



WORKSHOP NOTES INCREASING TRANSPARENCY AND EFFECTIVENESS IN WILDLIFE CRIME PROSECUTIONS

April 12-13, 2018; WWF Island House, Hong Kong

This document summarizes a workshop which brought together specialists from the Asia and Africa regions to discuss strategies and approaches for improve transparency and effective outcomes in wildlife crime cases.

That such a workshop would be useful is supported by a review of the institutional and political response in most Asian and African states to an intensifying wildlife crime crisis in those regions. When doing so, it becomes quickly apparent that problems in *appropriately applying and consistently realizing* the penalties called for by existing legislation usually outweigh shortcomings in the content of laws themselves. In some jurisdictions successful or meaningfully punitive prosecutions for cases of wildlife crime fall below 10%. This makes participation in such criminal activities a very low-risk bet, and does little to dissuade those who would seek to profit from it.

It is hoped that the results of the pre-workshop questionnaire and the content of the 16 presentations contained in this document will help shed more light on the most common impediments to successful convictions of wildlife criminals, as well as the unique challenges faced in some of the jurisdictions in which these experts operate. Encouragingly, early evidence from programs initiated in the Africa region within the last decade (Kenya, Malawi, Tanzania, and Cameroon) already appear to be affecting significant improvement in conviction rates and sentences for serious wildlife offences. These programs generally share a number of characteristics. They usually begin with a review of recent wildlife crime case decisions in a given jurisdiction or country, and then seek to use the findings to guide training and policy responses. In many cases this is then supplemented with active court room monitoring. That such an approach should be replicated in other countries – particularly those in the Asia region – was one of the key conclusions of the workshop.

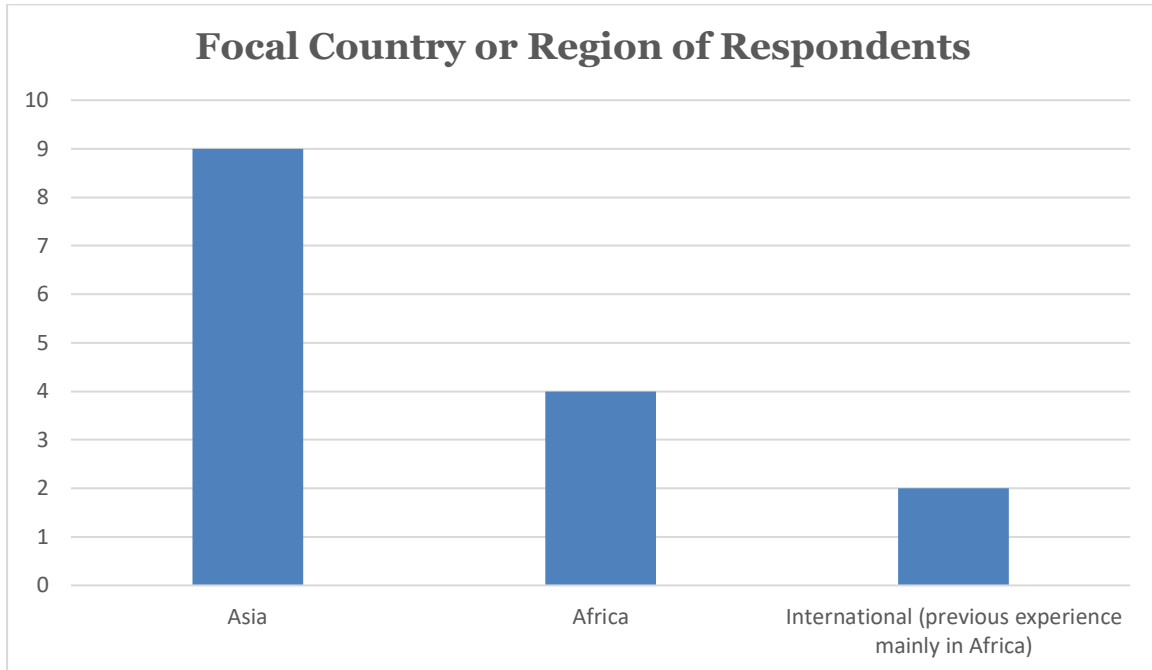


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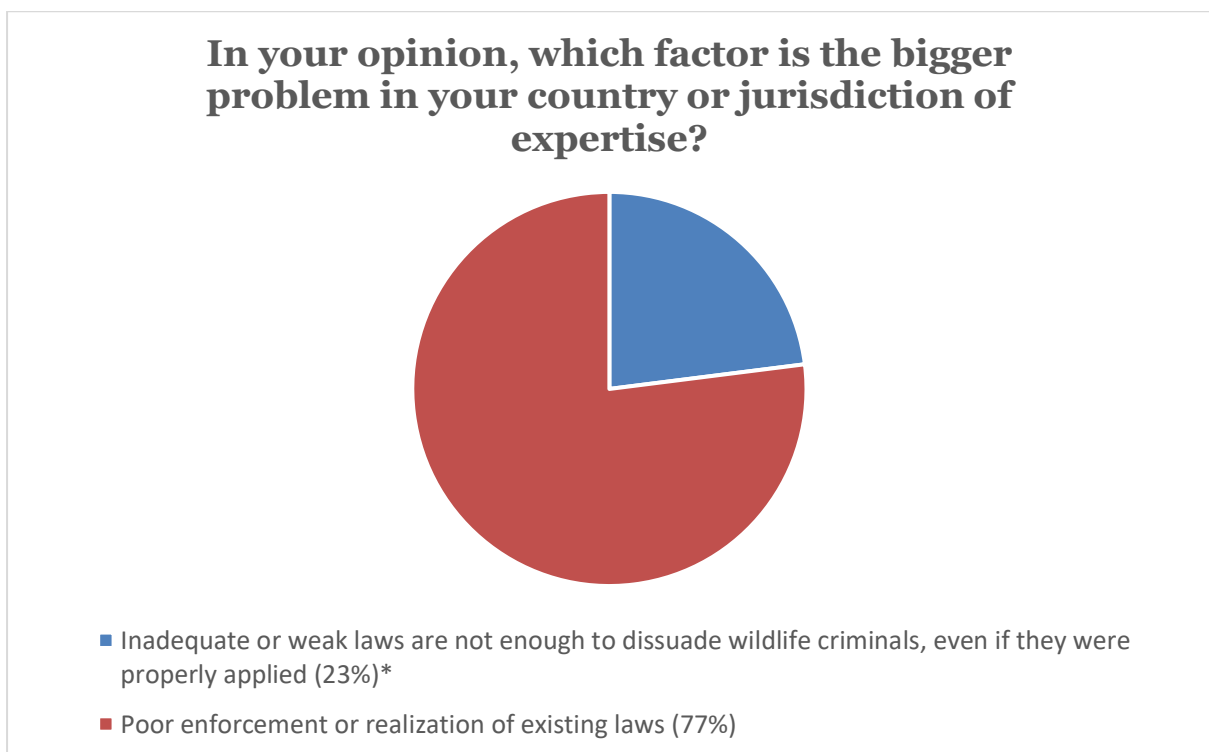
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Summary of Pre-Workshop Questionnaire Results

15 participants completed and returned survey questionnaires designed to better identify the most critical factors limiting effective prosecutions of wildlife criminals in their jurisdictions. The results from these surveys are listed here.

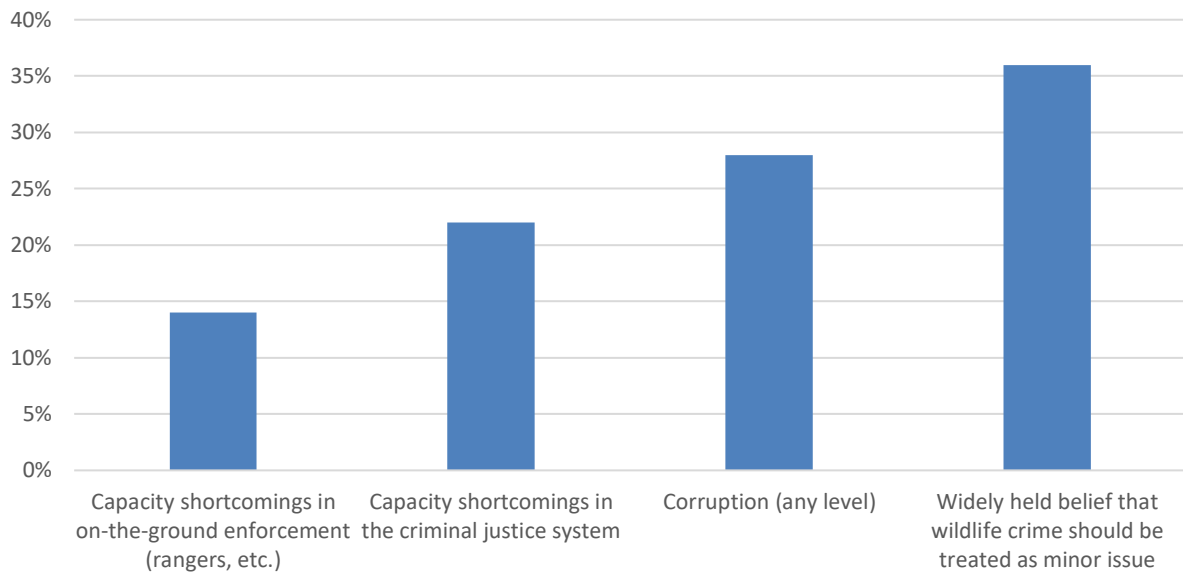


Preliminary questions:



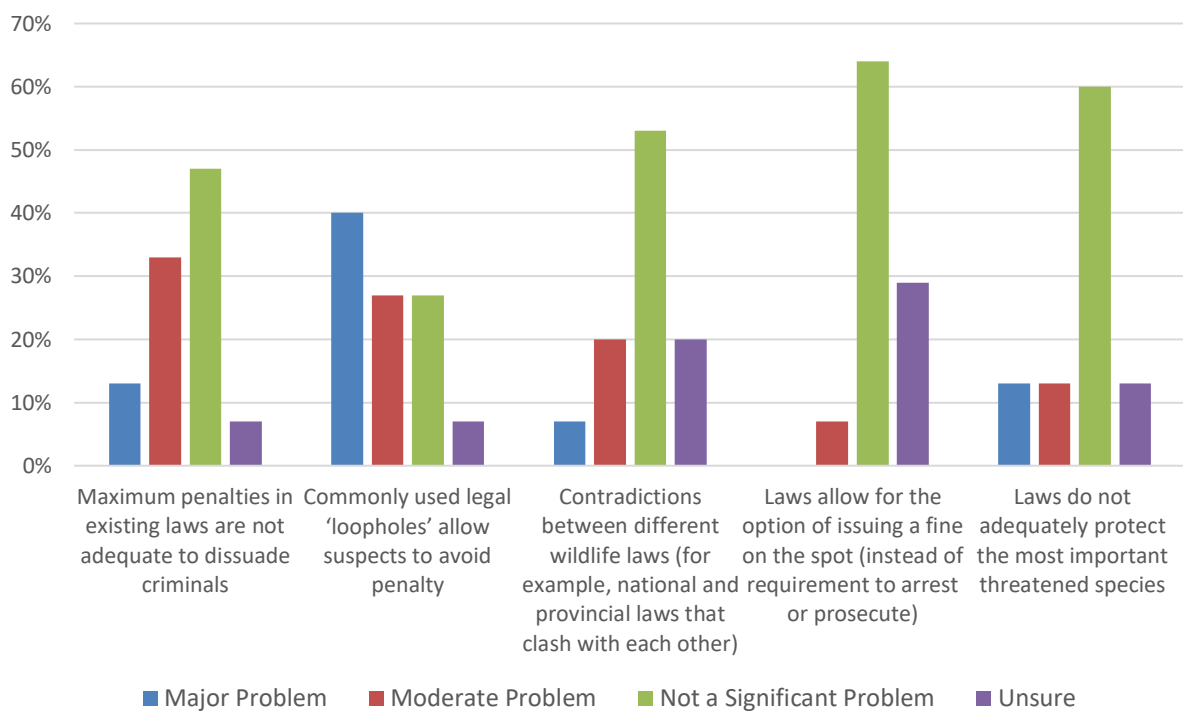
** If Hong Kong responses are removed, the split becomes even more pronounced; 88% to 12%. Hong Kong faces unique challenges, situated primarily a transit hub (as opposed to source country).*

In your opinion, which of the four factors listed is the biggest problem limiting effective wildlife crime prosecutions?

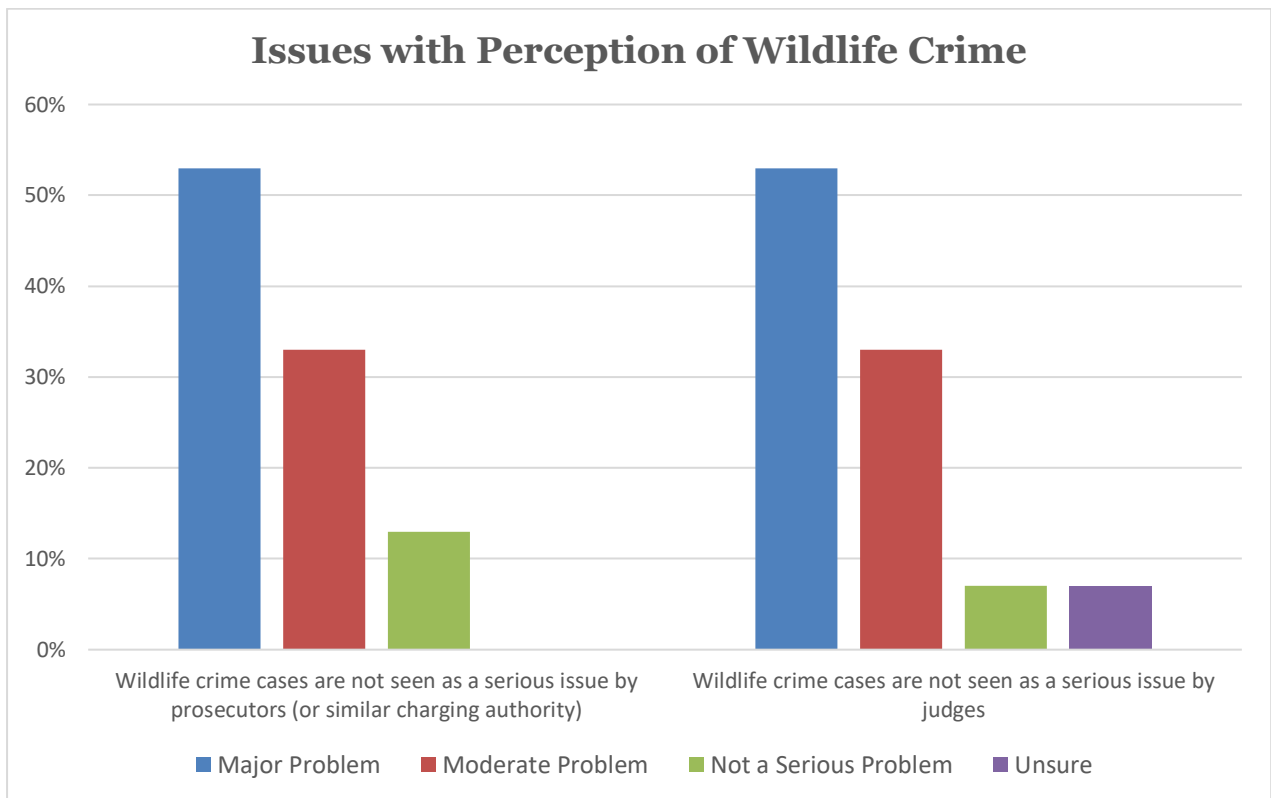
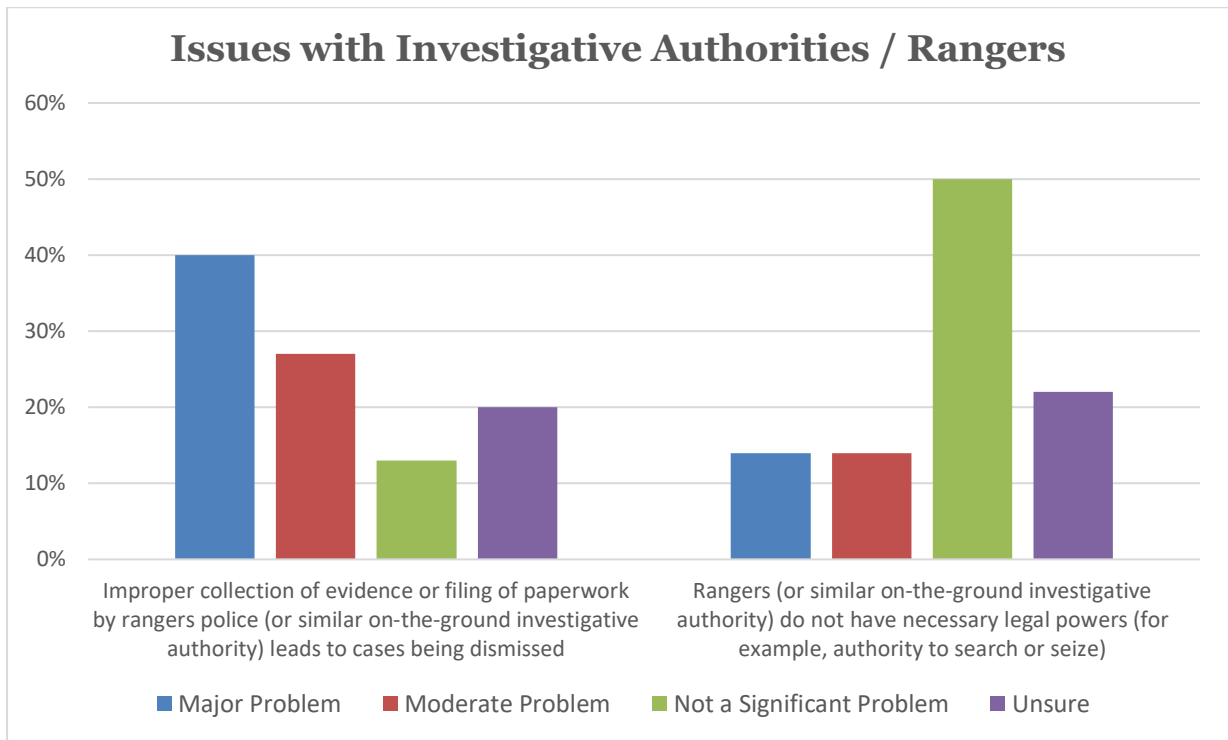


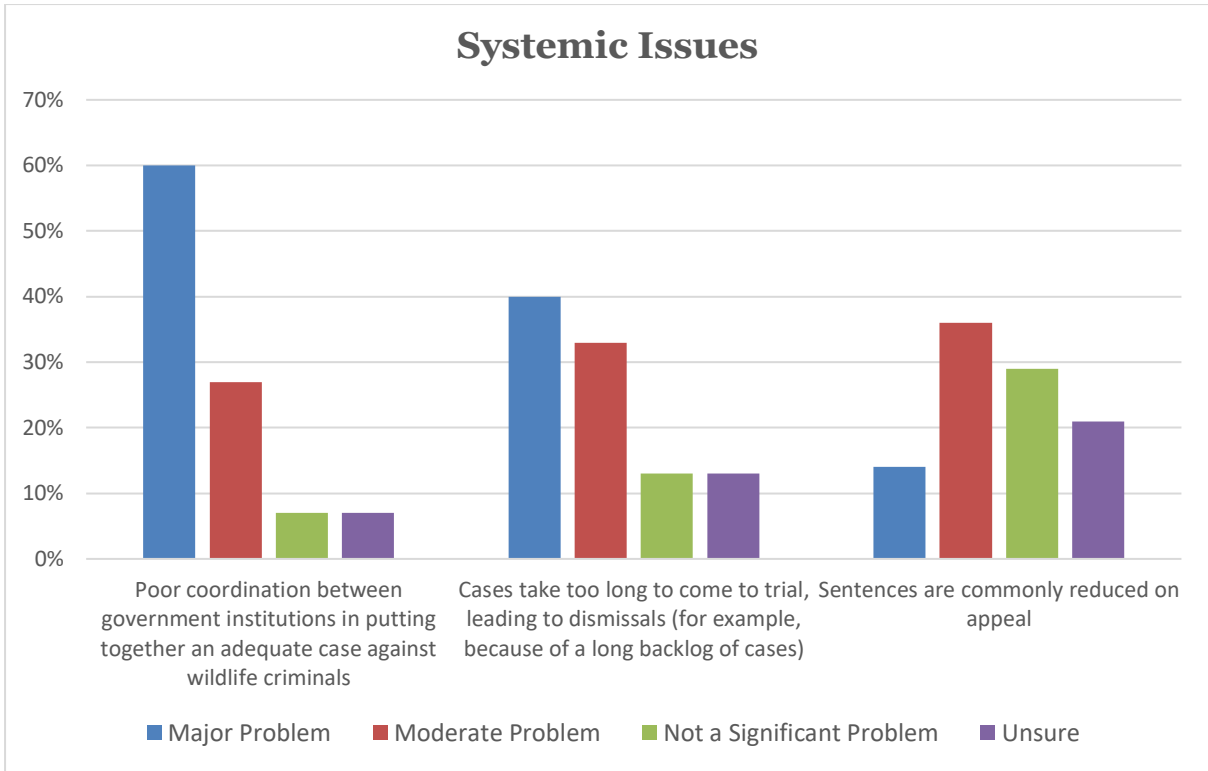
Issues with laws as written:

Issues with Content of Legislation

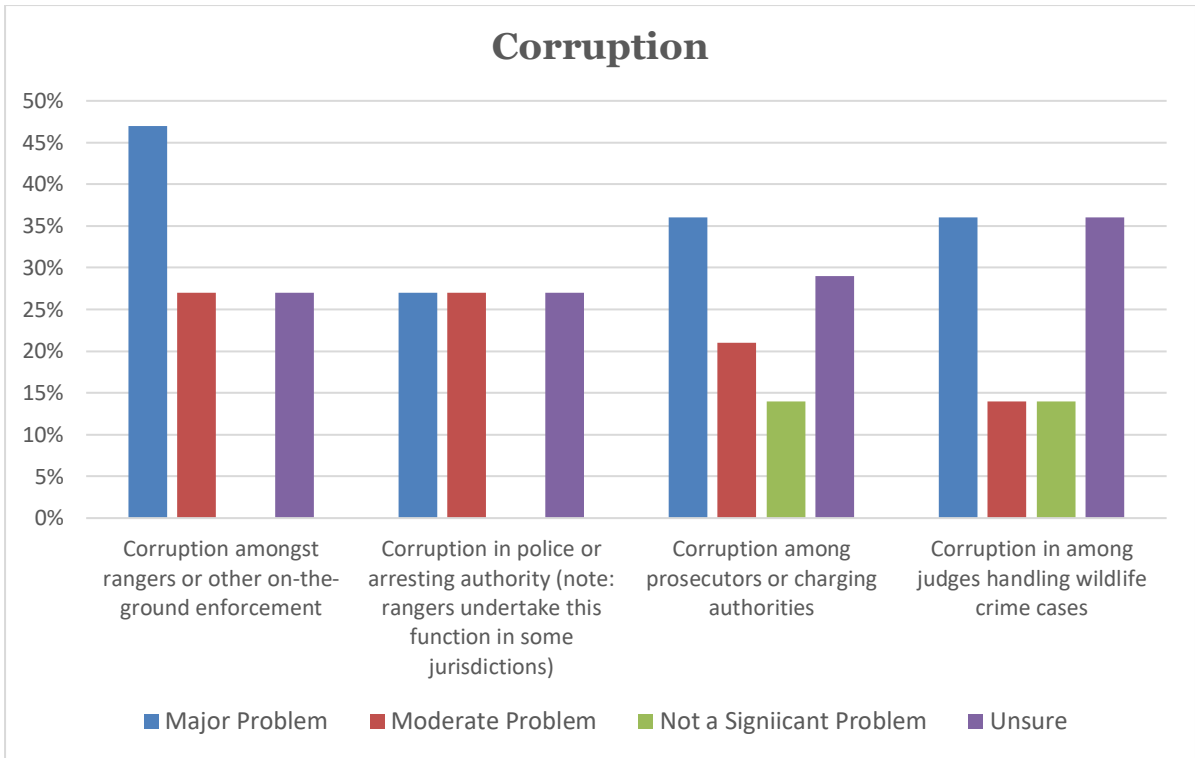


Issues with critical institutions/actors:

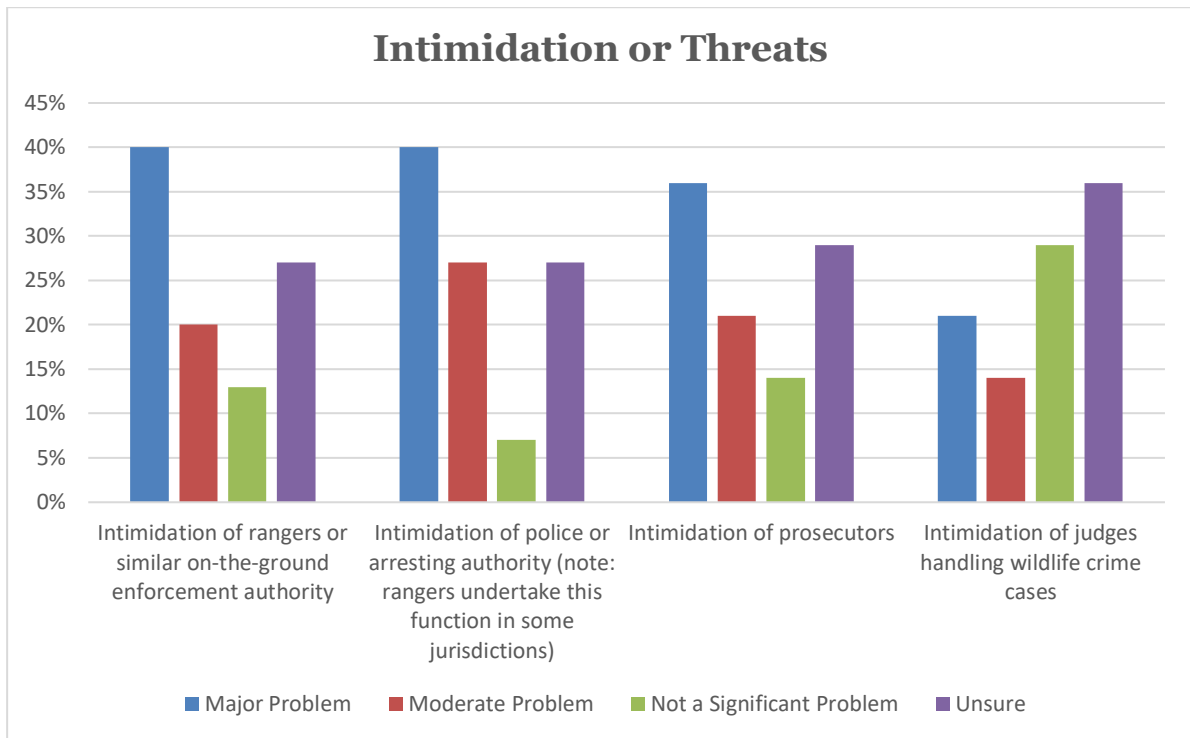




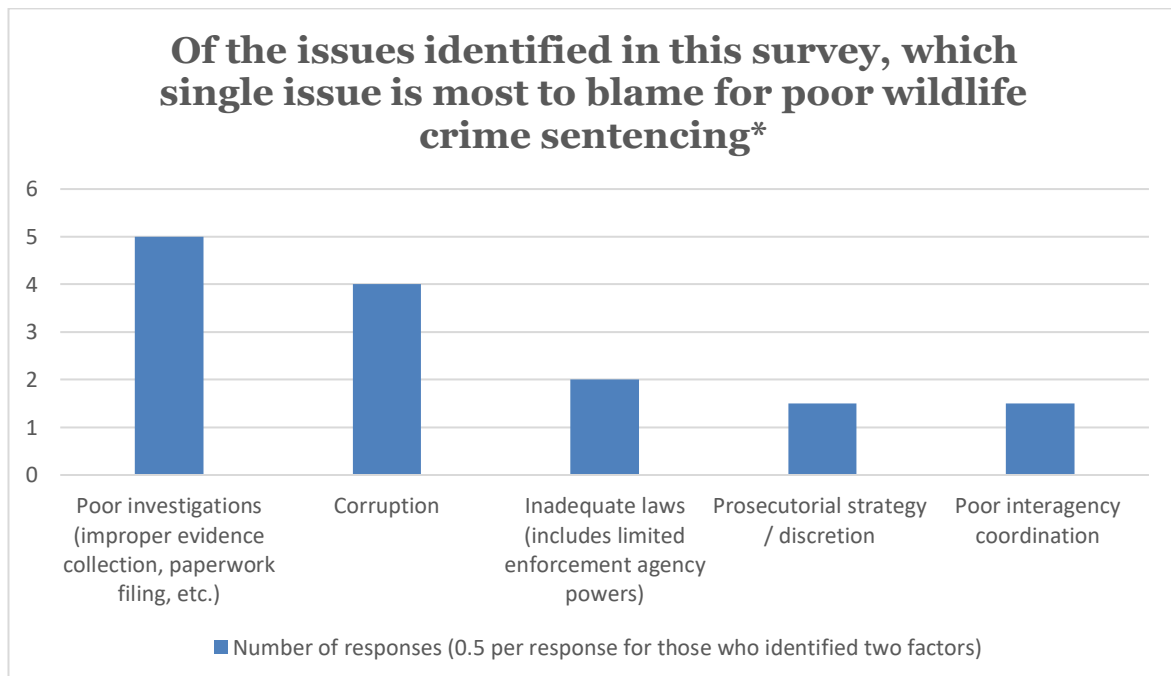
Issues of corruption:



Issues with threats or intimidation:

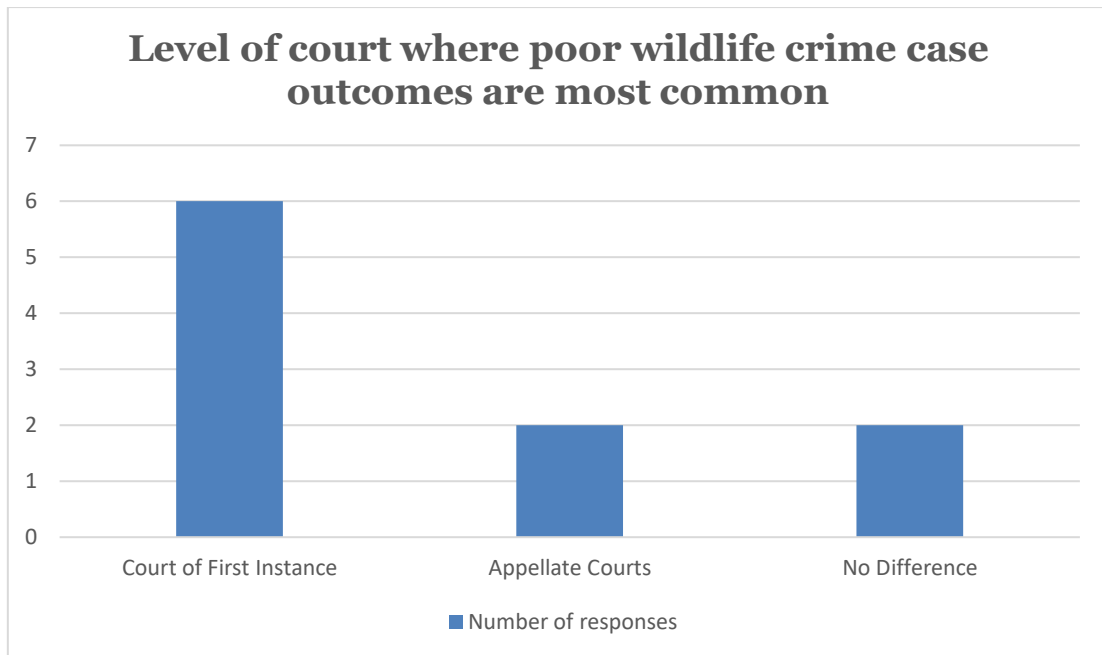


Single biggest limitation of effective wildlife crime sentencing outcomes:

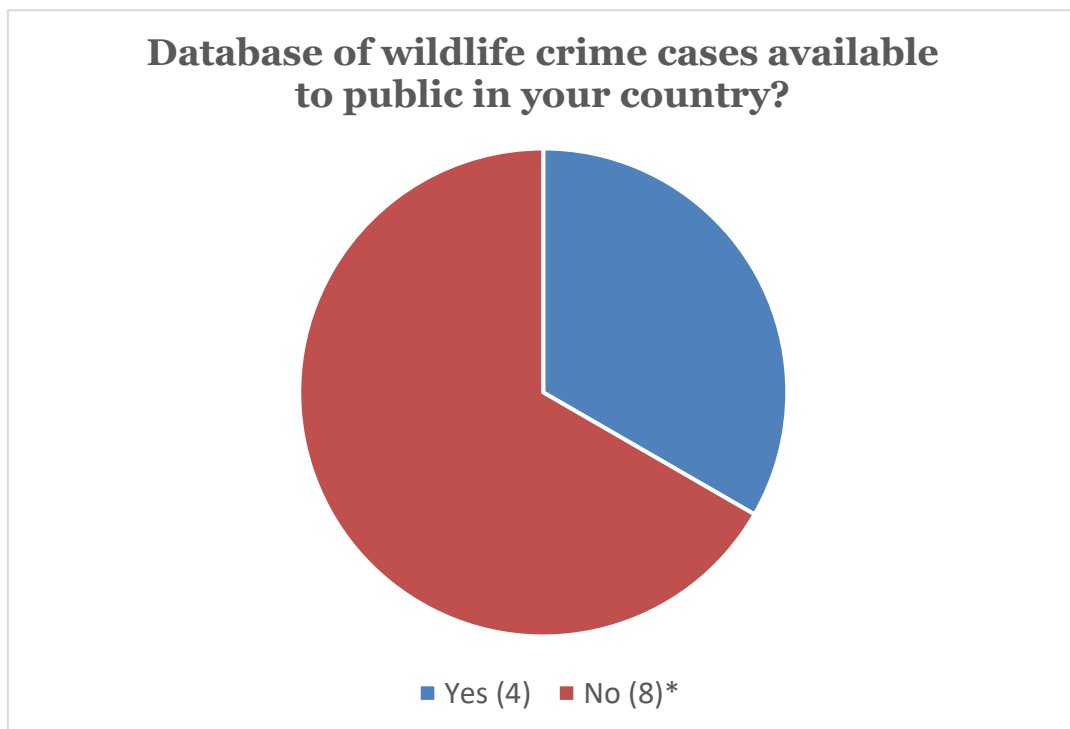


* For this question, answers were written (i.e. not limited to the five categories recorded).

In your country, which level of the court system are wildlife cases most frequently lost or dismissed?

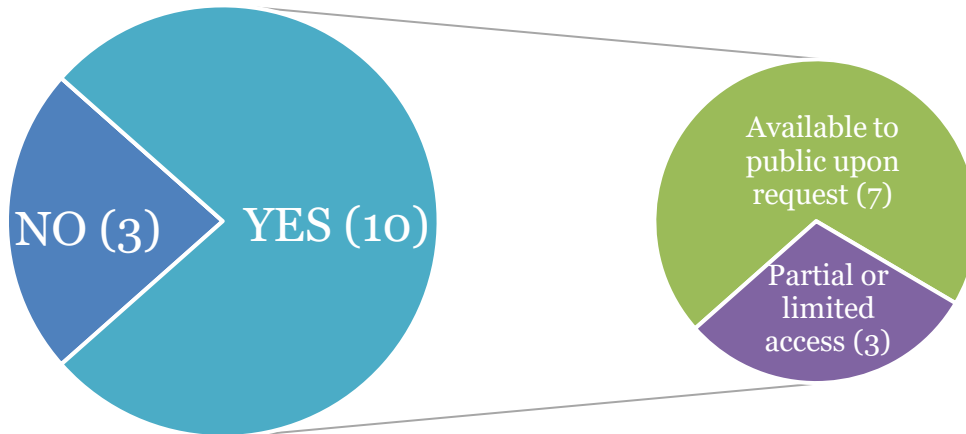


Access to Information and Transparency in Judicial Decisions on Wildlife Crime:



** All 8 respondents who answered 'No' to this question also indicated that the introduction of such a database would produce a positive impact in their country.*

**In your country are written judgements
(with reasons) always produced in
wildlife crime cases?**



SUMMARY OF SESSIONS

DAY 1

Session 1 – Wildlife Crime: A View from the Courtroom

Mr. Kartik Shukul, Independent Legal Counsel, India

“Wild Life (Protection) Act, 1972 and Criminal Law Jurisprudence in India: Recent Trends and Developments in the Fields of Wild Life Laws.”

Mr. Shukul’s session began with an overview of what he believed to be some of the most powerful provisions in the Indian *Wild Life Protection Act, 1972*. This included Sections 50(8) and 50(9) – in particular the power to receive and record evidence – and Section 51.A pertaining to bail conditions. Despite such stringent provisions it was noted that the conviction rate for wildlife crimes stood at *less than 1%* in many Indian jurisdictions. Four factors were identified as particularly problematic in this regard; i) untrained staff; ii) a lack of forensic expertise; iii) lack of knowledge of the *Wild Life Protection Act*; and, iv) the granting of bail (particularly to those with no permanent address) which enables the accused to potentially tamper with witnesses/evidence or engage in further wildlife crimes. That the maximum penalty under the *Act* is only seven years, unfortunately also encourages judges to frequently grant bail in wildlife crime cases - which are viewed as trivial offenses due to the quantum of punishment.

In 2014, a case that addressed this bail issue vis-a-vis the *Wild Life Protection Act, 1972* was considered for the first time by the High Court in the case of *State of Maharashtra v. Suraj Pal*, who was a high-volume trader in animal products, particularly tiger skins. In a landmark judgement the High Court reversed the decision of the sessions court, noting that the quantum of punishment should not be the sole determinate of the seriousness of the crime, and in this case the role that the tiger plays in the health of ecosystems makes it a matter of great public interest and concern. As such, in this case there was a serious crime where the granting of bail could be rightly denied.

Despite this positive development, and a reduction of organized wildlife crime in recent years (Maharashtra state, with which Mr. Shukul was very familiar was noted in this regard), some improvements were listed as needed. They included; i) the proper integration of CITES into the *Wild Life Protection Act, 1972*, ii) better inter-departmental coordination (national and international), iii) training of on-the-ground staff in procedural laws, and iv) capacity building efforts directed at higher ranking officers.

Mr. Saurabh Sharma, Legal Initiative for Forest and Environment (LIFE), India

“A View from the Courtroom”

Mr. Sharma’s session began with an overview of the Indian judicial system, including a description of the district and subordinate courts and their respective jurisdictions, which are largely defined by charge severity. Some issues with the function of these courts were then enumerated. These included, i) too few judges (exacerbated by too many judicial vacancies) with roughly only 10-11 judges per million citizens – where the Supreme Court of India recommends five times this number. This problem was described as interwoven with other major issues limiting wildlife prosecutorial successes in wildlife crime cases. These include, ii) long delays in the hearing of cases, and iii) crowded dockets, with many judges hearing up to 40 cases per day. With many of those cases falling under more conventional areas of criminal law, iv) wildlife crime cases are also generally deemed to be of lower priority. Furthermore, v) many courts are not fully aware of relevant legislation and thus end up giving lighter sentences than the minimum prescribed by law. Judges in India also often vi) deliver lighter sentences to those who admit their wrongdoing, or even out of sympathy due to the often ragged appearance of defendants. Finally, issues of vii) remand, and viii) lack of clear connection between *quantity* of wildlife product seizure and sentencing, produce a system that to a large degree favours the accused. The introduction of such a measure (as is found in drug sentencing), as well as specialized environmental crime courts, or fast-track courts, were identified as possible solutions to many of the above-listed issues.

It was noted as well that prosecutors are often linked to similar challenges, such as high caseloads, low concern with wildlife crime, and limited understanding of relevant laws. Wildlife criminals often counter with high-priced defence counsel. The granting of bail is another huge problem, and in many cases the accused will either continue in wildlife crime or flee to foreign jurisdictions – often to locales where extradition treaties are not in effect. That many wildlife criminals use multiple names will often make them harder to track down.

Other common problems were noted, including, i) the tendency for cases to begin and end with seizures (which is to say that no forward or backwards linkages, or connection to organized crime is investigated), ii) the previous criminal history of the accused is generally not considered during charging (making bail more likely), and iii) the local name for the species seized is often used, preventing proper identification with the exact schedule consigned to that given wildlife product under law.

Two innovations that could improve wildlife crime prosecutions in India were then addressed. The first posited the lodging of financial crimes charges against the accused whenever possible (*Money Laundering Act*, etc.), while the second would involve the establishment of a dossier/database of wildlife crime offenders and incorporate biometric information.

The roles and responsibilities of Forest Officers was then described in some detail. On this, it was noted that wildlife crime prevention was often not listed as one of the primary duties for such staff in various Forest Manuals used in India. The *Report of the Comptroller and Auditor General, 2014 Kaziranga National Park World Heritage Site (2014)* was then discussed for its recognition of inadequacies in funding, planning, staffing and training that would be necessary to most effectively combat wildlife criminals. It was then shared that similar concerns were echoed in the *National Forest Commissioner’s Report (2006)*.

In conclusion Mr. Sharma suggested that the single biggest brake on successful responses to wildlife crime were capacity shortcomings in forest staff, which critically also includes lack of staff numbers (a high percentage of sanctioned posts remain unstaffed in many jurisdictions). It was argued that such staff need to be given the resources to properly identify wildlife products, and those teams investigating such cases should not be asked to multitask between a number of unrelated responsibilities. The need to have curricula updated to reflect current realities was also flagged as a current gap to be addressed.

Mr. Zenzi Suhadi, Wahana Lingkungan Hidup Indonesia (WALHI)
[Friends of the Earth Network]
“The Predator of the Ecosystem”

The third session of the day kicked off with an overview of the alarming deforestation trends in Indonesia, where Mr. Suhadi described annual clearance rates as having steadily increased from 1.0 to 5.6 million hectares/year between 1980 and 2014. On current trajectories, projections for 2014-2025 would see up to 80.5 million hectares lost during the period; 26.3 million to palm oil plantations, 26.2 to logging, 12.5 to pulp and paper, and 3.2 to mining. It was noted that the vast majority of identified environmental crimes – for both the palm oil and mining sectors – have occurred in Kalimantan region (Indonesian Borneo). After outlining some of the broader numbers, Mr. Suhadi shared an example – that the number of plantations monitored by WALHI that are involved in haze/fire cases in Central Kalimantan exceeded that of the rest of the country combined. It was described that in the 26 cases against companies most recently investigated by the Ministry of Environment and Forestry (pertaining to environmental crimes), 10 led to a lawsuit, 3 to suspended licenses, and only one to the revocation of a license.

Mr. Suhadi then ran through a number of recent cases in which parties before the court were able to obtain standing to represent certain natural systems, or even specific wildlife – in Indonesia this includes cases brought for the protection of peatlands (2012), seas (2014), as well as a current case being prepared with the aim of representing the tiger. The latter effort would see a case brought against both corporate actors and the government. The session closed with a brief discussion on WALHI efforts to boost case collaboration with the Ministry of Environment and Forestry, harmonize and improve investigative methods and evidentiary techniques for environmental and wildlife crime cases, and also enhance an environmental lawyers’ network in that country.

Session 2 – Databases: Assessing Impact

Ms. Linah Clifford, TRAFFIC in East Africa (Tanzania)
“Wildlife Crime and Court Case Monitoring in Tanzania”

Ms. Clifford began her presentation by noting that TRAFFIC’s intensive work with the judiciary and prosecutors in the East Africa region began in mid-2015 with a small project collecting wildlife crime data in Tanzania. Following from this TRAFFIC began wildlife crime court case monitoring in Dar es Salaam, and collaborated with the IUCN Environmental Law Centre (IUCN-ELC) on the GIZ-funded project *‘Strengthening Legal Mechanisms to Combat*

Illicit Wildlife Trade in East Africa. Components of her team's work include; i) prosecutorial assistance trainings; ii) the development of an online course on wildlife crime and law in Tanzania for legal professionals (in development at time of the Workshop); iii) a stakeholder mapping (of the judiciary/prosecutorial environment) for Tanzania, Uganda and Kenya, and iv) in 2017 the establishment of a wildlife crime incident data collection and wildlife crime court monitoring project in Tanzania in collaboration with the Southern Tanzania Elephant Program (STEP) and other legal consultants. Data from that effort is uploaded into the TRAFFIC internal database managed in Cambridge, UK, where it is analyzed and distributed to trusted partners who have information sharing agreements with TRAFFIC

TRAFFIC in East Africa's wildlife crime and court case monitoring project - which is supported by USAID-funded '*Promoting Tanzania's Environment, Conservation and Tourism (PROJECT)*' project - was then described by Ms. Clifford in greater detail. It was noted that between May 2017 until the date of the workshop (April 2018) 248 incidents involving wildlife (terrestrial animals and marine products) in Tanzania, Kenya and Uganda were entered. Employing a standardized methodology, TRAFFIC, STEP, and PROJECT all contribute to court/case monitoring activities. It was also explained that the recent high profile "Ivory Queen" and "Zurich" cases were monitored in Dar es Salaam under this work.

It was then noted that certain information from these legal proceedings is also included in the TRAFFIC internal database previously mentioned. There, linkages can more clearly be drawn between various data points entered - incidents, locations, individuals, species, etc. - which allows for better detection of patterns and relationships as it pertains to wildlife crime and criminal networks. It was further shared that the majority of incidents entered are detected through intelligence – that is, provided by another person or organization. For instance, 71 of the reported 112 reported incidents in June/July 2017 were detected through such intelligence. The vast majority of these incidents entered (81%) were linked to a single location – the greatest number of locations a given incident was linked to was eight.

Ms. Clifford then described some recent related activities. For example, in December 2017 TRAFFIC undertook a visit to six districts in the Ruvuma region of Tanzania, where they collected more than 100 cases for entry into the TRAFFIC database, while also conducting outreach with relevant authorities and institutions.

A number of challenges in carrying out work of this nature was noted near the end of the presentation. These included; i) important information being often unavailable in registries (age, occupation, charge, judgement copy, etc.); ii) that current courtroom monitoring only covers a few districts in Tanzania; iii) slow judicial process when it comes to determining which cases may be deemed to include economic crimes; iv) inadequate investigation or evidence that does not match with charges; v) difficulty in getting independent witnesses to trial, and the fact that such witnesses are often a legal requirement; vi) poor coordination between wildlife officers, police and state attorneys, and finally; vii) an absence of centres of excellence to train prosecutors before and after admission as state attorneys (e.g. Tanzania Institute of Judicial Administrations).

In closing, Ms. Clifford forwarded a number of recommendations, including; i) the expansion of court monitoring in Tanzania (especially in south and central regions); ii) improvements of case information and data storage facilities to increase availability of judgements; iii) amendment of laws on jurisdiction to determine wildlife cases; iv) strengthening the flow of information from TRAFFIC and its partners to law enforcement authorities, and; v) the

establishment of a Centre of Excellence for prosecutors in the fight against wildlife crime, corruption and other related crimes in Africa (as of early 2019 TRAFFIC East Africa had drafted a concept note with Tanzania National Prosecution Services, and will seek funds).

Before the publication of this workshop report Ms. Clifford also provided a few related updates. One was the resolution of a Tanzanian case which TRAFFIC was closely monitoring involving a Chinese woman named Yang Fenlan, (dubbed the “Ivory Queen”). She was arrested in 2015 and accused of smuggling about 860 pieces (\$5.6 million worth) of ivory between 2000 and 2004. In a major decision, the court convicted her in February 2019, and sentenced to 15 years in jail plus an additional 2 years if she fails to pay a fine of roughly 12 million USD.

TRAFFIC also expanded Court Monitoring program, and support to judiciary and prosecution sector with the launch of e-course. As agreed with Tanzania’s Registrar of the High Court, the materials for the e-course have been drawn from the four-day workshop on wildlife crime delivered by TRAFFIC and partners in Mwanza, Tanzania, in January 2018. Satisfied with the materials from that workshop, the Registrar and the High Court Judge had previously given TRAFFIC the green light to proceed with the development and release of this tool.

Finally, Ms. Clifford also shared the fact that TRAFFIC has expanded court monitoring in other East African countries through its WWF/TRAFFIC wildlife crime Hub. Additionally, it has signed information sharing agreements with other organizations to strengthen collaboration and information exchange on illegal wildlife trade seizures, prosecutions and sentencing.

Ms. Ning Li, IUCN-Environmental Law Centre

“WILDLEX – Lessons from an Analysis of Judicial Cases in Tanzania

Ms. Ning Li kicked off the fifth session of Day 1 with an introduction to the history and function of the IUCN-Environmental Law Centre (IUCN-ELC). It was shared that the IUCN-ELC is currently staffed with 12 legal and information specialists, and that it serves as the management unit for ECOLEX, a global environmental law information service. She also noted that the IUCN-ELC’s work on wildlife crime is just one of nine focal areas in its 2017-2020 workplan - these cover diverse items including climate adaptation, benefit sharing, land use, and protected areas law and financing.

The project outlined in publication of *Wildlife Crime Cases in Tanzanian Courts* (see *Resources* section below) was then discussed in detail. It entailed six expert consultants visiting courts and registries to collect wildlife crime cases from all over Tanzania between October 2015 and March 2016. In all, there were 269 decisions analysed - 225 at the trial level and 44 appellate level decisions. These cases included illegal trade in 66 species, with the majority of those involving more than one species. Elephant and antelope parts were present in over 70 cases each, which was more than four times the number of the third most commonly identified species (zebras).

The analysis of the cases also revealed that ‘unlawful possession of a government trophy’ was by a large margin the most common charge brought by prosecutors in Tanzania – it was done so in 216 of the 225 trial court cases. In 142 of those it was the only charge brought. It was then presented that the outcomes of trial court decisions were as follows; *conviction* = 60%, *acquittal* = 27% and *withdrawal/dismissal* = 13%. In those cases that led to conviction the average sentence was 11 years 8 months’ imprisonment. In cases involving bushmeat the

average penalty was 12 years and for ivory and rhino-horn cases it was 16 years 4 months. Only 24% of cases analysed cited judicial precedent. The average fine imposed was just under 200 million Tanzanian Shilling, or equivalent to roughly 84,000 USD. This fine was calculated to be higher than the total trophy value in just 63% of cases analysed.

It was then revealed that of those convictions appealed up to the appellate court the decision was overturned in 76.9% of cases. Roughly one-third of these successful appeals were granted on the grounds that the trial court did not have jurisdiction to render the original decision. In 70% of the cases where an appeal was successful the accused was released, and in 27% of cases the decision was sent back for re-trial.

There were a number of key findings identified from this work that were then shared with the room. This included the fact that; i) sentences seemed to produce high impact on low-level offenders (see bushmeat sentencing above) while likely proving insufficient to deter high-level offenders given that prison sentences are often simply *an alternative* to payment of the stated fine. Also, ii) cases demonstrate a failure to investigate further up the criminal chain; iii) procedural errors lead to many overturned convictions on appeal, and iv) there is difficulty in accessing information. It was pointed out as well that this study did not consider the possible role of corruption, nor the enforcement of the judgements rendered.

The session concluded with a discussion of WILDLEX, a recently launched global portal that collates wildlife crime decisions, legislation, and related publications and literature relevant to the topic. A March 2018 technical workshop in Nairobi secured a commitment from ten organizations based in Namibia, Malawi, Zambia, Kenya, Cameroon and Uganda to submit wildlife crime cases to WILDLEX. The format of the database was then presented to the audience. Next steps for WILDLEX are to include; i) similar analysis as in Tanzania study, but based on the submissions of cases from other countries; ii) efforts to expand the databases to regions such as Asia; and iii) a pilot exploring linkages between WILDLEX and the IUCN Red List.

Session 3 – Curbing Wildlife Crime and Corruption

Mr. Michael Morantz (OECD) [remote presentation]
“*Corruption and Wildlife Trafficking: The Case of East Africa*”

The afternoon of Day 1 began with a remote presentation delivered by Mr. Morantz. This started with a discussion around the reasoning behind a corruption study of the nature recently undertaken by OECD - which was subsequently published as *Strengthening Governance and Reducing Corruption Risks to Tackle Illegal Wildlife Trade: Lessons from East and Southern Africa* (see *Resources* section below). That reasoning included; i) weak understanding of the mechanisms of corruption in cases of wildlife crime; ii) the need to introduce a structured analysis, given that corruption is generally used as a catch-all term for a range of diverse crimes, and; iii) the general unavailability of data on wildlife seizures and arrests as it pertains to corruption. It was shared that the aim of this OECD research was to establish an evidence base that can provide insight into gaps and institutional vulnerabilities in the East and Southern African regions, and thus provide informed policy recommendations to various stakeholders.

It was then described how this research adopted a comprehensive and multipronged approach comprising of; i) an extensive literature review (90 articles selected); ii) open source mapping of wildlife seizures and corruption reporting (over 300 individual cases involving corruption were identified, categorized and mapped), and; iii) structured interviews with over 100 government officials, experts, and NGO staff based in Kenya, Tanzania, Uganda and Zambia.

It was noted that the open source mapping exercise allowed for the creation of a number of visualization tools, for example on themes such as hotspot/trade route mapping and seizure data vis-a-vis species mapping for cases associated with corruption. Elephant and rhino poaching cases were the most commonly identified during the course of the research. The top five type of corruption actors identified broke down as such; police officers (44%), military officials (23%), government officials (14%), forest/game/park rangers (10%), and elected officials (9%). The top five offences reported in corruption mapping were; assisting poachers (38%), possession/sale (28%), poaching (16%), theft from government stocks (13%), and bribery (5%). This data comes from the same four countries where the interviews were conducted.

From the interviews it was noted that both corruption of *trade chain* (poaching, internal transit, warehousing, export) and corruption of the *chain of custody* (investigation/arrest, prosecution and court procedures, evidence control, chain of custody of exhibits, conviction and incarceration) issues were common.

Three major gaps in wildlife management authorities (WMAs) were identified from the gathered information. *First*, such agencies are vulnerable to internal corruption through low oversight for rangers in remote areas – a problem compounded by resource gaps for park ranger management, training and hiring. *Second*, were gaps in the ability to investigate and prosecute corruption, particularly complex cases involving money laundering or international organized crime. *Third*, was the high levels of political pressure commonly exerted in high-level corruption cases. Solutions suggested included; i) allowing for investigations of WMAs through special investigative or prosecution powers; ii) introducing exchanges or secondments in anticorruption bureaus to develop expertise; iii) structural human resources reforms (e.g. park ranger rotations, reward mechanisms for seizures, etc.), and; iv) strategic integration of local communities for joint-resource responsibility (e.g. community scout programmes, etc.).

Borders were also identified as particularly vulnerable to corrupt activities in the countries studied. Possible solutions suggested on this point included; i) integration of investigative mechanisms to trace back offenses to specific corrupt individuals at border crossings/airports; ii) increasing observance of standard practices across all airport facilities (e.g. no VIP or Diplomatic exemptions for security checks), and; iii) introduction of advanced background checks into hiring practice, and adoption of immediate consequences for any corruption or bribery act identified.

Of considerable relevance to the overriding theme of the workshop, governance gaps in the criminal justice system were also flagged as an enabling factor for corruption by the interviewees in this study. Shortfalls included; i) direct charges of corruption are nearly never brought in illegal wildlife trade cases; ii) gaps in chain of custody and exhibit control are frequent; iii) low levels of illegal wildlife trade training or awareness by state prosecutors weakens cases and prosecutorial interest; iv) external interference and pressures are often

placed on prosecutors and judges; v) gaps between judicial decisions and punitive outcomes are frequent.

Common solutions forwarded to these challenges included; i) 'quick reference guides' and standard operating procedures for prosecutors that include mandatory steps in order to mitigate entry points for corruption and case variance/drift; ii) encouragement of media and civil society to follow cases and report on results as a means to increase transparency, and iii) inclusion of experts from WMAs - and designated NGO legal experts - in the investigation and prosecution of such cases.

In following up this work, Mr. Morantz noted that the OECD will conduct a somewhat similar analysis in the Asia region, as well as undertaking follow-up work on the transit and demand side economies identified through the Africa regional analysis described during the session.

Ms. Shruti Suresh (Environmental Investigation Agency) [remote presentation]

"Time for Action: Curbing Wildlife Crime and Corruption"

Ms. Suresh kicked off her remote presentation by introducing the Environmental Investigation Agency (EIA), who are expert in the collection, analysis and sharing of information and intelligence on environmental issues. Such information is shared both with the public through a series of reports and films, and other parties such as governments in the form of confidential briefings. It was noted that desk-based research, field investigations and outreach are the principal means through which EIA investigation and reporting is produced.

It was noted that the EIA has a high degree of experience in the investigation and mapping of organized wildlife crime networks, and that through this work they have observed a number of commonalities, in that such networks; i) are driven by perceptions of low risk and high profit; ii) adapt quickly to law enforcement; iii) are enabled by corruption; iv) perceive losses caused by a seizures as a minor setback prior to the resumption of trade; and; v) heavily rely on failures of the criminal justice system(s) in the countries where they operate.

It was then highlighted that on the final point above, one should be aware that many legal tools are often available - yet although this is the case the full force of the law is rarely applied. Treaty provisions, international organizations and national approaches can all be used to enhance the consequences for engaging in wildlife crime. Treaties then listed included UNTOC, UNCAC, and CITES. It was put forward that the "serious offence" provision and criminalization of corruption under UNTOC can be particularly powerful. Membership in INTERPOL, WCO and regional enforcement networks can also serve to increase the risk of such crime. At the national level financial intelligence units and anti-corruption units are amongst the innovations with the most potential and room for expansion.

Yet despite these approaches, evidence that the most profitable illegal trade remains relatively low-risk was then described. A prime example provided was found by EIA in its trade data analysis of conviction rates for large scale ivory seizures, which stood at a mere 22%. It was noted that it would be folly to expect any major progress in combatting wildlife until the 'high profit, low risk' ratio (that is the norm at this time) is reversed.

Five recommendations for how this might be accomplished were then discussed in detail:

Recommendation 1 – Increase awareness of judges and prosecutors: This item would include at least three approaches; i) ensuring wildlife crime is substantively included in relevant curricula, ii) the adoption of sentencing guidelines for this type of crime, and iii) the establishment of specialized wildlife crime prosecutor units.

Recommendation 2 – Prosecutors must work closely with investigators to follow the money: At this time this is very rarely done, allowing many criminal parties to wildlife crime to operate in relative safety. An illustration of this type of follow-the-money approach was then presented with an overview of EIA's 2017 investigation *The Shuidong Connection* (see *Resources* section below). In this case five distinct participant types were identified for their financial involvement in the criminal activity. These were all between the level of elephant poacher (who received \$80-\$100 USD/kg.) and the end purchasers, who bought at roughly \$720 USD/kg, and included; i) corrupt customs officers (received \$30-\$70 USD/kg); ii) coordinators (who made over \$65,000 USD combined); iii) ivory collectors receiving \$200-\$300/kg.; iv) corrupt freight agents (making roughly \$450,000 USD), and; v) the investors behind the enterprise, who took in \$2.16 million USD.

Recommendation 3 – Bring charges under a variety of laws to maximise likelihood of success: Charges should not be strictly limited to those enumerated in wildlife legislation (poaching, illegal trade, possession, etc.) but also include, where possible; i) criminal laws (e.g. trespass, conspiracy); ii) firearms laws; iii) organized crime laws; iv) anti-money laundering laws (e.g. tax evasion, money-laundering); v) customs laws (e.g. false declaration for import/export); vi) anti-corruption law (e.g. provision or acceptance of bribes), and; vii) immigration laws (e.g. unlawful presence/entry into country).

Recommendation 4 – Adopt best practices to expedite prosecutions: in addition to efforts that would make the granting of bail less likely for such crimes, countries might also seriously consider the establishment of fast-track specialized courts to address key points in the trade chain (e.g. poaching hotspots or airports). Furthermore, it was suggested that transparency and access shortcomings must be addressed. Among priorities here would be increased courtroom monitoring of wildlife crime cases, and the publication, digitization of entry into databases for all such decisions.

Recommendation 5 – Making better use of existing tools and expertise: such available tools include UNODC's goCASE system, the ICCWC Indicator Framework for Combatting Wildlife and Forest Crime, as well as training modules offered by EIA, which were described as being currently available in English, Spanish, French and Portuguese, with Thai, Vietnamese, Mandarin, Cantonese and Swahili versions in development. At the time of the presentation 17 such modules were available.

DAY 2

Session 4 – Monitoring and Analysis: What it Tells Us

Mr. Jim Karani and Mr. Edward Muriu (WildlifeDirect, Kenya)
“Increasing Transparency and Effectiveness in Cases of Wildlife Crime Prosecutions”

The central focus of Mr. Karani and Mr. Muriu’s presentation was to outline WildlifeDirect’s highly influential *Eyes in the Courtroom* program, which is of considerable relevance to the workshop theme. To begin, a major precursor project that analysed the effectiveness of the Kenyan *Wildlife Act (1989)* was discussed. It was undertaken in partnership with the Judiciary of Kenya, which granted access to the necessary files, whereas WildlifeDirect provided the technical input. The analysis of wildlife crime trials that followed looked at the entire progression of all cases, from arrest to conviction. It was shared that comprehensive approach allowed them to accurately diagnose bottlenecks in the system, and thus better guide legal reform and interventions. The project was conducted by a team of 10 lawyers covering 121 Kenyan courts between 2008-2017. In total 3,500 wildlife crime court files were analysed by this team during that period.

WildlifeDirect’s first major report published on the work (in 2014) revealed some alarming statistics, including a 2013 conviction rate of 44%. It outlined findings that exposed serious loopholes in the enforcement of the *Wildlife Act (1989)* and was used to champion the eventual repeal of the weak provisions contained therein. Encouragingly, the second report, published in 2016 after the introduction of the new *Wildlife Conservation and Management Act, 2013* revealed substantial improvement in process and outcomes of wildlife crime trials, while also putting forward further recommendations to strengthen Kenya’s response to wildlife crime. The third report published in 2018 (after the conclusion of the workshop) examined the effect of further law enforcement reforms, and recorded evidence of further improvement in wildlife crime case outcomes in Kenya. All three publications are listed in the *Resources* section below.

It was described that the analysis of those decisions made clear that poor evidentiary procedures were the main impediment to a higher prosecution rate in a large number of cases. The most frequent examples of this were; i) poor processing of wildlife crime scenes; ii) poor use of forensics and science; iii) poor or insufficient presentation of evidence in court, and; iv) poor appreciation of evidence correctly provided.

In response to these findings, WildlifeDirect initiated a series of capacity building sessions for prosecutors, investigators, and judges, which included as a major element the fostering of a “culture of forensic awareness” and keener appreciation of such evidence. Core elements of these trainings thus included tutorials on *evidence preservation* (i.e. protection of the scene of crime and guarding against contamination of evidence through proper custody), and the means for identifying and understanding *when an item has evidential value*. It was noted that this is important given that many items at a scene will have little value towards proving a case in a court of law. It was also suggested that a combination of these trainings, with the introduction of a new Kenyan Wildlife Service Forensics Laboratory have produced a major positive impact in this regard.

Another response to a bottleneck identified through their case research and analysis was to provide training on the *presentation* of evidence in the courtroom, thus reducing the chance of cases being lost over a reliance on evidence which may not be legally admissible.

Furthermore, training was offered to improve prosecutorial strategy as to *who* to charge, and under *what law*, depending on variable factors. Indeed, many legal tools remain underutilized in most cases – for example, money laundering and organized crime statutes. These trainings sought to improve knowledge of the full range of legal strategies open to prosecutors. In general, a winning case strategy in the Kenyan context consists of having the following elements properly delivered; i) arrest report; ii) chain of custody form; iii) expert report on evidence; iv) trial submissions (charge, witnesses and submissions); v) sentencing.

It was then presented that WildlifeDirect has also contributed to a number of additional legal reference material relevant to the workshop themes, including, *A Guide to the Wildlife Act of Kenya (WCMA 2013)* and *A Rapid Reference Guide for the Investigation and Prosecution of Wildlife Related Offenses – Including Standard Operating Procedures and Sample Charges* (see *Resources* section below for both).

The speakers then moved on to discuss in further detail their monitoring of ongoing wildlife crime cases in Kenya, which they have been conducting since 2013. They deploy court monitors to collect wildlife crime data and maintain presence during wildlife crime courtroom trials, and thus follow cases from charging to sentencing. Interestingly, it was noted that there have been indications that the simple fact that those in a given courtroom are aware that a case is being monitored helps to ensure that cases are given the due consideration.

It was noted that the various reform interventions discussed above appear to be affecting positive change. Where the conviction rate stood at only 44% in 2013, it rose to 74% in 2015, and then yet again to 95% in 2017.

Near the end of the session some of the key outstanding or unresolved challenges in the Kenyan context were discussed. For one, the 2016-2017 data show 47% of cases have joint offenders, which is suggestive of organized crime. 25 cases of profit motivated police crime were identified. Furthermore, a 30% discharge rate (set free absolutely) in wildlife crime cases was seen. Also concerning was the fact that Kenya continues to be ranked as a major *source* and *transit* country for this type of crime.

The speakers closed with the identification of three areas in which they aim to further expand their work in the coming years. These were noted as; i) targeting trafficking networks (e.g. championing deeper investigation and prosecution); ii) creating platforms that enhance regional cooperation and better link networks of civil society response; iii) targeting unprosecuted crimes (e.g. disincentivize human wildlife conflict killings, marine crimes, and other unregulated or underreported crime that threaten wildlife).

A final point of note was that WildlifeDirect also encouraged others interested in replicating their approach (court evaluation and monitoring, plus law enforcement training and tool development) to reach out to them to discuss means for doing so.

Ms. Rosana Ng and Mr. Sam Inglis (ADM Capital Foundation, HK)
“Hong Kong’s Trade in Extinction”

The presentation delivered by Ms. Ng and Mr. Inglis began with an overview of ADM Capital Foundation, an impact-driven foundation focused on influencing positive change in Asia, around five environmental challenges. These were listed as; i) marine ecology; ii) water security; iii) air quality; iv) wildlife trade, and; v) forestry conservation finance. On the matter of wildlife trade select policy objectives include; i) a ban on the domestic (Hong Kong) trade in ivory; ii) an increase in penalties for wildlife crime; and iii) the inclusion of wildlife crime within the Organized & Serious Crimes Ordinance.

The speakers noted that their organization established the *Hong Kong Wildlife Trade Working Group* as a means to leverage the specific expertise of the various organizations interested in decreasing the prevalence of wildlife trade and crime. They also make contributions to the *Inter-departmental Task Force on Wildlife Crime* and engage in educational outreach activities in Hong Kong.

Ms. Ng and Mr. Inglis then proceeded to bring attention to the two core products their organization was currently developing.

The *first* was a report later released under the title *Trading in Extinction: The Dark Side of Hong Kong’s Wildlife Trade* (see *Resources* section below). The contents of the report were revealed to include a global trafficking update and details of overseas prosecutions linked to Hong Kong. Included also was an analysis of offenses, seizures, trade trends, and government statements on wildlife crime as it pertains to Hong Kong specifically.

The *second* major product being produced by ADM Capital Foundation was a Wildlife Products Seizures (WiPS) Database. A discussion on the source material that is used to populate the database was outlined. Sources that have been incorporated prior to 2013 include; i) Hong Kong Customs and Excise Department (C&ED) press releases; ii) C&ED notices of seizures; iii) Information Department press releases; iv) court records, and; v) other data (e.g. media, NGO partner). Since 2013 a number of new sources of data have been captured in the WiPS database, including; i) C&ED annual departmental reviews; ii) C&ED direct communication; iii) C&ED annual summary statistics on endangered species detected; iv) Agriculture, Fisheries and Conservation Department (AFCD) press releases; v) AFCD departmental annual reviews; vi) AFCD direct communications, and finally; vii) in-court observations.

The speakers then went on to discuss what can be done with the various points of data, which include parameters such as species, number/volume/value of seizures, last know country of consignment, transit points/destination, seizure characteristics (nature, concealment, mode of transport), seizure locations, and status/extent/nature of prosecutions. It was noted that such elements can be cross-referenced against additional categorizations such as taxonomic identifiers or illegal product ‘type’ (e.g. art/décor, furniture, fashion, foods/medicines, seafood, pets/breeding). Pangolins were used as an example, with seizures year over year displayed, which included the splits for pangolin scales vs. carcasses. Geospatial mapping outputs are also available as an aspect of this data capture. In closing this portion of the presentation, it was noted that elements of this database are available on request.

The second half of the presentation was led by Rosana Ng who discussed the ADM Capital Foundation's efforts in the monitoring of the Hong Kong courts in cases involving wildlife crime. From the accumulated court data for 379 detected cases entered into WiPS between 2013 and 2017 for Hong Kong, the results list 43% of cases as prosecuted, 15% not prosecuted, and 2% under investigation, while 40% are categorized as 'unknown'. It was outlined that the most common charges for wildlife crime in Hong Kong fall under the *Protection of Endangered Species of Animals and Plants Ordinance* – section 13(1). Sections 5(1) and 9(1) of Cap 586 were highlighted in this regard.

The court system of Hong Kong was addressed next by Ms. Ng. The fact that the Magistrate's Court had penalties capped at two years' imprisonment or maximum fine of HK\$100,000 (USD\$12,800) was flagged as a serious impediment in many wildlife crime cases in that country. Appeals from that level are usually heard by Court of First Instance of the High Court. There also exists the possibility of a case before a Magistrate Court being transferred to a higher level court during early stages of proceedings as well. Further details on court procedure were then outlined.

Three examples of rhino horn seizure cases were used to illustrate the inadequacy of penalties in Hong Kong in recent instances. The values of rhino horn seized at Hong Kong International Airport in these three cases were USD20,500, USD46,000 and USD69,000. The sentences delivered in those cases were four weeks, six weeks, and four weeks respectively. Similarly, a major totoaba fish maws seizure at the same airport involving two mainland Chinese passengers (arriving from Mexico) with USD359,000 and USD223,000 worth of the illegal products, only resulted in respective sentences of 14 and 10 weeks. Also of interest was the fact that these sentences were almost all reduced by one-third due to the entry of guilty pleas from the defendants.

The session closed with a discussion on how their creation of a social media presence - a Wildlife Crime Hong Kong Facebook page, and an ADM Capital Foundation Twitter account - has made a positive impact, and has better publicized wildlife crime cases and put name and shame campaigns to use. In a similar vein, exposing wildlife crime cases and prosecutions to the media has produced positive results from their perspective. An iCourtRoom tool developed by WildlifeDirect for monitoring cases was also noted for its usefulness.

Ms. Tatiana Ivannikova (WWF-Russia – project)
“Wildlife Crime: Russia's Cases”

Ms. Ivannikova began her presentation with a breakdown of the volume of commercial trade in Russian forest and wildlife products - estimated at approximately USD\$5 billion for forest products, USD\$2 billion for fish products, and USD\$1 billion for animal wildlife products. Following this, a mapping of the main import and export flows to and from Russia of CITES listed species (broken into 10 categories) was displayed, this being an output from a study that included contributions from TRAFFIC, WWF, DEFRA and the British Council. It highlighted China as a major destination for trafficked Russian wildlife, including bear, sturgeon, caviar, musk deer, tigers, leopards, trepang, ginseng, and antelope. Movement of bear and musk deer parts to North Korea and South Korea, birds of prey to Arabic countries, and the trafficking of insects to the US and EU were among some of the other notable trends captured by the study.

The categorization of species, and most relevant legislative provisions in Russia were addressed next. Categories discussed included ‘most valuable species’, ‘national red list species’ and ‘hunting species.’ For legislation, the *Criminal Code of the Russian Federation* articles 226.1, 258, and 258.1, and the *Code of the Russian Federation on Administrative Offenses* article 8.35 were outlined. It was noted that a new article 258.1 of the *Criminal Code* was instituted in 2013, which attaches *criminal* liability for hunting, possession, purchase, storage, transportation, transfer, or sale of valuable wild animals, as well as those listed in the *Red Data Book of Russian Federation* or protected by international agreements to which Russia is a party. However, it was observed that for some time after the introduction of 258.1 state authorities continued the practice of initiating *administrative* rather than *criminal* cases. This continued practice would be problematic, in that it was already observed to be more susceptible to the influence of improper motive or corruption.

A number of key challenges in securing high conviction rates against wildlife criminals were then identified and discussed. These included; i) inefficient investigation; ii) insufficient use of expert assistance; iii) inadequate crime scene management; iv) incomplete recording of relevant information from those detained at a crime scene, and; v) non-timely forensic examinations. Many of these problems were seen as a consequence of the perception of wildlife crime as a matter of low public importance.

To close the session a number of needed interventions were listed. These were as follows; i) the strengthening of procedural control and prosecutorial supervision of wildlife crime; ii) provision of workshops and trainings for investigators; iii) introduction of a database for necessary information on illegally traded species; iv) increased use and availability of forensic expertise, and; v) a legislated increase in the statute of limitations for criminal prosecution of wildlife crimes.

Mr. Brice Böhmer (Transparency International)
“*Alternatives to Ineffective Enforcement: Corruption/Wildlife*”

Mr. Böhmer kicked off his session with an overview of his organization, which he summarized as ‘*one global movement sharing one vision: a world in which government, business, civil society and the daily lives of people are free from corruption*’. This global movement of Transparency International (TI) includes a Secretariat based in Berlin, and more than 100 legally independent National Chapters. It was explained that those Chapters vary in size considerably, ranging between a few individuals to several dozen staff members.

This discussion transitioned into a description of TI’s expanding work on environmental issues. Their *Climate Governance Integrity Programme* (which Mr. Böhmer leads) has an aim of combatting corruption risks that could hamper climate adaptation and mitigation efforts in developing countries. It includes three key approaches; i) civil society and citizens act as effective watchdogs to monitor climate finance project development and implementation; ii) victims and witnesses of corruption in climate finance articulate and find solutions to their grievances through legal advice and support mechanisms, and; iii) international, national, and local climate institutions improve and enforce transparent and accountable policies and procedures.

Geographically, the *Climate Governance Integrity Programme* covered Mexico, Peru, Dominican Republic, Costa Rica, the Maldives, Bangladesh, Indonesia, PNG, South Korea, Nepal, Kenya, Cameroon, Ghana, Zambia, Zimbabwe, DRC, RC, Rwanda at the time of the workshop, while Vietnam, Brazil, Sri Lanka, Colombia, Guatemala, Indonesia, Malaysia, Sri Lanka, Mauritius, Madagascar, Togo were being considered for inclusion.

TI's Advocacy and Legal Advice Centres (ALACs) were then outlined. Their various investigations (Guatemala, Russia, Czech Republic) and litigations (France, Hungary, Kenya, Ireland, Italy) on matters involving corruption were noted.

Corruption – defined as the abuse of entrusted power for private gain – was then described as something that could fall under three separate classifications depending on money lost or the sector in which it occurs; *petty* corruption, *grand* corruption, and *political* corruption. Grand corruption was noted as the abuse of high-level power that benefits the few at the expense of the many, and causes serious and widespread harm to individuals and society. Major cases of wildlife crime are thus forms of grand corruption as per this definition.

The remainder of the session was dedicated to outlining two possible approaches that can be taken to combat grand corruption - the first being through national authorities, and the second through international fora. An approach through **national authorities** to grand corruption would ideally see the recognition of this concept reflected in national law, with characteristics such as unlimited statute of limitations, higher sanctions, and the allowance for private prosecutions or additional civil remedies for victims. In some cases foreign enforcement may even be introduced for crimes of this nature, given a perceptible legal trend towards increasing recognition of extra-territorial jurisdiction in recent decades. Notable examples of this approach include the U.S. Lacey Act, and EU Forest Law Enforcement, Governance and Trade (EU FLEGT) action plan.

Two major bottlenecks to the national-level approaches above were then brought to the attention of the room. The *first* was related to investigations, where; i) lack of financial or personnel resources; ii) undue influence, or; iii) insufficient international cooperation frequently derail wildlife crime cases. In cases where such shortcomings prevent proper investigation, the potential role of investigative journalism was noted, and it was pointed out that journalists are often privy to leaks that might not otherwise reach the authorities.

The *second* bottleneck pertained to deficiencies in charges (e.g. charges not put forward, not accepted, dropped, or weak/incomplete charges brought). Alternatives that may in some jurisdictions be used to help circumvent these roadblocks include; i) private prosecutions, ii) obtainment of standing as a civil party in criminal procedures (e.g. 2010 French Supreme Court *biens mal acquis* ruling); iii) participation as a representative of a victim or victim class in proceedings, and; iv) reforms to delivery of prosecution services (e.g. independent prosecutors in Italy). Attention was also drawn to an Open Society Foundations publication *Private Prosecutions: A Potential Anticorruption Tool in English Law* (see *Resources* section below).

The session closed with a with a discussion of the use of **international fora** to address the problem of grand corruption in cases of environmental or wildlife crime. This can be advanced via international courts and hybrid agencies, so as to; i) establish linkages between grand corruption and other crimes and human rights violations which can be investigated; ii)

provide a basis for action at the national level, and; iii) attach greater levels of stigma and shame to such crimes.

The potential for the International Criminal Court (ICC) and also for mock tribunals (through holding of public hearings on grand corruption cases were then addressed by Mr. Böhmer. In regards to the ICC, the paper released by its Office of the Prosecutor in 2016 (*Policy Paper on Case Selection and Prioritisation*) was raised, particularly the following text: *'the impact of the crimes may be assessed in light of, inter alia, [...] the social, economic and environmental damage inflicted on the affected communities. In this context, the Office will give particular consideration to prosecuting Rome Statute crimes that are committed by means of, or that result in, inter alia, the destruction of the environment, the illegal exploitation of natural resources or the illegal dispossession of land.'* Regarding mock tribunals, the Wildlife Justice Commission's Vietnam public hearings were noted for their usefulness, even they did not provide a legally applicable ruling.

The benefits of having grand corruption addressed and recognized in international human rights courts, forum and procedures was then explained. In particular, this could allow for greater; i) investigation of harm to victims, and; ii) recognition that through a failure to tackle such grand corruption states also fail to fulfil human rights - including an obligation to protect through criminal law enforcement. It was posited that a failure to prosecute results in insufficient protection against further abuses, and as such an argument can be made that the State has not fulfilled its duty to secure fundamental human rights. In closing it was noted that these approaches to grand corruption should be considered when attempting to make inroads against high-level wildlife criminal organizations, and that certain TI Chapters may be willing to discuss collaboration around the matter of wildlife crime depending on their capacity, in-office expertise and national priorities.

Mr. Luc Evouna Embolo (WWF Cameroon)

"Workshop on Corruption in the Judiciary: Cameroon Case Study"

Mr. Evouna Embolo began his session with a brief outline of the WWF Cameroon Country Programme Office's *Law Enforcement Support Programme*. He described how it was launched in 2013 to provide a dedicated law enforcement program that could address major gaps in technical, financial and logistical support to the national wildlife administration, and improve poor results in terms of sanctions and actions taken against poachers and traffickers. The strategy for the programme is in alignment with WWF's broader Zero Poaching approach, which focuses on six pillars - protected areas assessment, capacity building, technology, communities, prosecution and advocacy. The program consists of two staff; a coordinator and an assistant. They support law enforcement activities in all landscapes where WWF makes conservation contributions. Additionally, the programme contracts with five law firms to provide legal support to the wildlife administration in bringing strong cases against suspected wildlife criminals.

Some of the key results achieved during the first five years of the programme were then shared. During that time more than 200 cases saw a sentence delivered. The conviction rate was 86% in these cases, and sentences ranged between three months and three years' imprisonment. Maximum damages awarded from a case was USD\$ 400,000. It was noted that the distribution of charges was split almost evenly between three categories, those being;

i) illegal killing of animals (36%); ii) illegal detention of trophies (33%) and iii) illegal detention of hunting arms (31%). It was also pointed out that a major increase in the total number of prosecutions of wildlife criminals was seen when comparing the first half of 2016 (less than 50) with the first half of 2017 (just over 140).

At the ground level, more than 300 rangers were trained in areas such as wildlife law, criminal procedure, human rights law, informant network management, and in SMART patrolling software use. At the judicial level, capacity building training on wildlife crime and law was provided to more than 120 magistrates during the five-year period.

The second segment of the presentation highlighted some relevant features of Cameroonian law as it pertains to wildlife crime and prosecution. For instance, rangers can become a designated as a judicial police officer with special jurisdiction if sworn in by a competent high court justice. The offense statement subsequently drafted by such a ranger is then given special authenticity, as per specifications in Cameroon's 1994 forestry and wildlife law. The facts that Cameroon adopts both common and civil law systems, and that the bringing of criminal charges allows roles for both the State prosecutor and the victim (through a private prosecutor) were also discussed. Finally, it was noted that the procureur general (attorney general) has discretion to halt prosecutions at any stage of the proceedings in the name of public interest.

The third part of the presentation addressed the issue of corruption in prosecution strategy. In Cameroon, prior to initiation of a wildlife crime case, state counsel generally have two options for prosecution; i) forwarding a 'holding charge' requesting that an examining magistrate carry out a preliminary inquiry into facts susceptible to be offences, or ii) having the case taken up at the nearest court hearing as a *flagrant delicto* proceeding (associated with a criminal being 'caught in the act'). That roughly 90% of wildlife crime cases are processed through the latter approach, in fact limits the ability to more thoroughly investigate criminal networks and white-collar criminals.

The presentation closed with an analysis of a case involving 160 ivory tusks seized in March 2017 in eastern Cameroon. In spite of a number of disturbing facts around the case (the admission of a collaborator in the customs agency and the possible involvement of terrorist organization in the chain of sale/transport) the case was processed *flagrant delicto* at request of the Procureur General, resulting in only two sentences of one-year imprisonment and a payment of USD\$400,000. The use of this legal approach makes it easy to hide corruption, by cutting short the ability to unravel the many actors involved in such major operations and networks. It was concluded that efforts to convince prosecutors to more frequently adopt the holding charge in such cases will be the key to making progress against those who drive such crimes in that country.

Session 5 – Ensuring Wildlife Justice

Ms. Laure Barthau (Lilongwe Wildlife Trust, Malawi) *“Lilongwe Wildlife Trust: Wildlife Justice Program”*

Ms. Barthau began her presentation with an overview of the Lilongwe Wildlife Trust (LWT), a non-profit established in 2008 with the stated mission ‘to protect Malawi’s wildlife by helping animals in need, combatting wildlife crime and empowering guardians of the wild’. Such an organization was needed, particularly when it is recognized that Malawi sits as a principal transit hub for illicit wildlife trafficking in Southern Africa, as well as the weakest link in the regional enforcement chain for this category of crime. The situation in Malawi had been characterized by a relative lack of risk - for example between 2010-2014 the average sentence for ivory or rhino trafficking was a mere US\$40 fine (and no jail time). The result of this weak enforcement was that Malawi had become implicated in some of the biggest wildlife crime seizures in the world. Examples include Singapore in 2002 (6.5 tonnes of product), Mzuzu Malawi in 2013 (2.6 tonnes), Tianjin China in 2012 (930kg), and Perth Australia in 2015 (100kg). DNA analysis shows that much of this product transiting through Malawi comes from nearby countries, mainly Zambia, Tanzania, and Mozambique.

Multiple assessments prior to the implementation of the *wildlife justice program* demonstrated an urgent need for Malawian authorities to improve their law enforcement strategy. Notably, a 2015 technical assessment entitled “Illegal Wildlife Trade Review Malawi” supported by German development agencies (BMZ and GIZ), and with inputs from the LWT, outlined an urgent need to improve wildlife crime court outcomes (see *Resources* section below). In 2016, at CITES CoP17, Malawi was also identified as a country of ‘primary concern’ due to information collected through the Elephant Trade Information System (ETIS).

In response to these serious findings, a law enforcement strategy was developed by LWT in collaboration with the Department of National Parks and Wildlife and other Malawian authorities involved in wildlife crime investigations and court proceedings, including the Malawi Police Service, Department of Public Prosecution and the Judiciary. Ms. Barthau then went on to outline three projects that came out of this strategy – one on wildlife policy and law, another on wildlife crime investigations, and the third being the *wildlife justice program*.

On wildlife policy and law two major changes were recently implemented in Malawi. The first was the amendment of the *National Parks and Wildlife Act of Malawi*, a process initiated in November of 2015, with the new legislation entering into force in February 2017. Whereas the previous statute legislated a fine of roughly USD\$140 and/or a maximum of 10 years imprisonment, new provisions allow for up to 30 years imprisonment with no option of fine payment as a means to avoid jail time. It also expanded the number of species covered under the legislation, adding two new categories of protected species. One such category is ‘listed species’, which corresponds to all CITES Appendix 1 species. It was announced as well that LWT will participate in community sensitization efforts around the new *Act* in 2018. Encouragingly, new regulations were also passed in March 2018 that placed an additional 216 species considered threatened in the country under protection.

It was noted that another important element of the collaborative response was the 2016 establishment of a Wildlife Crime Investigation Unit (WCIU) within the Department of National Parks and Wildlife (DNPW). Here again early indicators of impact are encouraging. Whereas an average of 0.7 wildlife crime arrests per month occurred in the period prior to the Unit's founding, 9.5 arrests per month occurred on average in 2017. 1,400kg of ivory have been seized during the period running between their formal establishment and the workshop date.

LWT and the government also entered into a cooperative agreement to strengthen wildlife crime court outcomes through the *wildlife justice program*, a recognition that this particular element was seriously limiting the effectiveness of WCIU interventions as well as other recent efforts. It was noted that a major aspect of the *program* was courtroom monitoring, with monitors tasked with taking notes and recording proceedings and outcomes. A second element was the strategic support of *public-private prosecutions*, in which private counsel prosecute a case alongside the state, particularly in more serious cases. Other important activities, such as the organization of pre-trial meetings between investigators and prosecutors were supported by this program.

For cases involving court monitoring or prosecution support, standardized data about the trial and outcome were recorded and entered into an *Access* database which was designed by LWT and shared with the DNPW. A one-year pilot project to monitor the impact of these efforts was launched in 2016, and reported on in 2017. Jail sentences for elephant crimes rose from less than 3% pre-project, up to 84% in cases that were subject to court monitoring, and 100% in cases that were private prosecutors were involved. In 2017, in which average sentences rose to 3.6 years, 125 traffickers were put behind bars, and a record sentence of 18 years was delivered. The first custodial sentence passed for a forestry offence and a first conviction for pangolin trafficking were two other highlights of 2017.

The *wildlife justice program* also revealed other interesting data when comparing the pre-project period (2010-2016) with the pilot project findings in 2016 and 2017. This is captured in the publication *A Review of Wildlife Crime Court Cases in Malawi, 2010-2017* (see *Resources* section below). For one, it became apparent that over 99% of those prosecuted were charged under eight unique offences. The vast majority (60%) were charged with possession of a protected species under the *Act* while 19% were charged for dealing in government trophies. In the pre-project period only 9% accused of elephant-related crimes were tried before a chief resident magistrate, whereas that proportion rose sharply to 72% during the pilot project. Only 10% of those accused of elephant or rhino crimes were remanded to custody pre-project versus 58% during. However, one area that was shown to remain problematic was found in the fact that foreign nationals still received light fines (rather than jail time) more often than nationals of Malawi.

Ms. Barthau concluded her session with a number of recommendations for further improving the situation in Malawi over the coming year. These included; i) expansion of courtroom monitoring and public-private prosecutions; ii) a refinement of the database to improve offender profiling, better track repeat offenders and avoid data duplication issues; iii) stronger sensitizations and trainings for judiciary on new *National Parks and Wildlife Act* and related regulations; iv) sentencing guidelines related to the offences listed by the *National Parks and Wildlife Act* that should be developed to help guide magistrates and ensure sentencing is appropriate to legislation; v) stronger awareness campaigns around laws and penalties for

wildlife crime, and; vi) introduction of a monitoring project for custodial sentences passed for wildlife crimes.

Mr. Derek Huo (China Biodiversity Conservation and Green Development Foundation) [presented on behalf of Sophia Zhang]
“Fighting Illegal Trading of Wild Animals and Plants: A Case Study from the CBCGDF”

Mr. Huo began his presentation with an introduction to the China Biodiversity Conservation and Green Development Foundation (CBCGDF), noting the fact that it originated from the China Elk Foundation and is now a nation-wide non-profit public foundation approved by the State Council, registered in the Ministry of Civil Affairs, and supervised by the China Association for Science and Technology. Between the January 2015 entry into force of the *Environmental Protection Law of the People’s Republic of China* and the time of the workshop the CBCGDF had filed more than 70 environmental public interest litigation (EPIL) cases on a diverse range of issues (e.g. air, water, soil, endangered plants, etc.). The EPILs themselves are just one of the many focal approaches for the organization, which also prioritizes green development, poverty alleviation, development of volunteer systems, international exchanges, cultural protection, and expansion of conservation areas.

The presentation then shifted to a case study of judicial treatment of wild fauna and flora conservation in China. It drew attention to a recent official letter and information disclosure application filed in the Guangxi Autonomous Region on April 9, 2018. This administrative action was filed against Guangxi Autonomous Region Forestry Department who, it was argued, failed to perform its legal obligation for disclosure.

The efforts CBCGDF has taken to improve information and response to the trafficking of pangolins and their products in China was then described in some detail. This included an application for information disclosure on pangolins and pangolin products confiscated by customs officials in Shanghai, Guangzhou and Shenzhen. With individual seizures of 3 tons (Shanghai) and 11.9 tons (Shenzhen) in 2017 alone, it was deemed imperative to collect more information on this matter. Further to this effort, CBCGDF send an official letter to Northeast Forestry University (‘About disclosing the processing of pangolin scales’) as well as a ‘proposal for the treatment of pangolin scales’ for NPC & CPPCC 2018, which serves as one of China’s top political advisory bodies. CBCGDF volunteers have also played a role in helping the police uncover illegal sales of this animal. A further case study on consumption of the species was provided at the close of the presentation.

It was also explained that the organization had filed EPILs in the interest of rarer, lesser known species, such as *Acer pentaphyllum*. It has also investigated numerous cases spotted by CBCGDF volunteers (e.g. suspicious bird deaths in Fujian), and reported other illegal activities to relevant authorities (e.g. illegal mass release of turtles by certain religious groups in Hainan). It was emphasized that their positive and productive relationship with a wide variety of government officials was a critical factor in their successful interventions made in furtherance of conservation objectives.

Mr. Huo then moved on to point out specific areas in which further progress will be most critical in the coming years. They were, in order; i) raising public awareness around wildlife conservation; ii) strengthening punishment and sentencing of illegal wildlife traders; iii) further ensuring that all relevant department carry out open and transparent work and guarantee information access, and that; iv) judicial authorities are encouraged to more strictly crack down on wildlife criminals.

Mr. Praveen Bhargav (Wildlife First, India)

“Wildlife Conservation: The Big Picture”

Mr. Bhargav began his presentation by outlining the numerous contributions his advocacy organization (Wildlife First) has made to wildlife conservation in India. Training was highlighted as one key element of their work, with more than 5,000 forest guards trained since 1995. More than 300 police and 600 judicial officers have also been trained through their programs since 2008. By way of example, their ongoing training workshops for police and judicial magistrates under the aegis of the Karnataka Police Academy and Judicial Academy were discussed.

It was noted that Wildlife First have also been active at the highest political levels. In 2007 they were nominated to the National Board for Wildlife, the apex statutory committee constituted under the Wildlife (Protection) Act, 1972 (it is chaired by the Prime Minister of India). Mr. Bhargav, as Trustee for Wildlife First, served on that body, in addition to other expert committees established within the Ministry of Environment Forests.

It was then noted that Wildlife First had been involved in more than 500 cases of site-based monitoring and intervention since 1995, and had also become heavily involved in national policy interventions and major legal battles. One of those efforts entailed successfully challenging the continuation of open cast iron ore mining in Kudremukh National Park at the Supreme Court. Another entailed launching two major public-interest litigations before the Supreme Court. The judgements in those cases ensured complete stoppage of removal of dead, dying and wind fallen trees from all Wildlife Reserves across the country as well as the closure of a highway through Nagarhole Tiger Reserve between dusk and dawn.

Moving further into the legal context, Mr. Bhargav then discussed how the constitutional framework of India includes important provisions in support of wildlife conservation, notably Article 21 in which protects right to life as a fundamental right, that encompasses preservation of environment, and ecological balance as articulated by the Supreme Court IA 670/2002 AIR SC 724. Additionally, article 51A(g) sets out a fundamental duty of every citizen to protect forests, rivers and wildlife, and Article 48A (Directive Principles of State) mandate that the state shall endeavour to safeguard forests and wildlife.

The discussion then moved on to address the protected areas system in India, where over 600 national parks and sanctuaries covers 4% of the country’s landscape. The *Wild Life Protection Act*, which provides several categories of such protected areas and reserves was discussed in some detail, including an overview of the most relevant prohibitions, powers, procedures and penalties found in that statute. It was noted that no animal listed within the four Schedules of the *Act* can be hunted either within or outside protected areas. Penalties for such offences are limited to a maximum imprisonment of seven years.

Mr. Bhargav then shifted to address some major problems that plague the criminal justice system in terms of wildlife crime, but not before highlighting his belief that enhanced *prevention* efforts are even more urgently needed in order to directly and immediately halt population declines and thus reduce the number of wildlife crime cases appearing before an already hugely stressed criminal justice system with large backlogs of cases. As for bottlenecks within the judicial process that limit effective prosecutions, six items were flagged as particularly problematic. These were; i) poor investigative skills and lack of legal knowledge applicable to investigations; ii) inadequate supervision of investigating officers; iii) the absence of a dedicated intelligence wing; iv) insufficient forensic facilities; v) deficient coordination with prosecutors, and; vi) the fact that budget proposals from protected area managers do not commonly seek funds for investigations and prosecutions, because they are not deemed ‘lucrative’ (i.e. there are perverse incentives to apply for funding towards far less impactful items of work).

The speaker then dedicated some time to running through strategic approaches that Wildlife First has found effective and replicable. These included; i) hands-on training for enforcement officers and prosecutors; ii) the delivery of sensitization programs for magistrates and judges; iii) advocacy efforts to empower the agencies to have purview over matters susceptible to corruption; iv) direct investments in crime prevention and monitoring (eyes in the field); v) support of special prosecutors and private lawyers as allowed by Section 301/2 of the *Code of Criminal Procedure*; vi) expansion of dedicated forensics labs, vii) fast-track or specialized courts for wildlife crime, and; viii) the provision of legal support to investigating officers. On this last point it was mentioned that Wildlife First provides legal advice and assistance to such officers on effective legal enforcement, and also in instances where they find themselves facing malicious prosecution. This was identified as a major problem and an increasingly common approach used by those trying to protect wildlife criminals and derail legitimate wildlife crime investigations.

In conclusion, a number of useful - and again potentially replicable - legal clauses were listed. From the *Wild Life Protection Act* this included Sections 2(16) (definition of hunting), 34 (registration of weapons around parks), 50 (power of entry, search, arrest and detention to flow directly from law – not notifications), 57 (burden of proof on the accused), and 58A-Y (forfeiture of property from hunting). From the *Code of Criminal Procedure* Section 55(c) /200 (private complaints) was also singled out in its usefulness towards combatting wildlife crime. It was concluded that Indian legislation provides an powerful model that could be studied by countries looking to improve weak or ineffective statutes.

Mr. Eric Tah (Last Great Ape Organization – LAGA, Cameroon) [remote presentation]

“Wildlife Crime: Challenges and Perspectives”

Mr. Tah, who brings extensive experience through his work with the Last Great Ape Organization (LAGA) as well as the Eco Activists for Governance and Law Enforcement (EAGLE) network, closed out the workshop with a via a remote presentation. LAGA, which was established in Cameroon in 2003, was noted as the forbearer of EAGLE, with EAGLE currently present in nine African countries. It was recognized that prior to 2003 the prosecution baseline for wildlife crime was essentially zero, despite the existence of relevant laws and institutions. The 1994 law was in fact quite powerful in theory, given that it shifted

presumption of guilt to anyone found in possession of illegal wildlife products. It was then described how quickly it became apparent to LAGA that corruption was the main driver of the impunity that wildlife criminals had enjoyed over the prior decade. Strong evidence of corruption was observed in 80% of cases that were studied around that time.

In response, LAGA decided that they would need to implement a comprehensive strategy that covered the full breadth of the issue. This required that they create departments to address each of the following; investigations, operations, legal follow-up and media engagement. The role of LAGA is also highly unique in the local context, given that it involves a strong direct partnership with the Cameroonian government. It was noted that their approach is also characterized by the identification of measurable standards (to quantify impact and change) as well as a strong commitment to case follow-up, most notably through the adoption of a case tracking system.

To tackle the main issue of corruption, a system in which allowed LAGA to always be present during the process of law enforcement and tightly supervise what is occurring in the field was prioritized - an approach they equate to 'body checking of the process'. For instance, it was commonly observed that bribes to secure the release of suspects were usually delivered at police stations, something that became nearly impossible with the presence of an observer from LAGA.

Mr. Tah noted that the approach appears to be delivering concrete results and international recognition. It was shared that on average one wildlife trafficker is now prosecuted weekly on average in Cameroon. Furthermore, since 2006, 87% of those arrested for such crimes are denied bail, a marked improvement on the previous rates. Jail terms have now reached up to three years, and fines up to USD\$200,000.

This said, it was recognized that continuing to ensure the legal system remains free of corruption remains an ongoing challenge for LAGA. Ensuring that a case is well known by the public was then highlighted as an important bulwark against corruption. Mr. Tah noted that they also foster high profile partners - including diplomatic partnerships - to bring transparency to certain elements of the system. The balancing act involved in trying to assist the judiciary - or address any corruption in the judiciary - while ensuring the perception of no undue influence in judicial matters was described at the end of the presentation as another challenging aspect of such work.

Next Steps

The final session asked participants to reflect on and then discuss the following question:

On which of the many themes addressed during this meeting would we collectively benefit the most through better multi-organizational and international collaboration? Please limit these answers to those programs or partnerships that could be realized through a small to moderate investments of resources.

Consensus was reached around the opinion that immediate next steps should include the creation of a network of like-minded organizations, including those represented at the workshop. Such a network (even if informal) could be useful in the following ways:

- By facilitating the further adoption of best-practice court monitoring or simplified data entry approaches, including the use of apps.
 - *For example, it was suggested that some of the courtroom monitoring products and approaches developed by Wildlife Direct may be of use in other countries.* A Network of this type would support requests between organizations for such trainings and implementation feasibility analyses.
 - In the process of adopting best practices to track more data on wildlife crime prosecutions, members of this Network might also be better positioned to publicize the developments of ongoing wildlife crime cases – too often public awareness and interest in such crimes end at ‘arrest’.
 - The Network might also be useful in combining resources to collect data that is publicly available yet remains unstudied. *For example, despite occupying a critical nexus in illegal wildlife trade, an analysis of Chinese judicial decisions in cases of wildlife crime has yet to be undertaken.*
- By strengthening in-country advocacy capable of encouraging officials to provide mutual legal assistance in time-sensitive transnational wildlife crime investigations.
 - It was noted that formal state-to-state requests often languish, suffer delays, or are not acted on at all. Given that many of the organizations at this meeting have direct working relationships with the relevant agencies (Justice Dept. etc.) in their home countries, a request forwarded between members of this Network may be a contingency approach.
- Those in the Network should be kept abreast of upcoming meetings or funding calls that tackle related themes.
 - It was also reiterated once again that only *after* national-level organizations have taken steps to enhance their wildlife crime case analysis and courtroom monitoring will they be better able to make targeted training or policy interventions in their countries. Given that many of those in this Network are already expert in such activities (as well as trainings and policy intervention), it was agreed that smaller organizations not present at this meeting should also be brought in and supported by the Network should they express an interest in implementing such approaches.

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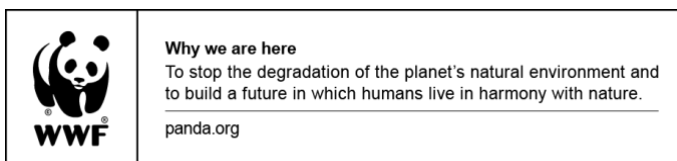
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