

Strengthening legal frameworks for licit and illicit trade in wildlife and forest products

Lessons from the natural resource management, trade regulation
and criminal justice sectors





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Executive Summary

There have been longstanding efforts at the international, regional and national levels to develop and strengthen legal frameworks which regulate legal trade in wildlife and forest products, and which prevent or address any illegal trade in such products. Nevertheless, overexploitation of wildlife and forest resources through illegal, unsustainable and untraceable human activities continues to occur, often at an appalling rate. Just as people are part of the problem, however, so are they part of the solution. Accordingly, they are engaged in ongoing efforts to improve the legal instruments designed to help manage living natural resources, regulate the trade in these resources and prevent, detect and penalize any violations of relevant instruments.

A sizeable amount of domestic and international trade in wildlife and forest products, both commercial and non-commercial, takes place on a regular basis. Such trade meets the needs and desires of people all over the world. Although much of the trade is legal in nature, sometimes there is little awareness or appreciation of this fact. Instead, attention from special interest groups, the media and others has often focused on instances of and concerns about illegal trade. This analysis clarifies the existence and regulation of both legal and illegal trade. Although it is primarily concerned with international trade, there are places where domestic trade is also mentioned – particularly where it may have implications for international trade.

The terms used to describe ‘licit or illicit trade in wildlife and forest products’ are often varied and inconsistent. These inconsistencies can lead to misunderstanding and less effective action. In an effort to achieve a uniform understanding and application of those terms, at both the national and international levels, this analysis proposes working definitions of some of the key terms used in relation to such trade.

Institutions and legal instruments have an important role to play in regulating legal trade and addressing illegal trade in wildlife and forest products. In this analysis, these have been divided into the three thematic sectors of natural resource management, trade regulation and crime prevention and criminal justice. These sectors can overlap, and even work together. They can also remain in their respective ‘silos’, however, where they may not be operating to their best advantage in connection with the trade in wildlife and forest products. One of the aims of this analysis has been to consider how each of these thematic sectors addresses licit and illicit trade in wildlife and forest products and how they have complemented, or might better complement, each other. In this connection, key institutions and instruments in each sector have been identified and described.

Another aim of this analysis has been to identify useful components of existing instruments and possible issues with the content of those instruments, which could benefit from future attention by the executive, legislative and judicial branches of national governments. Such issues might concern unregulated, insufficiently regulated or even over-regulated activities. Although the implementation and enforcement of such instruments is also important, this analysis focuses on the instruments themselves, leaving the analysis of their implementation and enforcement to future studies.

It is hoped that this analysis can serve as a continuing reference tool. With that in mind, a number of potentially useful resources have been identified, with the relevant pages on the World Wide Web being provided for easy access to current information.



Introduction

Purpose of analysis

The regulation of licit trade, and the prevention, detection and penalization of illicit trade, in wildlife and forest products¹ (at the global, regional and national levels) has received increasing attention over the years. The degree of such attention continues to be high because challenges still remain for the effective functioning of institutions and legal frameworks in this area. Taking stock of their current status at the global level, listing key players and resources at the regional level, and identifying legislative components and possible gaps or weaknesses at the national level, could assist ongoing and future efforts aimed at improving the effectiveness of their operation.

This analysis was initiated by UN Environment but has been undertaken in collaboration with the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the United Nations Office on Drugs and Crime (UNODC) and the Food and Agriculture Organization of the United Nations (FAO). Other UN bodies have been consulted on various parts of this analysis. A summary of initial findings from a zero draft of the analysis was shared with participants in the Africa-Asia Pacific Symposium on Strengthening Legal Frameworks to Combat Wildlife Crime (Bangkok, July 2017; the Africa-Asia Pacific Symposium), organized by the United Nations Inter-Agency Task Force on Illicit Trade in Wildlife and Forest Products (UN Inter-Agency Task Force).² Information gathered during the Symposium has been incorporated, where appropriate, into this analysis.

The analysis is intended, in part, to build on the UN Environment report entitled “Analysis of the environmental impacts of illegal trade in wildlife” (UNEA-2 Inf. Doc. 28 (2016)) produced in response to Resolution 1/3 on

Illegal trade in wildlife adopted at the first session of the United Nations Environment Assembly (UNEA). It also responds to UNEA-2 Resolution 2/14 on Illegal trade in wildlife and wildlife products and implements relevant parts of the UN Environment project on “Addressing the Illicit Trade in Wildlife and Forest Products”. The analysis may assist States with their implementation of global and regional legally binding instruments like CITES, the United Nations Convention against Transnational Organized Crime (UNTOC) or the Lusaka Agreement on Co-operative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora, resolutions of the United Nations General Assembly and policy decisions taken by key institutional partners and others working in the area.

One major component of the analysis comprises the identification and review of relevant institutions and legal frameworks (i.e. both legally binding and non-legally binding instruments) at the global level, and an initial identification of such institutions and frameworks at the regional level. Obligations or recommendations within those legal frameworks, as well as tools for their implementation, were then used to identify components of national legal frameworks (i.e. laws and regulations) and possible gaps or weaknesses that should be addressed. It is anticipated that the information, analysis, checklists, key resources and recommendations contained in the analysis could be used by interested countries to assess the content and experience with implementation of their legal frameworks and to develop or further strengthen those frameworks as needed.

Although a number of countries participating in the Africa-Asia Pacific Symposium (mentioned above) reported having strong legal frameworks and penalties in place, some reported inadequacies that are now being addressed or are scheduled to be addressed and the vast majority of all participants indicated that they would be revising their legislation in the near future – if necessary financial and/or technical assistance were made available.

¹ Trade in wildlife products is sometimes viewed as part of the trade in non-timber forest products.

² The report of the Symposium can be found at <https://www.unodc.org/documents/southeastasiaandpacific/Publications/wildlife/Africa-AsiaPac-Wildlife-law-symposium-REPORT-FINAL-SHARE.PDF>.



This analysis also serves as a potential tool for aiding identified institutions which, either individually or through cooperative mechanisms (e.g. the International Consortium on Combating Wildlife Crime (ICCWC), the UN Inter-Agency Task Force or the Global Wildlife Programme (GWP)), are working on or considering ways to better regulate licit trade and better address illicit trade in wildlife and forest products. More information on ICCWC, the UN Inter-Agency Task Force and GWP is provided in Annex 1 below. On a broader level, the analysis may also help efforts to improve the sound management of wildlife and forest resources, to reduce overexploitation of biodiversity through licit or illicit trade, to prevent and address related corruption, to enhance the participation of and benefits for indigenous people and local communities and to address any gender inequality that may exist in this area of work.

Scope, timeframe and structure

The scope of this analysis is licit and illicit trade in terrestrial wildlife and forest products, as well as issues related to indigenous people and local communities and gender equality. The analysis does not cover aquatic products or related institutions and legal frameworks. However, many of the concepts addressed in the analysis are also relevant to aquatic resources and a key concern regarding those resources is illegal, unregulated and unreported fishing as well as related trade. The timeframe of the analysis takes into account longstanding institutions and legal frameworks but places particular focus on the period from Rio+20 (2012) until 2017. The analysis begins with this introductory section, continuing with a summary of existing, relevant global institutions and legally binding and non-legally binding legal instruments (which are outlined in more detail in two annexes) as well as a listing of key regional institutions and instruments and moves on to a description of identified components of national legal frameworks as well as possible gaps and weaknesses in those frameworks that should be addressed.

Key terms

It is useful to discuss early in the analysis what is meant by the phrase 'licit or illicit trade in wildlife and forest products'. The terms used to describe such trade are often varied and inconsistent, which can lead to misunderstanding and less effective action. More care therefore needs to be taken in achieving a uniform understanding and application of those terms, at both the national and international levels. One of the outcomes of the analysis has been the identified need for working definitions of the key terms mentioned below.

Illicit or illegal

There is no current globally agreed definition of 'illicit trade in wildlife and forest products' or related terms like wildlife or forest crime, illegal logging and environmental crime. Nevertheless, United Nations General Assembly (UNGA) Resolution 68/193 (2013) speaks of 'illicit networks that drive and enable trafficking in wildlife, timber and timber products harvested in contravention of national laws' as well as 'international trafficking in wildlife, forest products, including timber, and other forest biological resources harvested in contravention of national laws and relevant international instruments'.³ A more recent Resolution on tackling illicit trade in wildlife, adopted at the 71st session of the General Assembly in 2017,⁴ also refers to such networks.

The Wildlife and Forest Crime Analytic Toolkit (produced by UNODC in collaboration with its four other institutional partners in the ICCWC) says that '[w]ildlife and forest crime' refers to the taking, trading (supplying, selling or trafficking), importing, exporting, processing, obtaining, and consumption of wild fauna and flora, including timber and other forest products, in contravention of national or international law. In this context, 'national law' encompasses, *inter alia*, wildlife and forest laws, species protection laws and criminal laws. 'International law' encompasses, *inter alia*, CITES, UNTOC and the United

3 See document A/RES/68/193 at http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/68/193.

4 General Assembly Resolution 71/326, document A/RES/71/326, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/71/326.



Nations Convention against Corruption (UNCAC).⁵ Under the Lusaka Agreement on Co-operative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora (1994, entry into force 1996), 'illegal trade' means any cross-border transaction, or any action in furtherance thereof, in violation of national laws of any party to the Agreement for the protection of wild fauna and flora.⁶

This analysis provides a working understanding of illicit trade in wildlife and forest products. In parallel to the conduct of this analysis, UN Environment has been facilitating an experts' process on crimes that have serious impacts on the environment. This process has resulted, among others, in a publication by UN Environment entitled *The State of Knowledge of Crimes that have Serious Impacts on the Environment*.⁷

Per several English language (and legal) dictionaries, 'illicit' trade (or related activities) encompasses but is broader than 'illegal' trade. Illegal trade relates to (often criminal) activities which are not allowed by or are contrary to or in violation of established law or rules. Illicit activities comprise as well those which are not allowed by or are contrary to custom or public morals/ethics. Both illicit and illegal trade include activities which might be legal under other circumstances (e.g. with authorization under a valid permit or certificate). Illicit and illegal trade are often linked to poaching (i.e. the illegal killing and taking of a protected wild animal), the illegal harvest of protected wild plants or the illegal logging of protected timber. For example, wild tigers

Examples of illicit and illegal trade include, *inter alia*, that which occurs without the written authorization required under law (e.g. smuggling) or that which occurs with written authorization which was fraudulently obtained or falsified, or which is otherwise invalid.

Illicit trade and illicit possession, as well as related acts, may be treated as administrative, civil or criminal offences, with a corresponding penalty, in national legislation. This legislative treatment renders such acts illegal and not just illicit. If the acts are 'criminalized' in national legislation, with a criminal offence and penalty (e.g. imprisonment and/or a criminal fine), then they also constitute wildlife or forest or environmental or general crime. In this connection, it may be helpful to clarify that all crimes are offences in the sense that they involve a violation of law but not all offences are crimes because they may be punishable only by administrative or civil penalties. The UN Environment report on the state of knowledge of crimes that have serious impacts on the environment mentioned above speaks about the three types of penalties. Jurisdictions which provide for all three sorts of offences and penalties may allow them to operate simultaneously or require them to proceed in consecutive fashion (e.g. a criminal case may be pursued first, followed by a related civil case).

As stated in the ICCWC section of the CITES website, 'wildlife crime' as far as ICCWC is concerned refers to acts committed contrary to national laws and regulations intended to protect natural resources and to administer

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