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Africa-Asia Pacific Symposium on Strengthening Legal Frameworks to Combat Wildlife Crime

United Nations Inter-Agency Task Force on Illicit Trade in Wildlife
and Forest Products

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Executive summary

The Africa Asia-Pacific Symposium on Strengthening Legal Frameworks to Combat Wildlife Crime (Symposium) was convened by the United Nations Inter-Agency Task Force on Illicit Trade in Wildlife and Forest Products (Task Force), in partnership with the World Bank-led, Global Environment Facility (GEF)-financed Global Wildlife Program (GWP) and USAID. The event was made possible through the generous support of the Government of Norway, Ministry of Foreign Affairs. Symposium participants included senior officials from the national authorities responsible for wildlife and criminal justice in 22 countries: Botswana, Cambodia, China, Ethiopia, Ghana, India, Indonesia, Kenya, the Lao People's Democratic Republic, Malawi, Malaysia, Mozambique, Myanmar, Nigeria, the Philippines, Solomon Islands, South Africa, Thailand, Uganda, the United Republic of Tanzania, Vietnam, and Zimbabwe, together with parliamentarians from the Lao People's Democratic Republic, the Philippines, Thailand and the United Republic of Tanzania.

Prior to the Symposium, countries' nominated participants completed a rapid survey that asked for baseline information on provisions in national legal frameworks for combatting wildlife crime, on countries' plans for strengthening their own legal frameworks, and on their needs for any assistance in doing so. A total of 24 countries completed the survey – all of the 22 countries that sent participants to the Symposium plus two countries whose nominated participants were ultimately unable to attend.

An indicative summary of an analysis of the information from all 24 responding countries yielded the following results:

- 96% have laws and/or regulations to prevent, detect and penalize wildlife and forest offences
- 88% rely primarily on forest laws and regulations to address wildlife and forest offences; only
- 50% of the countries use Penal Code provisions to punish wildlife and forest crimes
- 100% require or enable authorities to involve communities in developing, implementing and benefitting from policies and laws that ensure the sustainable use of natural resources
- 75% provide financial and/or other support for communities to raise their awareness regarding the disadvantages and dangers of illegal trade in protected wildlife and forest products and to involve them in efforts to prevent, detect and address such trade
- 100% establish penalties for illegal taking, including hunting, poaching, harvesting and logging;
- 88% restrict or prohibit trade in CITES-listed species
- 63% stipulate a minimum prison term for certain wildlife and forest crimes, although this is more common among African countries (85%) and less so in Asian countries (36%)
- 92% stipulate a maximum prison term for certain wildlife and forest crimes
- 46% of the respondents state that their wildlife and forest legal frameworks provide for increasing a penalty if the offence is committed through corruption, although this



is more common among African countries (62%) and less so in Asian countries (27%)

- 42% allow advanced investigative techniques such as controlled deliveries in case of serious wildlife offences, although this is more common among African countries (69%) and less so in Asian countries (9%)
- 25% allow special investigative measures such as wiretapping in case of serious wildlife offences, although this is more common among African countries (38%) and less so in Asian countries (9%)
- 75% allow mutual legal assistance in case of serious wildlife and forest offences.

The complete results of the analysis of the pre-Symposium survey responses are in Annex 3.

Parallel working groups

In parallel working groups, participants considered natural resource management and trade regulation, and criminal justice and inter-regional mechanisms. Each parallel session identified a series of suggested elements for strengthening legal frameworks to combat wildlife and forest crime and for improving coordination and cooperation. Parallel session A focused particularly on institutional arrangements and regulatory mechanisms to prevent wildlife and forest offences and to improve compliance with and enforcement of legislation governing wildlife and forests and offences related to them. Parallel session B focused primarily on enforcement and criminal justice issues, including identifying wildlife and forest crimes as serious crimes offence within the corresponding specialized legal frameworks.

Natural resource management and trade regulation

Building on requirements in CITES and other legally-binding instruments, participants in Parallel Session A on natural resource management and trade regulation identified four clusters of essential elements for national legal frameworks:

1. Designation of authorities, their powers, functions, and collaboration and coordination
 - Require collaboration between the various national Ministries involved in combating wildlife trafficking (e.g., environment,

agriculture, forestry, health, police, customs, prosecution, etc.) to promote a whole-of-government approach. This could be done formally through legislation, or informally through cooperative governance mechanisms

- Consider consolidating multiple institutional mandates into a single border management authority with an integrated chain of command or create a formal dispute resolution mechanism or standard operating procedures if integration is not possible
- Take the effective aspects of CITES institutional arrangements and procedures and apply them to other areas (not just protected species) that require international collaboration to be successful
- Specify a clear and distinguishable distribution of responsibilities among the relevant authorities
- Establish a single chain of command of CITES authorities – one Management Authority should take the lead
- Empower community-based monitoring of implementation and surveillance.

2. Regulation of legal and prohibition of illegal trade

- Clearly distinguish between activities that are considered to be prohibited, restricted and permissible. Regulatory instruments should be drafted in a clear manner that can be easily understood by the regulated community
- Specify the criteria to be applied to determine whether an activity is considered to be permissible, e.g., compliance with a biodiversity or species management plan
- Establish a clearly defined process – formal or informal, e.g., a hotline – for private persons and NGOs to report incidents of illicit trade
- Clearly regulate online trade. The CITES Secretariat is identifying best practices for doing this;

- Clearly specify that the responsibility of an importing country is to verify the authenticity of the CITES export permits, but does not extend beyond this
- Establish fees in such a way that they can be a source of income for enforcement agencies
- Ensure that provisions in national legislation are consistent with the capacity and resources of the enforcement agencies.

3. Penalization of illegal trade

- Define aggravating circumstances
- Penalize attempted violations
- Provide that perpetrators of wildlife crimes are not given an automatic right to bail, due to the fact that many of them abscond once released
- Apply anti-corruption laws to CITES-related violations
- Harmonize/align the categorization of wildlife crime as a “serious offence”, particularly in neighboring countries, to prevent criminals from attempting to operate in countries with less severe penalties.

4. Confiscation of illegally traded specimens

- Stipulate that all items used in the commission of an offence must be confiscated, including assets such as vehicles, equipment, proceeds of the crime (and not just the wildlife contraband itself)
- Establish strong checks and balances if national law allows regulatory authorities to sell/auction confiscated items without a court order, as there may be a risk of the specimens re-entering illegal trade
- Distinguish the seizure of live animals that can be kept in a holding facility or released and wildlife products/derivatives that can be used for scientific or educational purposes.

Criminal justice and inter-regional mechanisms

Participants in Parallel Session B on criminal justice and inter-regional mechanisms debated recommended minimum provisions for criminal penalties in national legal frameworks.

1. Acts that should be punishable as criminal offences:
 - Illegal taking, including hunting, poaching, harvesting and logging
 - Illegal captive breeding, game ranching or artificial propagation
 - Illegal possession
 - Illegal transportation
 - Illegal trade (import, export, re-export)
 - Illegal wildlife products in transit
 - Illegal sale and purchase (including through the internet and other electronic means)
 - Illegal processing
 - Attempt to commit the above.

When this was presented to the plenary, 93% of government participants and parliamentarians strongly agreed or agreed with the recommended minimum provisions.

2. Penalties should be increased for acts committed under these conditions, either as aggravating circumstances or additional charges under separate criminal provisions:
 - The offence involves corruption (such as abuse of position)
 - The offence involves money laundering
 - The offence is committed by an organized group
 - The offence involves a firearm or other violent means
 - The offence results in death or bodily harm
 - The offence is committed by a repeat offender
 - The offence involves a CITES Appendix I species
 - The offence involves exploitation of a minor.

When this was presented to the plenary, 98% of government participants and parliamentarians strongly agreed or agreed that penalties should be increased for acts committed under the listed conditions.

3. Legal frameworks should penalize trade conducted in violation of international and national laws, for the following categories of species:
 - Domestically protected species
 - All species listed in CITES Appendices I, II, III
 - Species that are illegally acquired according to the legislation of the country of origin and/or transit (i.e., as in the US Lacey Act).

When this was presented to the plenary, 93.5% of government participants and parliamentarians strongly agreed or agreed that legal frameworks should penalize trade conducted in violation of international and national laws for the listed categories of species.

4. Legal frameworks should stipulate the following penalties for wildlife offences:
 - Minimum penalties
 - Maximum penalties, not less than 4 years
 - Maximum penalties should be set to the level that is considered to be serious crime.

When these recommendations were presented to the entire group in plenary, 88.9% of government participants and parliamentarians strongly agreed or agreed that legal frameworks should stipulate minimum and maximum penalties as specified.

5. Sentences should be based on a combination of the following factors:
 - The kind of offence (e.g., possession, export, sale, false statement, fraudulent permit, etc.)
 - Independent expert witness
 - First or repeat offence
 - Purpose of the offence (commercial or not)

- Knowledge that the activity is illegal
- Role in the illegal activity (lead or supportive)
- Type of species involved (e.g., highly protected, CITES Appendix I)
- Quantity of specimens that are involved in the offence (weight or number of individuals)
- Market value of specimens involved
- The damage generated
- Aggravating circumstances (organized group, repeat offence, etc.).

When these recommendations were presented to the entire group in plenary, 95.6% of government participants and parliamentarians strongly agreed or agreed that sentences should be based on a combination of the listed factors.

Recommendations

The recommendations for next steps that emerged from the Symposium can be grouped into two categories – recommendations specifically focused on national legal frameworks, and recommendations on related issues, particularly the implementation of the laws.

Regarding national legal frameworks

According to the responses to the pre-Symposium rapid survey, 88% of participating countries plan to strengthen their national legal frameworks to combat wildlife crime and will need external financial and technical assistance to do that. Participants made three broad recommendations, in addition to the specific ones for the contents of national legal frameworks that the parallel sessions proposed:

- Develop a set of model legal provisions to assist countries in strengthening national legal frameworks to combat wildlife and forest crime
- Review the status of existing regulatory frameworks governing wildlife and forest resources, under the CITES National Legislation Project, the UN Environment project, and other relevant initiatives
- Compile best practices and comparative analysis of penalties, and share experiences.

Ongoing activities are at least partially addressing two of these recommendations. UNODC is in the process of developing model criminal law provisions that countries will be able to use to amend existing law or draft new legislation. The CITES National Legislation Project and many of the GWP projects provide support for reviewing existing law and amending it or drafting new laws and/or regulations. UN Environment is currently implementing a project aimed at identifying and analyzing institutions and legal frameworks at the global, regional and national levels which address the regulation of licit trade and the prevention or penalization of illicit trade in wildlife and forest products.

Regarding related issues

The results of the real-time survey in Session 5 indicated that participants considered there is even greater need for support to build capacity to implement national legal frameworks than there is for support to strengthen those frameworks. Participants made several recommendations on implementation and related issues:

- Provide training to strengthen cooperative mechanisms between relevant central authorities to increase capacity to prepare and approve requests for mutual legal assistance (MLA)
- Promote international legal cooperation between regions and promote the creation of informal networks of wildlife and forest authorities, prosecutors, parliamentarians, enforcement agencies (e.g., police, customs officials), and judges
- Identify priority wildlife and forest crimes and facilitate problem-solving dialogues among concerned parties, including source, transit and destination countries
- Include parliamentarians in future initiatives to discuss and promote the strengthening of national legal frameworks to combat wildlife and forest crime
- Include local communities as part of the response and involve them in future initiatives to combat wildlife and forest crime



- Contribute legislation and case law relevant to wildlife and forest crime to UNODC's database Sharing Electronic Resources and Laws on Crime (SHERLOC)
- Consider the development of a massive open online course (MOOC) on illegal trade in wildlife covering national legal frameworks to combat wildlife and forest crime.

Symposium partners are already addressing some of these recommendations in ongoing projects and are including related activities in projects that are currently under development.

The results of the pre-Symposium rapid survey clearly showed that the national legal frameworks of a vast majority of the countries already include minimum legal provisions to punish wildlife and forest offences. Nonetheless, Symposium participants indicated that there is a need to increase consistency in setting adequate penalties as well as in effectively using aggravating circumstances and sentencing guidelines to punish the most serious forms of wildlife and

forest crimes. These recommendations may be introduced in other international fora (e.g., UN inter-governmental bodies, CITES official meetings, etc.) to substantiate the call for the harmonization of legal frameworks and to adopt more specific resolutions/decisions.

Symposium participants made very specific recommendations for the contents of national legal frameworks and general recommendations on the approach for developing provisions to be included in them. Based on their recommendations, Governments should be encouraged to re-assess the quality of their national legal frameworks and to take their own initiatives to strengthen them, and partners should be encouraged to support them in doing so.

The Symposium's recommendations for next steps provide clear indications for Task Force member entities planning future activities in Africa and Asia Pacific, at national level as well as sub-regional and inter-regional levels. Countries should contact Task Force member entities directly with specific requests for assistance.

Acronyms and abbreviations

ASEAN	Association of South East Asian Nations
AIPA	ASEAN Inter-Parliamentary Assembly
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CMS	Convention on the Conservation of Migratory Species of Wild Animals
DPKO	United Nations Department for Peacekeeping Operations
DPA	United Nations Department of Political Affairs
DPI	United Nations Department of Public Information
GEF	Global Environment Facility
GWP	Global Wildlife Program
ICCWC	International Consortium on Combating Wildlife Crime
MLA	Mutual legal assistance
MOOC	Massive online open course
SHERLOC	<i>Sharing Electronic Resources and Laws on Crime</i>
UNDESA	United Nations Department of Economic and Social Affairs
UNDP	United Nations Development Programme
UN Environment	United Nations Environment Programme
UNFF	United Nations Forum on Forests
UNODC	United Nations Office on Drugs and Crime

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