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OF WILD FAUNA AND FLORA



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BEYOND SEIZURES: ADOPTING THE ICCWC INDICATOR FRAMEWORK AS A TOOL TO MEASURE
EFFECTIVE ENFORCEMENT RESPONSES TO TRAFFICKING OF CITES LISTED SPECIES

1. This information document is submitted by the United Kingdom of Great Britain and Northern Ireland on behalf of the Environmental Investigation Agency in relation to agenda item 17.5.*

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INTRODUCTION

Wildlife trafficking constitutes a form of serious and organised crime. Organised criminal groups use various methods to illegally source, transport and sell vast quantities of endangered fauna and flora across the globe, with devastating consequences not only for biological diversity and conservation but also impacts upon law enforcement and governance more widely.

It is commendable that governments have stepped up their efforts to improve their responses to wildlife crime, including by amending legislation and engaging with processes such as CITES. However, more needs to be done to secure *criminal justice responses* to wildlife crime to bring about long-term, sustainable, and impactful change. In this information document, we argue there is an overreliance on seizures as a data source in the context of CITES. Seizures alone are an incomplete response to crime and an insufficient indicator of enforcement. There is an urgent need to increase comprehensive post-incident investigations, along with the adoption of tools to assess effective enforcement.

THE PROBLEM

In recent years, enforcement of and compliance with CITES has become a topic of increasing importance at meetings of the Standing Committee and Conference of the Parties. The practice of, and rhetoric around, “seizures” has prevailed in the field of counter-wildlife crime enforcement, with incidents recorded and cited by government and non-government actors both as a measure of illicit trade and as an enforcement response. Yet seizure instances alone barely provide a snapshot of the volumes in trade given the near-impossible mission of knowing how much illegal trade slips through borders *without* detection. Furthermore, while seizures are often publicised as law enforcement successes, they are a poor indicator of enforcement, shaped invariably by a lack of prioritisation and a lack of resource allocation.

Seizures alone should not be relied upon as an indicator of illegal trade patterns or of enforcement efficacy. On the contrary, in the absence of a comprehensive set of investigation responses, seizures alone indicate an enforcement response way below that which is necessary to combat transnational, organised wildlife crime, especially considering the ongoing biodiversity crisis.

Law enforcement responses to other forms of organised crime, such as drug trafficking, human trafficking or weapon trafficking barely recognise seizures as an enforcement activity. Instead, the initiation of investigations and securing contraband as evidence to inform investigations is standard practice to disrupt criminal activity in the long-term. By placing emphasis on targeted, intelligence-led and reactive investigations, more can be determined about the *modus operandi*, actors, routes and other trends that allow criminal networks to thrive in the first place. This information in turn provides opportunities for arrests, prosecutions and convictions which can disrupt and frustrate criminal networks and prevent repeated criminal activity by identified individuals and networks. Considering current levels of illegal exploitation of endangered wildlife, long-term enforcement responses are vital to secure conservation successes. Wildlife trafficking is a recognised form of organised crime and as such, investigations, prosecutions and convictions should be carried out as standard practice following seizure instances.

Conducting seizures without undertaking follow-up investigations into those responsible for trafficking does little to *prevent* poaching or trafficking of endangered wildlife. Prosecution and conviction information is necessary for decision-makers to evaluate the implementation and impact of relevant legislation and to identify gaps in responses. Seizure information alone cannot provide this level of insight.

EIA collates and analyses wildlife trafficking incidents related to Asian big cats, elephants, pangolins, rhino and timber in a publicly accessible Global Environmental Crime Tracker.¹ As of the end of October 2022, EIA's database has recorded over 14,000 incidents. While many of these incidents involved the arrest of one or more suspects, determining the outcome of any criminal justice response is more problematic, with most cases apparently having no prosecutorial outcome.² The implication is that for most incidents of wildlife trafficking, there is little investigative response – a conclusion that raises issues of data deficiency, and underscores the need for greater transparency and open access to criminal justice outcomes.

There are indications of corruption and crime associated with seizures that may in fact perpetuate an illicit and corrupt economy at the expense of endangered wildlife, highlighting again that seizures alone may not provide impactful responses to organised wildlife crime. Over the years, EIA investigators engaging covertly with wildlife traffickers have uncovered evidence of entire teams of corrupt customs officers only seizing goods from traffickers as a consequence of non-payment of bribes, a situation that prevails at the most persistently used routes. In other instances, seized goods have been sold back to traffickers. Seized ivory, with official markings, has been re-seized, indicating thefts or leakage from stockpiles – an issue of continuing concern to Parties at CoP19.³ These issues indicate that seizures do not always result in securing contraband, and without disruption efforts, may in fact continue to perpetuate illegal markets.

As seizures alone offer few opportunities to disrupt the criminal networks responsible for the unsustainable exploitation of endangered wildlife, CITES Parties should be encouraged to focus on intelligence gathering and post-seizure investigations to secure criminal justice responses and conservation outcomes. By doing so, Parties would align their responses to wildlife trafficking with the precautionary principle which encourages actions to avert potential harm.

THE IMPACT

Throughout the wildlife crime sector, seizures are often used as a primary indicator of effort and success in the enforcement against wildlife crime. For example, the Elephant Trade Information System (ETIS) makes use of a "law enforcement ratio" (LE Ratio) as a relative measure of a country's ability to make seizures, based on the number of seizures a country makes and/or is involved in.⁴ Though the LE Ratio is intended by ETIS as subsidiary data, it is explicitly captured as "a measure of a country's law enforcement effort".⁵ EIA believes the LE Ratio alone cannot provide this level of conclusive analysis, and other data sources must be used for a more complete analysis of effort.

In a questionnaire on ETIS data collection disseminated to Parties in Notification 2020/042,⁶ results indicated that "a seizure does not equal a success, it also depends on what is done with the information, how it is followed up and shared, how the legislation [is] and many other factors".⁷ Using seizures to measure law enforcement effort presents not only an incomplete picture but may also absolve Parties of the responsibility to conduct follow-up investigations if their effort is measured by seizure instances alone. EIA therefore recommends that the LE ratio, or a measure of law enforcement effort should draw on more suitable and comprehensive tools for this process, particularly the ICCWC Indicator Framework, which allows for a more rapid assessment of a national law enforcement response to wildlife crime across 50 indicators.

¹ The open-source data EIA draws on includes Google searches using species name/product name plus the search term "seizure". We exclude incidents reported as anecdotal without credible information. Additional sources include law enforcement agency reports and news releases, court verdicts, inter-governmental agency reports. Our records are subject to certain limitations and inherent biases, such as reporting rates, data accessibility and language barriers as well as a restricted geographic focus and species-specific focus. Thus, the quantitative data presented should be treated as an indication based on accessible information rather than of absolute value.

² Due to data limitations, this is likely an underestimate of seizure outcomes; however, it underscores the need for transparency and open access to criminal justice. For more information regarding inherent reporting biases that restricts what is available in open source/media, please see K. Paudel et al. (2022) 'Evaluating the reliability of media reports for gathering information about illegal wildlife trade seizures', available at: <https://peerj.com/articles/13156/>

³ CoP19 Doc. 66.2.1. Ivory stockpiles: implementation of resolution conf. 10.10 (rev. Cop18) on trade in elephant specimens. Available at: <https://cites.org/sites/default/files/documents/E-CoP19-66-02-01.pdf>

⁴ TRAFFIC. 2019. Understanding ETIS: An introduction and overview of the elephant trade information system analysis; CoP19 Doc. 66.6. Report on the Elephant Trade Information System (ETIS). Available at: <https://cites.org/sites/default/files/documents/COP/19/agenda/E-CoP19-66-06.pdf>

⁵ CoP19 Doc 66.6. Report on the Elephant Trade Information System (ETIS). Available at: <https://cites.org/sites/default/files/documents/COP/19/agenda/E-CoP19-66-06.pdf>

⁶ CITES.2020. Notification to Parties Notification No. 2020/042. Available at: <https://cites.org/sites/default/files/notif/E-Notif-2020-042.pdf>

⁷ CITES. 2020. Elephant Trade Information System (ETIS) Report. Available at: https://cites.org/sites/default/files/MIKE/ETIS/E-CITES%20Secretariat_TRAFFIC_ETIS%20report_Sept2020_final_MESSubgroup.pdf

Furthermore, in accordance with Resolution Conf. 11.17 (rev. CoP18) on National reports, Parties are requested to report annually on their levels of Annual Illegal Trade, covering all law enforcement actions in the preceding year related to illegal trade in CITES-listed species. However, EIA remains concerned that Parties are not mandated to report on their post-seizure actions (columns- "law under which the charges were brought"; "sanction" and "disposal of confiscated specimens"). It is critical to record post-seizure law enforcement activity to determine prosecution and conviction rates relating to wildlife crime – such information could be used to inform public awareness campaigns and serve as a deterrent. High, low or absent prosecution rates provide insight into law enforcement and judiciary capacity and prioritisation, which in turn may be indicative of structural issues relating to enforcement of CITES.

Furthermore, many interceptions of wildlife contraband are conducted through the work of Customs officers, usually based on intelligence and risk profiling. This may create a problem given that many Customs agencies lack extensive investigative powers, and Customs law can be limited in the scope of offences covered, their jurisdiction, and penalties upon conviction. Arguably, in many jurisdictions the enforcement response under Customs alone is not suitable for tackling serious, transnational organised crime.

When wildlife trafficking incidents are not investigated, opportunities to identify and prosecute the networks involved are reduced and offenders may perceive weaknesses in enforcement while the removal of commodities from the illicit trade chain drives more criminal activity as perpetrators seek to recoup losses.

THE SOLUTION

The urgency of addressing conservation and biodiversity loss demands more accurate means of assessing wildlife crime and the responses to it. There is a need for law enforcement responses to focus efforts on post-seizure investigations, prosecutions and convictions to disrupt wildlife crime networks.

There is an imperative to gather data on wildlife crime incidents or cases, document the enforcement and criminal justice response, and analyse that response to determine gaps and weaknesses. Cases must be tracked, and data gathered on actions such as administrative fines, prosecutions, acquittals, and convictions. By measuring these aspects, it is possible to determine whether challenges occur at the investigative stage, legislation, prosecutorial or judicial capacity etc.

To complete the picture and assist decision-making, reliance on seizure data in CITES processes such as ETIS, AITR, the World Wildlife Crime Report and ICCWC enforcement actions should be revised to incorporate tools such as the ICCWC Indicator Framework and Toolkit. To date, there is little evidence of the Indicator Framework being used as a comprehensive means of reporting on enforcement⁸, noting that it is an independent self-assessment tool, accessible to donors, NGOs, and enforcement agencies themselves. The Framework was updated in 2022.

Agencies involved in interceptions and the arrest of suspects must develop responses that include techniques such as controlled deliveries. Furthermore, these agencies should be empowered and resourced to conduct investigations including through the interrogation of digital devices, social media searches, execution of search warrants at businesses and residential properties, effective and ethical suspect interviews, and financial investigations.

Given the transnational nature of these crimes, where contraband and smuggling routes span several countries, Parties must prioritise international cooperation in their responses. Before publicising an incident and thereby risk alerting outstanding suspects or the disposal of evidence, communication should be made with relevant countries along the illicit supply chain, providing information about the commodity intercepted and any suspects, particularly foreign nationals who may feature in criminal or intelligence databases.

Agencies without the mandate or capacity to conduct such actions must hand over cases or conduct joint investigations with competent, multi-agency taskforces or other relevant agencies. China's Anti-

⁸ ICCWC, Implementation of the ICCWC Toolkit and Indicator Framework updated January 2022. Available at : https://cites.org/sites/default/files/EST/ICCWC_Toolkit_implementation_table-revJan22.pdf

Smuggling Bureau is an example of the evolution of a Customs body that has gone beyond conducting seizures to securing criminal justice responses against wildlife traffickers.

In conclusion, seizures as a post-incident measure to secure and preserve evidence of a crime are an important component of an investigation, but it is critical to recognise their limitation as an indicator of trade volume or of effective enforcement.

EIA RECOMMENDS PARTIES TO:

- Prioritise resources to ensure comprehensive enforcement and criminal justice responses to wildlife and forest crime, including comprehensive post-incident investigations into wildlife trafficking incidents
- Adopt and use the ICCWC Indicator Framework for Wildlife and Forest Crime across the CITES mechanism, as the primary tool to monitor performance over time and identify any changes in the effectiveness of law enforcement responses to wildlife crime⁹.

[END]

⁹ CoP19 Doc. 17.5. International Consortium on Combating Wildlife Crime. Available at: <https://cites.org/sites/default/files/documents/COP/19/agenda/E-CoP19-17-05.pdf>