests.³⁰⁹

One main differentiation regarding the use of wildlife and forest products can be made between subsistence use and commercial poaching. The motives that drive traditional hunting for subsistence and local consumption are different from those that drive large-scale commercial hunting to serve bigger, often international, markets.³¹⁰ The same applies to illegal logging, for which it is necessary to distinguish the poverty-driven illegal logging of wood mainly for fuel, from commercial illegal logging.³¹¹

No matter the driver, the result of the illegal logging may be the same: illegal logging in protected areas threatens endangered species, whether it is traded within criminal structures or used as firewood. The killing of a protected species is illegal, no matter if it is conducted to sell the animal's fur or to protect a farmer's livestock. However, to effectively prevent wildlife and forest crime, it is crucial to identify and then to address the underlying motivation that drives the action.

The following tools identify and analyse various uses of wildlife and forest products and thus help users to understand the diverse factors that may drive the illegal activities associated with wildlife and forests. In some cases, these factors may be beyond the wildlife and forest sectors.

Subsistence

In many cases, the use of wildlife and forest products must be recognized as a means for subsistence for communities and groups 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 these vulnerable 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.

A household economic survey conducted in communal areas of Zimbabwe identified approximately 100 different subsistence uses of forest resources, which included primarily firewood use, the consumption of wildlife, livestock grazing and cash income from the sale of non-timber products.³¹²

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. Interventions that address the improvement of economic conditions in rural areas and economic development in general could help to decrease the current massive illegal fuel wood extraction.³¹³

³⁰⁸ TRAFFIC, "What's driving the wildlife trade?", p. ix.

³⁰⁹ Ibid.

³¹⁰ Andrew Zakharenka and William B. Magrath, *Governance and Anti-corruption*, p. 13.

³¹¹ Savcor Indufor Oy, "Ensuring sustainability of forests and livelihoods through improved governance and control of illegal logging for economies in transition", Working Document: Serbia, for the World Bank (World Bank, 2005), p. vii.

³¹² Sara J. Scherr, Andy White and David Kaimowitz, *A New Agenda for Forest Conservation and Poverty Reduction: Making Forest Markets Work for Low-income Producers* (Washington, DC, Forest Trends, 2003), p. 6.

³¹³ Savcor Indufor Oy, "Ensuring sustainability of forests", p. 33.



Tool IV.7 Subsistence

- Are the wildlife and forest products under review used by local (and poor) communities?
- Are the wildlife and forest products used for food, firewood, construction, tools or other? What are the main uses of these products?
- Do livelihoods of local communities depend on wildlife and forest products?
- To what extent do livelihoods depend on the wildlife and forest products under review?
- Could sustainable substitutes be used instead of the wildlife and forest products under review? What kinds of livestock and agriculture could be introduced to substitute the rare wildlife species and forest products?
- Does a high demand for fuel wood and a lack of sustainable alternatives force local communities to (illegally) use forest products (from protected areas)?
- Does a lack of access to forests force local communities to hunt and harvest in protected areas?

Income generation

Gains made through participation in illegal wildlife and forest activities vary. In some cases they serve as a regular source of income, and in other cases they provide occasional sources of income or safety nets in times of hardship. Illegal activities in wildlife and forest activities can also be lucrative and generate large profits.³¹⁴ Therefore, it is crucial to analyse the motivation and reason for the activity under review. The following analytic tool explores income generation from activities that are considered to be wildlife and forest crime.



Tool IV.8 Income generation

- Do the incomes of users depend on wildlife and forest products?
- To what extent do incomes depend on wildlife and forest products?
- Are wildlife and forest products used to supplement agricultural incomes of local farmers?
- Do other (legal) streams of income exist?
- Do wildlife and forest products serve as a regular or occasional source of income?
- Are the activities under review conducted to meet unforeseen or emergency needs for cash income?

³¹⁴ TRAFFIC, “What’s driving the wildlife trade?”, pp. ix-x.

Commercial use, trade and markets

The hunting, logging and trading of some protected species is stringently restricted and in some cases fully prohibited.³¹⁵ Other timber and non-timber products, however, are to a certain extent traded legally on local, national and international markets. In these cases, it is not always easy to identify clearly the line between legally and illegally supplied and traded products.

An imbalance between the limited legal supply and the high demand for commercial products such as timber, combined with the high cost of imported products, increases illegal markets and therefore the attractiveness to engage in illegal logging.³¹⁶



Tool IV.9 Commerce, trade and markets

- Are wildlife and forest products sold in local markets?
- 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 are the final consumers receiving?

Enjoyment, leisure and tourism

As previously mentioned, different values, views and interests can be placed on the same natural resources.³¹⁷ Besides the users on the supply side, such as local subsistence users, commercial hunters and forest concessionaires, a diverse group of users exists on the demand side. These include consumptive end-users in markets and restaurants, and non-consumptive users, such as tourists.

Some resources can be adversely affected by the impacts of recreational use and tourism (for example, through the collection of corals, the disturbance of nesting sites and trophy hunting). Laws or regulations may address some of these activities and criminal penalties may be relevant, but prevention through education, and the planning and positioning of tour routes, services and amenities to direct tourists away from fragile areas may offer better prospects. In this way, wildlife and forest crime can be prevented through an elaborated and meaningful environmental design.

³¹⁵ See part one, section 1.1.

³¹⁶ Savcor Indufor Oy, "Ensuring sustainability of forests", p. 34.

³¹⁷ Andrew Zakharenka and William B. Magrath, *Governance and Anti-Corruption*.



Tool IV.10 Enjoyment, leisure and tourism

- Which leisure activities involve wildlife and forest products?
- Which rare wildlife and forest products are collected to keep at home or sold as pets or ornaments?
- Is trophy hunting prevalent in the area of interest?
- What impact do tourist activities have on wildlife and forests in the area under review?

Culture and tradition

Cultural uses of wildlife and forest products include medicinal and ceremonial uses. Such consumption can also be based on certain beliefs in the product's effect on one's power and strength. In the case of bushmeat, the trade is mainly driven by cultural proclivity.³¹⁸



Tool IV.11 Culture and tradition

- What kinds of wildlife are consumed as delicacies?
- Are wildlife and forest products used for traditional ceremonies or medicine?
- Could sustainable substitutes be used instead of the wildlife and forest products under review?
- 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?

Community land use conflict

Land use conflicts usually occur as a consequence of a population increase leading to competitive demands for the use of the land.



Tool IV.12 Community land use conflict

- How do people obtain rights to use the community common land?
- How is the public land of the community distributed for use?
- Have there been any disputes or conflicts on land use in the community? How are such problems solved and agreements achieved?

³¹⁸ Environmental Ethics, "Wild meat and biodiversity".

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 and other essentials. However, current extents and intensities of land cover change are far greater than ever before. They are driving unprecedented changes in ecosystems and environmental processes, which pose a great risk for wildlife and natural resources.



Tool IV.13 Land cover change

- Has the land cover changed over time?
- 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?

Herding and farming

The killing of endangered and protected species, such as tigers and snow leopards, can be motivated by the lucrative revenue gained through the selling of the animal's body parts. Additionally, there are other factors and human behaviours that threaten the existence of protected species. For example, overgrazing by domestic livestock can lead to a reduction or loss of the predator's prey source, and as a consequence the predators are forced to attack domestic livestock as prey. As a result, the predator puts itself at risk of being killed—in retaliation or prevention—by the herders as the loss of livestock poses a serious threat to the subsistence and income of herding communities.³¹⁹

Livestock depredation by predators, however, often corresponds with inappropriate herding techniques and a lack of precautions, such as poorly constructed corrals, too many livestock watched by too few guards or those that are too young, or insufficient night-time enclosures.³²⁰

Once an animal is killed, its body parts may be sold, even though the prime motive for killing is not trade. This shows that different types of wildlife-threatening actions are related, which makes 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 adequately to prevent wildlife crime.³²¹

³¹⁹ Stefanie Theile, *Fading Footprints: The Killing and Trade of Snow Leopards* (Cambridge, United Kingdom, TRAFFIC International, 2003), pp. 19-21.

³²⁰ *Ibid.*, p. 23.

³²¹ *Ibid.*, p. 24.



Tool IV.14 Herding and farming

- Are there conflicts between herders and wildlife?
- Are animals killed for livestock protection or retribution for depredation?
- Are animals killed to protect agriculture? Is adequate guarding material available and used (corrals, stables, shelters and so forth)?
- Is a loss of habitat or natural prey base through fragmentation or overgrazing prevalent?
- Is fire used to enlarge grazing areas?

Hunting and non-selective killing

Non-selective killing (for example, by using traps or poisoned bait) is a hunting technique that can lead to the killing of species other than the one targeted. Such accidental killings can affect endangered species as is the case for the protected snow leopard.³²²



Tool IV.15 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)?
- Do hunting associations exist?
- Is legal hunting organized (trophy hunting, hunters associations and so forth)?
- Is access to and possession of guns regulated?
- Does the problem of overhunting exist? If so, to what extent?

2. 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. The sustainable management of a region's natural resources is an important complementary element to wildlife and forest law enforcement.³²³ Sustainable resource management seeks to strike a balance between the protection and conservation of natural resources, and economic and developmental demands.³²⁴

³²² Ibid.

³²³ William B. Magrath and others, *Timber Theft Prevention*, p. 1.

³²⁴ See further part one, section 1.

Part four of the *Toolkit* provides an analysis of 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 users to design an adequate and effective response to wildlife and forest crime. 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 part, however, cannot offer concrete recommendations to be applied to all wildlife and forest areas in a given country. Rather, it underscores the importance of wildlife and forest crime prevention and associated measures in the discussion of wildlife and forest legislation and law enforcement. For detailed recommendations and an in-depth analysis of a country's natural resource management, the reader is directed to the references mentioned.

2.1 Wildlife and forest management systems

It is estimated that less than 4 per cent of the world's tropical forests are managed and protected by forest management systems, whereas only 1 per cent of these systems can be considered to be sustainable.³²⁵ It is widely recognized that illegal activities associated with wildlife and forests are facilitated by disorganized and dysfunctional natural resource management. This includes, among other factors, the absence of basic surveys and inventories, unsafe working conditions and a lack of standardized business practices. On the contrary, 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.³²⁶

The following section helps users to analyse the existence and robustness of natural resource management systems in a given country, and highlights the linkages between natural resource management planning and the prevention of wildlife and forest crime.

Domestic wildlife and forest law lays the ground 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, licence systems and so forth.³²⁷ In addition to these elements, the World Wildlife Fund and World Bank Global Forest Alliance recommends that the following standards be part of any effective and sustainable wildlife and forest management system:³²⁸

- Compliance with all laws relevant to wildlife and forests
- Respect for tenure and use rights
- Respect for indigenous people's rights
- 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

³²⁵ William B. Magrath and others, *Timber Theft Prevention*, p. 7.

³²⁶ *Ibid.*, p. 13.

³²⁷ See further part one, sections 2.1 and 2.2.

³²⁸ WWF and World Bank Global Forest Alliance, *Forest Certification Assessment Guide*, p. 1.

- Specific provisions for plantations
- Implementation of a management plan
- Effective monitoring and assessment.

*The Framework for Assessing and Monitoring Forest Governance*³²⁹ 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 analysing 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 between three and five components. The framework is designed to be used in national or subnational forest governance assessments.



Tool IV.16 Wildlife and forest management

- Is wildlife and forest management in compliance with all the relevant wildlife and forest laws in a given country?
- Does management respect tenure and use rights?
- Does management respect indigenous people's rights?
- Does management respect community relations?
- Does management respect workers' rights?
- Does management deliver multiple benefits from the forest?
- Does management assess and mitigate environmental impacts?
- Does management maintain protected forest areas?
- Does management provide specific provisions for plantations?
- Are management plans implemented?
- Is effective monitoring and assessment conducted?
- Has the country or region undergone a holistic natural resource governance assessment (for example, one based on the framework developed by the Program on Forests and FAO)?

Institutions and responsibility

Wildlife and forest resources have local value through their consumptive use but they also provide an income by attracting non-residents, such as trophy hunters or tourists. There are also notable local and global public goods and public services provided by forests and wildlife (for example, biodiversity, carbon sequestration and watershed protection). Therefore, different and sometimes

³²⁹ Program on Forests and FAO, *Framework for Assessing and Monitoring Forest Governance* (Rome, FAO, 2011).

opposing interests need to be managed by a higher-level institution. These 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).³³⁰



Tool IV.17 Institutions and responsibility

- What institutions or agencies are responsible for wildlife and forest management?
- Does a forestry, wildlife or environment department or unit exist?
- Do management mechanisms and structures cover the entire area of interest?
- What is the management structure and its chain of command? What is the coordinating mechanism among these agencies?
- 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 management process?

2.2 Wildlife and forest management plans

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. The plans should include the following aspects:³³¹

- 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;

³³⁰ Andrew Zakharenka and William B. Magrath, *Governance and Anti-Corruption*, p. 18.

³³¹ William B. Magrath and others, *Timber Theft Prevention*, pp. 16-28.

- 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 “watch dogs” to report illegal activities, and providing them with educational, awareness-raising programmes and incentives to change attitudes and behaviours.



Tool IV.18 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?
- Is access to sensitive areas regulated, monitored and controlled, for example, by the location of roads, gates and checkpoints?
- Are key stakeholders involved and encouraged to serve as “watch dogs”?
- 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?

Legal and policy frameworks

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 one 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 IV.19 Legal and policy frameworks

- 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?
- Is all legislation relevant to wildlife and forest considered (for example, legislation relating to conservation, biodiversity and water management issues)?^a

^a William B. Magrath and others, *Timber Theft Prevention*, p. 16.

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 IV.20 Natural resource inventory

- What are the region's wildlife and forest resources?
- What ecosystems are prevalent in the region (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 concerned by the activity under review?
- Are the species concerned by the activity under review endangered?
- Are the species concerned by the activity under review listed in CITES or other relevant lists for endangered species?
- Does the country have a national or regional endangered species list?

Protected areas

Protected areas are essential for biodiversity conservation and constitute essential elements in many national and international conservation strategies.³³² The World Commission on Protected Areas provides a framework for the development and analysis of protected areas. This framework includes the following elements: understanding the context of existing values and threats; the planning and allocation of resources; the management of actions; the development of products and services; and evaluating resulting impacts. Tool IV.21 lists important factors concerning the management of protected areas. For a detailed and exhaustive list of assessment questions, refer to the Management Effectiveness Tracking Tool put out by the World Wildlife Fund and the World Bank.³³³



Tool IV.21 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? Can staff enforce the rules for the protected area well?
- 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?
- Do commercial tourism operators respect and contribute to protection?

Certification systems and schemes

Certification systems help to identify, document and prove the sustainability of certified forest products.³³⁴ Certified forests are considered to be of high environmental, social and economic value and help to guarantee the maintenance of adequate wildlife habitat and water quality protection. According to the World Wildlife Fund and World Bank Global Forest Alliance, certification and accreditation have to be in compliance with international frameworks and compatible with globally applicable principles that balance economic and ecological dimensions. Additionally, major stakeholder groups should participate in governance and standard setting, which must be based on objective and measurable performance standards that are adapted to local conditions. To ensure support from local communities and main stakeholders, certification and accreditation procedures need to be transparent and disclosed to the public.³³⁵

³³² Nigel Dudley, ed., *Guidelines for Applying Protected Area Management Categories* (Gland, Switzerland, International Union for Conservation of Nature, 2008), p. 2.

³³³ WWF and World Bank, *Management Effectiveness Tracking Tool: Reporting Progress at Protected Area Sites*, 2nd ed. (Gland, Switzerland, WWF International, 2007), p. 3.

³³⁴ The certification system of the Forest Stewardship Council is one example of such a system. See www.fscus.org/.

³³⁵ WWF and World Bank Global Forest Alliance, *Forest Certification Assessment Guide*, p. iii.



Tool IV.22 Certification systems and schemes

- Do certification and accreditation systems exist? If so, are they in compliance with international frameworks for certification, accreditation and standard setting?
- Do all major stakeholder groups participate in governance and standard setting?
- Do certification systems cause unnecessary obstacles to trade?
- 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?
- Do complaint and appeal mechanisms exist?

Land tenure and property rights

Often, forest management programmes do not adequately reflect forest-dependent communities' access and use of wildlife and forest resources.³³⁶ As a result, these groups have difficulties in obtaining land ownership and property rights.



Tool IV.23 Land tenure and property rights

- 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?

Access to area of interest

Forest management programmes should be carefully designed so as to reflect the livelihoods and rights of forest-dependent people and therefore ensure their adequate access to and use of wildlife and forest resources.

³³⁶ See further part four, section 1.



Tool IV.24 Access

- 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?

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.



Tool IV.25 Security

- What risks and threats do protecting and managing personnel receive 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 rewards are offered to the personnel?

3. Social capacity-building

As previously stated, many indigenous groups and poor communities depend upon wildlife and forests for their livelihoods. In many cases, forest resources serve as safety nets for poor and marginalized communities. It is usually the poorest and most vulnerable forest-dwelling communities that depend entirely on the forest for their livelihoods and food security. Additionally, in many countries, laws related to forests and wildlife limit the rights and livelihoods of these vulnerable 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 forest management programmes.³³⁷ Furthermore, traditional hunting for subsistence may fall under a national law that protects wildlife and forests, therefore leading to the criminalization of their activities.

Against this background, the prevention of wildlife and forest crime should take into consideration the condition and needs of rural and poor communities that depend on wildlife and forests for their living. The following tools help users to analyse the existence and robustness of preventive measures that address rural development and social capacity-building in the field of wildlife and forest protection.

³³⁷ World Bank, *East Asia Region Forestry Strategy*, p. 43.

In many cases, interventions aimed at reducing and preventing wildlife and forest crimes have to consider factors and fields that lay outside the wildlife and forest sectors. Such interventions and programmes could address issues such as the promotion of alternative sources of energy, namely by providing rural areas with solar and wind energy, mains gas or electricity to improve the balance between the demand for and the supply of fuel wood.³³⁸

3.1 Poverty reduction

For an estimated 90 per cent of the 1.2 billion people living in extreme poverty globally, forest resources directly contribute to their livelihoods. In many developing countries, forests are central to development and economic growth through trade and industrial development.³³⁹

Interventions and long-term programmes aimed at reducing poverty and promoting rural development can help to addressing the poverty-related drivers that cause wildlife and forest crimes. In this sense, poverty reduction interventions targeted at wildlife- and forest-dependent communities that are involved in illegal activities could 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 biased against poor 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.³⁴⁰



Tool IV.26 Poverty reduction

- Do poverty reduction programmes or rural development programmes exist?
- Do these programmes link poverty reduction with the sustainable use of natural resources or wildlife and forest products?

3.2 Participative approaches

The participation of civil society, the private sector, and national and international non-governmental organizations is important to establish and maintain the management of natural resources and the protection of wildlife and forests. Their involvement 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.³⁴¹

The importance of the main stakeholders' participation in the decision-making and law-making processes is outlined in the natural resource management planning, as well as other, sections of the *Toolkit* referring to domestic wildlife and forest law.³⁴²

³³⁸ Savcor Indufor Oy, "Ensuring sustainability of forests", pp. 33-34.

³³⁹ World Bank, *Sustaining Forests*, p. 1.

³⁴⁰ World Bank, "Strengthening forest law enforcement and governance", p. xi.

³⁴¹ *Ibid.*, p. 25.

³⁴² See further part one, section 2.



Tool IV.27 Participation of local communities

- How do local communities explain their actions in connection with wildlife and forest use?
- How are local communities represented and organized?
- Do local communities have equal property rights?
- Are local communities involved in law-making processes?
- Do local communities have their own resource planning, management and protection initiatives?
- To what extent are local communities involved in monitoring and protecting their natural resources?
- Are there community-based awareness-raising and prevention campaigns?

4. Trade and legal markets

Lucrative gains from illegal trade in wildlife and forest products make the activities involved in this trade attractive. High prices may exist due to the imbalance between the legal supply of and the high demand for commercial timber and non-timber products, and imported timber is expensive. A market-based intervention could be appropriate to address illegal activities, and increasing the legal allowable 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.³⁴³ Consumer countries and industry should take advantage of these possibilities in order to reduce incentives for illegal logging. They can include market reforms and public procurement policies that discriminate against stolen material.³⁴⁴

Market-based approaches address the demand for and supply of wildlife products. They target markets and prices of wildlife products, as well as those of their substitutes, such as sustainable harvested resources. However, 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 most of the countries where wildlife trade occurs.³⁴⁵

Common market-based strategies to prevent illegal trade in wildlife products include the following tactics:

- 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 sustainable-harvested production through subsidies, value adding, certification and labelling.³⁴⁶

³⁴³ Savcor Indufor Oy, “Ensuring sustainability of forests”, p. 34.

³⁴⁴ World Bank, “Strengthening forest law enforcement and governance”, p. xiii.

³⁴⁵ TRAFFIC, “What’s driving the wildlife trade?”, p. 63.

³⁴⁶ Ibid., p. 21.



Tool IV.28 Trade and legal markets

- Do legal timber markets exist?
- Where are the sources and destinations of the timber?
- Is legal timber production controlled?
- Does price policing create or promote illegal markets?

5. Awareness-raising

The difference between “legal” and “illegal” activities should be clear, especially for key stakeholders such as wildlife and forest workers, wildlife and forest managers, and local communities, as well as for 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 provide the key stakeholders and interest groups involved in wildlife and forest matters with education and training to establish an appropriate level of awareness.³⁴⁷ 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.



Tool IV.29 Awareness-raising

- Are stakeholders aware of the extent, consequences and impact of the activity under review?
- Do stakeholders have an understanding of existing legislation, remedies and sanctions?
- What is the level of knowledge of the local authorities and the general public regarding legislation and prosecutions related to wildlife and forest crime?
- Are there regular situation updates and reports of the activities under review?

6. Concluding remarks

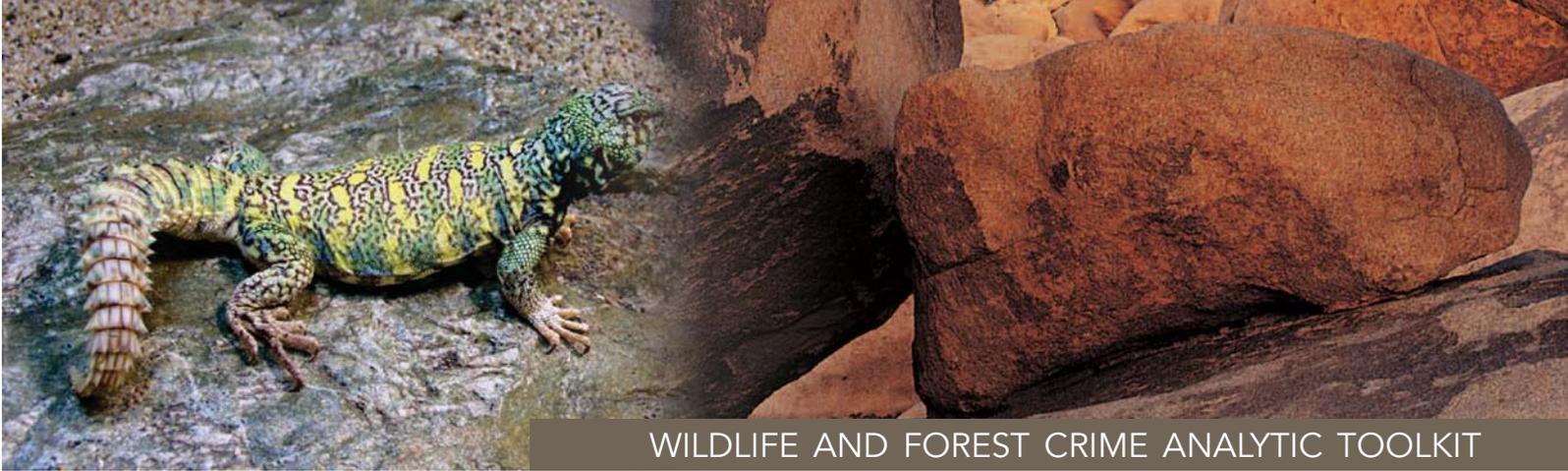
Given the ecological, economical and ethical complexities of wildlife and forest offences, a variety of responses are needed. Some of these responses may directly concern wildlife and forest protection through the sustainable and fair management of natural resources, while others focus primarily on legislation concerning wildlife and forests, and on law enforcement measures and procedures. Other

³⁴⁷ William B. Magrath and others, *Timber Theft Prevention*, p. 17.

responses may lie beyond the forest and wildlife sectors, addressing rural poverty, promoting alternative sources of income, raising public awareness, and changing inappropriate techniques and habits. The World Bank has developed a framework for assessing drivers and adequate responses to various wildlife and forest crimes, such as illegal logging, wildlife poaching, arson, encroachment and others.³⁴⁸

The primary goal of this part of the *Toolkit* was to analyse different links in the wildlife and forest crime chain and to point to the main factors that drive the illegal activities. In regard to the complexity of the issue and to the limited scope of this *Toolkit*, neither an exhaustive list of analytic tools nor concrete and specific recommendations could be given. Depending on a country's situation, different aspects of the wildlife and forest crime chain need to be focused upon and addressed. The user of the *Toolkit* is therefore advised to consult literature and initiate consultative partnerships and cooperation with leading organizations, associations and experts in the respective fields.

³⁴⁸ World Bank, "Strengthening forest law enforcement and governance", p. 69.



Part five.

Data and analysis

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Data and analysis

To this day, very few reliable measurements of wildlife and forest crime have been conducted at national, regional and international levels. The scale of the problem, the volume of the illegal trade and the number of people involved in it are largely unknown and often impossible to calculate. The clandestine nature and the lack of comprehensive enforcement and research make it impossible to know the true size of the phenomenon. Indeed, many figures circulated in various reports and articles are the result of guesswork rather than of systematic analysis.

Information and statistics on the levels and patterns of wildlife and forest crime are essential to the proper planning of justice reforms and capacity-building, as well as technical assistance initiatives. Successful strategies to improve law enforcement in the wildlife and forestry sectors also depend on a solid knowledge of the wildlife and forest resource base and its utilization, which governments and the general public in many countries do not possess. In most places, data and knowledge about the location, extent and nature of legal and illegal operations in the wildlife and forestry sectors are, at best, fragmented. Good information is, however, essential for preventing, detecting, monitoring, reporting and investigating illegal operations.

Analysing a criminal justice system can be quite challenging, particularly when there is very little quantitative information available on the system itself, on the problems and the types of crime that it is confronted with, or on the resources at its disposal. Part five of the *Toolkit* identifies a range of measures that explore the availability and quality of relevant crime statistics and other data, performance measures, databases and the existence of independent scholarly research on wildlife and forest crime. Part five provides tools that help users to create or enhance a knowledge base that will allow the formulation of informed policies, relevant laws and enforcement measures to prevent and suppress wildlife and forest crime more effectively.

In assessing forest and wildlife law enforcement systems, information on two broad matters is critical. One relates to law enforcement efforts as indicated by, for example, arrests, prosecutions, seizures, penalties, fines and other forms of restitution, as discussed further below. The other matter concerns the incidence of crime, such as the numbers of animals taken illegally, the volume of timber stolen, areas of encroachment, and geographic locations of crime or “hot spots”. The data typically available for either matter are almost always limited by and subject to interpretation and misuse, but when properly organized and analysed, they can provide important insights and lead to useful policy recommendations.

Information on the incidence of natural resource crime is subject to many of the same limitations as criminal victimization data generally. These include the failure of victims to report crime and incomplete record keeping by agencies. In the case of natural resource crimes, these limitations are compounded for the following reasons: it is often unclear who the particular victim is; resource management agencies and their staff may have strategic, political, accountability and budgetary motivations for underreporting crime; and many crimes may simply be unnoticed. Generally, detection and therefore the data on natural resource crime originate from the routine conduct of natural resource management activities. Vital resources for natural resource crime analysis include natural resource inventories, maps, population censuses and surveys, harvest and sales records, revenue records and so forth. Management plans for specific areas such as forests and parks, or wildlife populations also contain information that can be useful in assessing criminal threats and vulnerabilities.

In forestry and natural resource management, crime detection tends to revolve around the following methods: direct observation; recognition of losses (also referred to as shrinkage); and the

observation of discrepancies in records, statistics and transactions. Often, indicators related to one or more of these methods can be observed at the same time by different actors within the law enforcement system. A key to effective criminal intelligence processes is assembling, organizing and processing information. How—and how well—systems of crime detection work are key questions for analysing national responses to wildlife and forest offences.

Patrols by game wardens in wildlife conservation areas and road checkpoints in forest areas are among the direct observation methods used in many countries. However, as forests and wildlife habitat are usually large, remote and without roads, forest and wildlife officials are notoriously unable to monitor all areas of their responsibility. Some law enforcement authorities expand their ability to monitor resources and detect crime by using information from the general public or specially mobilized groups. In many countries, forest watch groups from local communities have been organized on either a voluntary or paid basis. Another approach to crime detection is to use the tools provided by laws against money-laundering.³⁴⁹

The recognition of losses is another method for crime detection used in wildlife and forest management; a reduction in an area of forest, populations or wildlife numbers can be the basis for estimates of losses due to crime. However, inventories and wildlife censuses are often out of date, inaccurate or imprecise and are therefore of little practical value in estimating losses due to crime. Some countries have developed explicit land-use development plans that specifically call for the conversion of forests to land for other uses. Technological advances in remote sensing and forest inventory practices have the potential to make a contribution to crime detection in forestry. In addition, forest cover change detection has become dramatically easier and less expensive over the last 25 years due to improvements in satellite imagery.

In order to estimate the extent of illegal logging, a point of comparison is an essential starting point. Analysts seeking to estimate the extent of crime in forestry can compare a number of indicators. Trade statistics have frequently been used for such a purpose.

1. Data collection

Efforts to effectively prevent and suppress wildlife and forest crime are severely hampered by the lack of comprehensive data collection. In spite of the widespread tendency to attempt to estimate the size of the illegal market for wild fauna and flora, there are few reliable statistics.

The absence of any comprehensive data on the scale and spread of wildlife and forest offences has a direct impact on the ability of those charged with enforcing current legislation. If the scale and nature of the problem are not known, it is unlikely that the appropriate measures and resources can be allocated to prevent and suppress it. Without accurate information on wildlife and forest offences, prevention strategies cannot be identified, and suppression activities are rendered useless because insufficient information will not lead to the effective prosecution of offenders.

Collecting data on the scale and patterns of wildlife and forest offences is important for evaluating the impact and efficiency of policy, legislation and enforcement programmes, and for providing feedback to policymakers and legislators. Without defensible and realistic baseline data, claims concerning the operation and impact of the strategies to combat wildlife and forest offences cannot be verified, and thus the credibility and commitment of government programmes are left subject to question.³⁵⁰ Information gleaned from detection measures can also be used for effective campaigns

³⁴⁹ See part one, section 5 of the *Toolkit*.

³⁵⁰ *Ibid.*, p. 55.

against illegal activities.³⁵¹ Since 1994, the Wildlife Crime Working Group of the International Criminal Police Organization (INTERPOL) has emphasized the need to collect accurate and comprehensive data and specifically called for the creation of a global database designed to assist countries in their efforts to curtail wildlife and forest offences.

In some countries, government departments and individuals are reluctant to collect or release data on wildlife and forest offences for fear that such reports would be viewed as an indication of policy, law, enforcement or wildlife or forest management failings and as failure by staff to carry out their duties. Elsewhere, disingenuous governments and corrupt officials seem to find the absence of monitoring data and crime detection systems a convenient screen.³⁵² However, only by acknowledging the existence of wildlife and forest offences and by trying to qualify the scale of the phenomenon can the problem be tackled.³⁵³

The following sections identify the relevant analytic tools relating to data collection, statistics and reporting.

1.1 Crime statistics

Remarkably, few governments have systematic, if any, statistics on wildlife and forest offences. In many countries, statistics on wildlife and forest offences are not collected at all, and even if they are collected they are often fed into broad categories and become inseparable and indistinguishable. Few countries count the number of investigations, prosecutions and convictions under individual offences relating to the wildlife and forestry sectors. Even fewer countries separate the number of offences by, for example, type of offender, geographic location or severity of the offence.³⁵⁴ Even if statistics exist, they are rarely published or otherwise openly available, which further hampers efforts to analyse and understand the levels and patterns of wildlife and forest offences and to design adequate strategies to fight them.

One of the difficulties in collecting statistics is the fact that wildlife and forest offences are often perceived as victimless crime because complainants will only contact the authorities to report a crime in rare and exceptional circumstances, usually when they experience personal loss or harm. Even where they exist, crime statistics alone do not necessarily provide a good indication of the prevalence of crime and victimization in a given country because they are greatly influenced by the willingness of victims to report the crime to the police. Victims and witnesses of crime are unlikely to report it to the authorities when they do not have much trust in them or cannot reasonably expect much help from them.³⁵⁵

Most offences are detected by enforcement agencies, either when they encounter someone engaging in illegal conduct, discover the scenes of illegal logging, illegal hunting, or illegal processing, or if they intercept the smuggling of contraband. In many cases, non-governmental organizations (NGOs) play a vital role in identifying illegal activities and bringing them to the attention of the authorities. Many government agencies tend to use information on seizures and arrests as indicators of wildlife and forest offences, but this is seriously biased to underestimate crime because it reflects law enforcement efforts and incidents that are successfully resolved rather than the accurate number of all cases.

³⁵¹ Esa Puustjärvi, *Proposal for Typology of Illegal Logging*, p. 28.

³⁵² World Bank, "Strengthening forest law enforcement and governance", p. 55.

³⁵³ United Nations, Economic and Social Council, "Illicit trafficking in protected species of wild flora and fauna and illicit access to genetic resources", report of the Secretary-General, 4 March 2003 (E/CN.15/2003/8), para. 54.

³⁵⁴ Cf. World Bank, "Strengthening forest law enforcement and governance", p. 54.

³⁵⁵ UNODC, "Criminal justice information", in *Criminal Justice Assessment Toolkit*.

Incidence of wildlife and forest offences

The first steps in examining the existence and availability of data and analysis pertaining to wildlife and forest offences is to identify the relevant crime statistics and to explore any data that reflect the incidence and levels of offences related to the environment. In some jurisdictions, statistics are collected for each individual criminal offence, while elsewhere data are clustered in broader categories such as forest offences, environmental crime and import/export offences.³⁵⁶

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 processes and to identify potential weaknesses in the criminal justice system that cause cases to collapse. Many jurisdictions also 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.



Tool V.1 Crime statistics

- Are crime statistics collected? If so, which agencies collect crime statistics?
- Do they separate wildlife and forest offences and other offences from environmental offences? Are individual wildlife and forest offences identified? Who collects these data?
- How many wildlife and forest offences are reported? How many are investigated?
- How many investigations result in prosecutions and convictions?
- Do these statistics contain information about the perpetrators, the location of the offence and any harm or damage caused?
- How regularly are crime statistics collected? How, how often, and where are they published?

Unreported crime

Crime statistics generally count only those criminal offences that come to the attention of the police or other law enforcement agencies. For a variety of reasons, however, victims and witnesses of crime, including wildlife and forest offences, may not report offences to the authorities. The reporting rate, as it is usually referred to, may be affected by a number of factors, including access to law enforcement agencies and confidence (or lack thereof) in the police.

The difference between how much crime actually occurs and how much crime is reported to or discovered by the authorities is usually referred to as the “dark figure of crime”. Crime statistics are therefore a very imperfect measure of the number of wildlife and forest offences actually committed.

³⁵⁶ UNODC, “Crime investigation”, in *Criminal Justice Assessment Toolkit*.



Tool V.2 Unreported crime

- Do available crime statistics relate only to reported crime or is there an estimate of the crime level in general?
- Are there other official and unofficial estimates about the dark figure of wildlife and forest offences?



Tool V.3 Police data and enforcement outcomes

- What number and types of wildlife and forest offences have been reported?
- What number and types of wildlife and forest offences have been investigated?
- How many suspects have been investigated? How many have been detained?
- 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)?
- How much and what type of property and other assets are seized annually in relation to wildlife and forest offences?

Customs data

Customs data contain information on cross-border trade, including trade volumes and declared values. Data on imports and exports are collected by most Customs services around the world and are usually organized according to commodity types, often using the Harmonized Commodity Description and Coding System.³⁵⁷



Tool V.4 Customs data

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

³⁵⁷ Steven Broad, Teresa Mulliken and Dilys Roe, “The nature and extent of legal and illegal trade in wildlife”, pp. 3-7.

Prosecution data and outcomes



Tool V.5 Prosecution data and outcomes

- How many prosecutions involving wildlife and forest offences have been initiated?
- How many prosecutions resulted in charges being laid?
- How many persons have been prosecuted? How many have been convicted? How many have been acquitted?
- How many appeals involving wildlife and forest offences have been initiated by the prosecution service?

Court data and outcomes



Tool V.6 Court data and outcomes

- How many court proceedings involving wildlife and forest offences have been initiated? How many proceedings involved charges? How many involved appeals?
- How many cases resulted in convictions? How many resulted in acquittals?
- How many convictions for wildlife and forest offences have been overturned on appeal? What are the main reasons for appeal?
- How long do court proceedings generally take?

1.2 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 control and enforcement and has been described as “the life blood of trade control”.³⁵⁸ The information generated this way can potentially identify routes of the illegal trade and highlight some of the main source, transit and destination points. The CITES Secretariat has also established mechanisms to collect trade records from Parties to the Convention and other information about CITES implementation and compliance.³⁵⁹ 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.

³⁵⁸ David S. Favre, *International Trade in Endangered Species*, p. 215.

³⁵⁹ Convention on International Trade in Endangered Species of Wild Fauna and Flora, art. VIII, para. 7, and art. XII.

Furthermore, the CITES Secretariat has attempted to gain an overview of specific forms of wildlife offences. For example, in recent years, its Monitoring the Illegal Killing of Elephants (MIKE) and Elephant Trade Information System (ETIS) schemes have gathered data on poaching and illegal trade.



Tool V.7 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?
- If records are not maintained or reports are not submitted to the CITES Secretariat, what are the reasons for not doing so?

1.3 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 wild 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.³⁶⁰

A growing number of countries use independent wildlife or forest monitors whose mandate is to 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 make recommendations to improve the current system. 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.³⁶¹ The Food and Agriculture Organization of the United Nations (FAO) and the International Tropical Timber Organization (ITTO), among many other organizations and experts, recognize that, by and

³⁶⁰ Esa Puustjärvi, *Proposal for Typology of Illegal Logging*, p. 31.

³⁶¹ See further Global Witness, *A Guide to Independent Forest Monitoring* (London, 2005).

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.³⁶²



Tool V.8 Resource assessment 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?
- Does the country, or parts of the country, use wildlife or forest monitoring systems? 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?

1.4 Economic data

Economic data and trade statistics can also be helpful in identifying the scale and patterns of illegal trade in wild fauna and flora. For example, data on revenue shortfalls and information on industrial capacities or utilization efficiencies are helpful in analysing the extent to which illegally acquired wild 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 usually 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. Unfortunately, in many natural resource applications, 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.³⁶³



Tool V.9 Economic data

- What economic data on trade in wild fauna and flora are 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?

³⁶² FAO and ITTO, *Best Practices for Improving Law Compliance*, pp. 62-64.

³⁶³ World Bank, “Strengthening forest law enforcement and governance”, p. 54.

1.5 Technology and information management

Access to information services, such as the Internet and mobile telephones, has increased rapidly in the 2000s. In 2009, mobile telephone access in developing countries passed 50 per cent for the first time, reaching 57 per cent of the population. Technological change has often been taking place at the same time as institutional reforms when former State-owned monopolies have been commercialized or privatized, and competition among service providers has been introduced. Increased access to information and communication technologies (ICTs) has led to the development of e-government and e-governance initiatives, that is, ICT applications for interaction between governments and citizens. The increased use of technology has improved public access to information. Despite the expansion of service networks, a digital divide continues to exist, and information services remain expensive for the average consumer in developing countries. However, there has been a declining trend in ICT costs.

Many natural resource management vulnerabilities can be addressed through the use of ICT. Effective law enforcement systems in the forestry sector consist of prevention, detection and suppression. Technology has an important role to play in each of these steps, in the efforts to curb the illegal logging, transportation and processing of timber, and trade in wildlife.

A variety of ICT applications can be used to improve deterrence and response, including the following:

- Prevention: crime mapping and corruption hotlines;
- Detection: timber tracking, chain of custody systems, checkpoints, satellite images, global positioning system surveillance; and
- Suppression: crime databases and case management systems.

ICTs can often be applied to identify discrepancies or other early signs of illegality (“red flags”) in a large volume of observation data. These data can be collected through remote sensing, administrative data source, crowd sourcing or various other means. The efficient use of technology makes this activity cost efficient and may have even been impossible through manual means.³⁶⁴

2. Databases

Information sharing among national agencies and across international borders is crucial in combating wildlife and forest offences. A variety of tools designed to initiate and facilitate cooperation within and among countries have been identified in earlier parts of the *Toolkit*. In addition, the creation and management of national and international databases can provide platforms to report and record information pertaining to wildlife and forest offences in standardized ways, and to share this information with domestic and international partners.

Some countries, albeit a very small number, maintain national databases that record all incidents of wildlife and forest offences, as well as the details of all successful and unsuccessful prosecutions.

³⁶⁴ Tukka Castrén and Madhavi Pillai. *Forest Governance 2.0: A Primer on ICTs and Governance* (Washington, DC, Program on Forests, 2011).



Tool V.10 National wildlife and forest crime databases

- Does the country maintain a national database that records incidents of wildlife and forest offences?
- Which agencies have access to that database?
- What information is recorded? How is information recorded and disseminated? Does legislation limit the use of forensic data in the database?
- Do the relevant authorities have adequate ICT infrastructure? What is the e-readiness of these authorities?

2.1 Customs Enforcement Network seizure database

The World Customs Organization (WCO) maintains an Internet-based seizure database on the Customs Enforcement Network (CEN), with a wildlife seizure database as one of the 13 commodities since 2002. The database contains non-nominal seizure information such as date, location, species, quantity, departure, destination, conveyance, concealment 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. The data are also available to all WCO member Customs administrations for analytic purposes.



Tool V.11 WCO Customs Enforcement Network seizure database

- Are wildlife seizures regularly reported to CEN?
- Is the available seizure information analysed? Is so, by whom?

2.2 Trade in Wildlife Information Exchange

The European Union Trade in Wildlife Information Exchange (EU-TWIX) is a tool developed to facilitate information exchange and international cooperation among law enforcement officials across the European Union. It has been operational since October 2005.

The EU-TWIX database centralizes data on wildlife trade seizures submitted by European Union enforcement agencies (police, Customs, environmental inspection services and CITES Management Authorities) in six European Union languages. WCO also regularly provides Customs seizure data from its CEN seizure database, which is populated by data from European Union Customs administrations. Access to the EU-TWIX database is Internet-based and granted exclusively to designated enforcement officials who are provided with access codes.³⁶⁵ The database also contains information on forensic institutes, rescue centres and wildlife experts, as well as the prices of wildlife specimen being traded. The EU-TWIX electronic mailing list allows designated enforcement officials to share information quickly and efficiently, and to exchange experience and expertise on illegal wildlife trade matters.

³⁶⁵ See www.eutwix.org.

While EU-TWIX mechanisms for information sharing are currently open to only European Union Member States, they provide a useful model for the creation of similar databases in other countries. They may also serve as a template for future regional and global wildlife and forest offence databases.



Tool V.12 EU-TWIX

- Does the country have access to EU-TWIX?
- Which agencies have access to the database? How is information recorded and disseminated?

2.3 CITES Alerts

Using information and intelligence it receives from a variety of sources, the CITES Secretariat prepares Alerts that contain intelligence regarding current trends in wildlife offences or information about new *modi operandi* related to the illegal trade. CITES Alerts are available on the restricted-access enforcement authorities forum on the CITES website. Multilingual training materials and other enforcement-related bulletins can also be accessed via the forum, which can be used as a secure communication channel among officers globally.



Tool V.13 CITES Alerts

- Does the national CITES Management Authority prepare its own Alerts and make use of CITES Alerts? If not, why not?
- Are the relevant staff trained in preparing Alerts?
- How are CITES Alerts acted upon? What obstacles have been encountered in using CITES Alerts?

3. Performance indicators

Few countries have in place the kind of data gathering processes necessary to collect data on the various aspects of their criminal justice system and develop indicators to monitor their performance. 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, represented by a few selected indicators for measuring performance, generating data consistently over time, providing information for both policy and programme management decisions, and reporting outcomes regularly and publicly.³⁶⁶

³⁶⁶ UNODC, "Criminal justice information", in *Criminal Justice Assessment Toolkit*.

Police performance indicators

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 came 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.³⁶⁷

This indicator is not always based on very robust data because of (a) changes in crime reporting behaviour, (b) how the police define a “solved crime” (for example, charges have been laid, the offender has been identified, enough evidence has been accumulated to obtain a conviction or there has been a confession), or (c) 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.³⁶⁸

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.³⁶⁹

Customs performance indicators

Very few Customs agencies 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*, 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 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);

³⁶⁷ Ibid

³⁶⁸ Ibid.

³⁶⁹ Ibid.

- 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.

Prosecution performance indicators

Very few jurisdictions have adopted indicators that systematically address the performance of prosecutors. The most obvious indicators in this regard are:

- Average number of cases per prosecutor;
- Average number of appellate 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;
- Proportion of cases per year in which the offenders pleaded guilty;
- Proportion of cases per year that went to trial;
- Proportion of cases per year in which a conviction was obtained;
- Proportion of cases that went to trial in which the offender was eventually acquitted;
- Number of cases of wrongful convictions per year;
- Proportion of cases that were diverted away from the formal criminal justice process; and
- Average cost per case prosecuted during a given period of time, usually one year.³⁷⁰

Court performance indicators

For criminal courts, performance indicators include:

- Average number of cases per judge;
- Average length of time for the completion of a criminal case;
- Average number of trials per year;
- Average number of trials per judge; and
- Average length of a trial, and the average cost per case.³⁷¹

³⁷⁰ Ibid.

³⁷¹ Ibid.



Tool V.14 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 the performance indicators regularly reviewed and updated?

4. Analytic research

One of the main obstacles to combating wildlife and forest crime more effectively is the lack of systematic and in-depth analytic research on the causes, concepts, circumstances and characteristics of this phenomenon. Presently, reports by government agencies, international organizations and NGOs constitute the vast majority of information on this topic, but there is very little scientifically based analytic research.³⁷²

Analytic research work is fundamental to understanding wildlife and forest offences, and to gaining a perspective on the functioning of the local, regional and global illegal market for wild fauna and flora in order to identify better ways of countering it. Only with a proper knowledge base 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.

4.1 Scholarly and independent research

Independent scholarly research is a crucial step in understanding wildlife and forest offences. It can also assist in analysing existing and proposed government policies, legislation, administrative and enforcement measures, and in developing recommendations for law reform and policy 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 offences, and make their findings available to the relevant audiences and the public at large. Such research can also give greater legitimacy to the relevant government initiatives.

While some governments are supportive of critical and independent research in this field, others are less open and do not collaborate with scholarly researchers for fear their policies, laws and administrative systems may be criticized. This attitude directly and indirectly benefits those engaged in wildlife and forest offences, and hampers domestic and international efforts to curtail illegal trade in wild fauna and flora.

³⁷² Cf. Jacqueline L. Schneider, "Reducing the illicit trade in endangered wildlife", pp. 274-281.



Tool V.15 Scholarly and independent research

- What independent research on any aspect of wildlife and forest offences has been undertaken? What aspects have been researched and by whom?
- 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 offences?
- Are systems in place to evaluate and utilize information from academic research and from NGOs for policy development, law-making and enforcement purposes?

4.2 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, such as the laundering of timber and wildlife, payments of bribes, and specific procedures used to break the law. 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.³⁷³

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.³⁷⁴ These diagnostic surveys can also be done more openly, but then their nature is different. For example, the framework developed by the World Bank's Program on Forests and the United Nations Food and Agriculture Organization is based on a transparent multi-stakeholder process.³⁷⁵



Tool V.16 Diagnostic surveys

- Have diagnostic surveys relating to wildlife and forest offences 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?

³⁷³ FAO and IITTO, *Best Practices for Improving Law Compliance*, p. 78.

³⁷⁴ *Ibid.*

³⁷⁵ For a description of this framework, see part four, section 2.1.

4.3 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 “stockpiles” of information relating to wildlife and forest offences 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, however, important tools to prevent and suppress wildlife and forest offences more effectively. 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.17 Dissemination

- How do the relevant government agencies publish, release and disseminate data and other information relating to wildlife and forest offences?
- 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, or in annual or other periodic reports?

Annex. List of tools



Part one. Legislation

1. CITES
2. CITES reservations
3. United Nations Convention against Transnational Organized Crime
4. United Nations Convention against Corruption
5. Convention on Biological Diversity
6. Convention Concerning the Protection of the World Cultural and Natural Heritage
7. Bilateral agreements
8. Domestic wildlife laws
9. Domestic forest laws
10. Domestic CITES implementation
11. CITES Management Authority
12. Cooperation between Management Authority and Customs
13. Species protection outside CITES
14. Proof of subjective fault elements
15. Extensions to criminal liability
16. Liability of legal persons
17. Illegal logging and harvesting
18. Illegal hunting (poaching)
19. Illegal processing of animal and plant material
20. Trafficking, illegal trade, sale and supply
21. Import and export offences
22. Offences relating to possession
23. Penalties for wildlife and forest offences
24. Document fraud and related offences
25. Money-laundering offences
26. FATF 40 Recommendations
27. Reporting of suspicious transactions
28. Corruption and bribery offences

29. Tax evasion and non-payment of fees
30. Participation in criminal organizations
31. Regional FLEG processes
32. Regional wildlife enforcement networks
33. Certification systems and schemes, and private and voluntary standards



Part two. Enforcement

1. Law enforcement structures
2. Enforcement mandates
3. Legislation for enforcement mandates
4. Management of investigations
5. CITES Management Authority
6. Community policing
7. Partnerships
8. Staffing levels
9. Salaries and benefits
10. Recruitment
11. Training: delivery
12. Training: content
13. Intelligence gathering
14. Covert investigation techniques
15. Controlled delivery
16. Informants
17. Patrols and checkpoints
18. Proactive investigations
19. Sources of enforcement powers
20. Types of investigative powers
21. Exercise of enforcement powers
22. Facilities and equipment
23. Reporting offences

24. Information and evidence gathering
25. Wildlife and forest crime scene work
26. Identification of suspects
27. Interviewing
28. Witness and victim protection
29. Forensics and crime scene investigation
30. Financial investigation
31. Border control and Customs
32. Cooperation between Customs and CITES Management Authority
33. ENVIRONET
34. WCO Customs Enforcement Network
35. Frameworks for international cooperation
36. INTERPOL
37. Ecomessage
38. Procedures for international cooperation
39. Law enforcement cooperation
40. International and regional assistance
41. Bilateral and multilateral donors
42. Donor coordination
43. Accountability and integrity
44. Corruption and bribery



Part three. Judiciary and prosecution

1. Judiciary: legal frameworks
2. Criminal court system
3. Independence of the judiciary
4. Judiciary: staff and salaries
5. Recruitment and training of judges
6. Judiciary: facilities and equipment
7. Court records and court reporting

8. Accountability and integrity of the judiciary
9. Source of prosecution authority
10. Prosecution: organization and delegation
11. Partnerships between law enforcement and prosecution
12. Role of the prosecutor
13. Operation and workload of prosecutors
14. Prosecution: staff and salaries
15. Recruitment and training of prosecutors
16. Prosecution: facilities and equipment
17. Accountability and integrity of prosecutors
18. Extradition
19. Mutual legal assistance
20. Letters rogatory
21. Patterns of international cooperation
22. Confiscation of assets
23. Transfer of criminal proceedings
24. Transfer of sentenced persons
25. Sentencing
26. Sanctions
27. Restitution
28. Restoration and remedial measures



Part four. Drivers and prevention

1. Actors in the supply chain
2. Local communities and indigenous groups
3. Insurgent groups
4. Police and military
5. Forest rangers and wardens
6. Commercial users
7. Subsistence
8. Income generation

9. Commerce, trade and markets
10. Enjoyment, leisure and tourism
11. Culture and tradition
12. Community land use conflict
13. Land cover change
14. Herding and farming
15. Hunting and non-selective killing
16. Wildlife and forest management
17. Institutions and responsibility
18. Wildlife and forest management planning
19. Legal and policy frameworks
20. Natural resource inventory
21. Protected areas
22. Certification systems and schemes
23. Land tenure and property rights
24. Access
25. Security
26. Poverty reduction
27. Participation of local communities
28. Trade and legal markets
29. Awareness-raising



Part five. Data and analysis

1. Crime statistics
2. Unreported crime
3. Police data and enforcement outcomes
4. Customs data
5. Prosecution data and outcomes
6. Court data and outcomes
7. CITES reporting
8. Resource assessment and monitoring

9. Economic data
10. National wildlife and forest crime databases
11. WCO Customs Enforcement Network seizure database
12. EU-TWIX
13. CITES Alerts
14. Performance indicators
15. Scholarly and independent research
16. Diagnostic surveys
17. Dissemination

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