



Prosecution Guidelines
to Tackle Transnational

Wildlife Crime

between

LAO PDR
and **THAILAND**



Working to sustain the
natural world for the benefit
of people and wildlife



Acknowledgements



The development of this reference guide involved a desk study of various documents produced by the governments of Lao PDR and Thailand in local language as well as in official and unofficial translations into English. The documents included a mutual legal assistance treaty, criminal procedure laws, and wildlife and forestry laws, as listed in the References section. Law enforcement officials, prosecutors, and judges of Lao PDR and Thailand provided guidance on the development of this reference guide. They gave their input during judiciary workshops and seminars delivered as part of the “Fighting Wildlife Trafficking in the Golden Triangle” project.

During these events, these criminal justice officials highlighted procedures, laws, and additional government regulations relevant to wildlife crime case proceedings. They shared case studies, international cooperation experience, and good practices for prosecuting wildlife crime cases. They discussed special techniques in collecting evidence and its admissibility in court in their respective country.

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Objective

The objective of this reference guide is to ensure effective cooperation between prosecutors and law enforcement officers in relation to investigating and prosecuting transnational wildlife crime in each country, as well as between the two countries. This reference guide defines ways prosecutors can support strengthening wildlife crime case files for presentation in court. It includes good practices for cross-border cooperation, the collection of evidence, expanding investigations on criminal networks, and special considerations, such as inclusion of species victim impact statements.

This guide shall be subject to the domestic laws and regulations of the Lao People’s Democratic Republic and the Kingdom of Thailand.

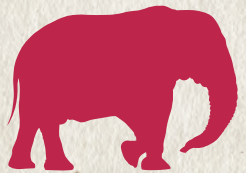
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Impact of Wildlife Crime

Why should we care about protecting wildlife?

Environmental crimes have a catastrophic effect on our planet's biodiversity and negatively impact our climate, public health, and the security of local communities.



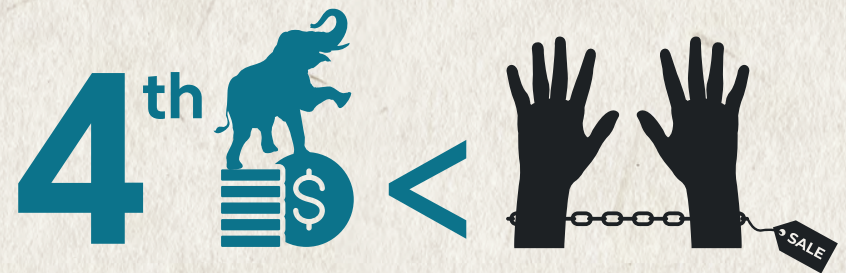
Elephants and rhinos help shape landscapes and help the regrowth of trees and vegetation.



Tigers and pangolins help balance the populations of other animals in the forest, like deer and termites.



Therefore, the removal of such wildlife from their natural environment can have a significant impact upon the functioning of key ecosystems.



From a financial perspective, illegal wildlife trafficking is the fourth most profitable global crime after human trafficking. Together with fisheries crime and illegal logging, it generates an estimated **two trillion U.S. dollars per year** and involves other crimes, including financial crimes and corruption.



How can criminal justice officials help protect wildlife?



Wildlife traffickers often perceive the trade of wildlife as a low-risk, high-reward business. They have a low risk of punishment by the criminal justice system, and they make enough money to live a luxurious, powerful lifestyle.



For punishment to have a deterrent effect, it must be appropriate for this type of serious crime, and it must be consistently applied.

Carefully consider the financial aspects of the case.



What is the value of the proceeds of crime in this case?



What is the value of the species being illegally traded?



What is the damage caused to the species?



What is the damage caused to the environment?

50

If a wildlife trafficker gets
USD Fine

1,000

For illegally trading rhino horn of
USD Profit

Then this fine could be viewed as a small price to pay for doing business.

Informal Cooperation

When should we use informal cooperation?

You learn from the forestry officer that the wildlife crime case involves transnational elements, such as:



The suspect is not a national of your country.



The suspect is communicating with someone in another country to facilitate illegal wildlife trade.



The suspect is sending or receiving money to /from another country.



The suspect has a bank account in another country.



The suspect has a company established in another country that may be a shell company.



The suspect is married to a foreigner who may have a role in the illegal wildlife trade.



The wildlife crime was planned or committed in more than one country by a group of three or more persons acting together and involves an offense punishable by **four or more years of imprisonment.**



The case involves electronic evidence, This electronic evidence needs to be preserved to prevent loss or damage.

Why should we use informal cooperation?

Informal cooperation is great for expanding investigations and strengthening the case file. Encourage the forestry officer to speak to their cross-border counterparts to:



Clarify the context and elements of the crime



Build the intelligence picture of transnational wildlife crime cases



Ensure effective formal cooperation processes

The officers should discuss the elements of the crime and the eligibility of the offense being prosecuted in the partner country. Of the eligible offenses, which offenses are criminal, and which country has higher potential sanctions? The forestry officer should also learn what kind of information is available in the other country to build the case and how to access it.

Since criminal justice processes have limited timeframes, it is important to manage time efficiently while collecting information and evidence. Using informal cooperation helps investigators and prosecutors understand what evidence collection efforts to prioritize to ensure a successful prosecution.

For example



while the requesting country is working to issue arrest warrants for offenders or fugitives, the assisting country can begin tracking the perpetrators. Therefore, law enforcement officers can immediately make arrests when the warrants are ready or when the formal mutual legal assistance process is completed.



If the case involves the sale of illegal wildlife products in private social media groups, encourage the officer to consult with the cross-border counterpart where the Internet Service Provider is located about their domestic laws and procedures on searching, seizing, collecting, and preserving digital evidence.



If, for example, a trafficker is suspected of smuggling protected wildlife commodities in the partner country, advise the officer to ask the counterpart about interviewing witnesses via video conference.

Task Forces

Foreign nationals have committed serious wildlife offenses in Lao PDR and in Thailand. Wildlife crime will continue to be transnational.

Past wildlife crime investigations conducted by individual agencies in Lao PDR and Thailand have highlighted:



1
The difficulty in
deploying resources



2
The lack of expertise
to present the most
compelling case before
the court



3
Missed opportunities
to prosecute others
involved in
the criminal network

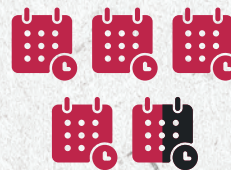
Therefore, the law enforcement response should be led by multi-skilled task forces. By forming task forces, agencies can quickly exchange information and experience. Through these wildlife enforcement networks (WENs), such as the Lao-WEN Task Force and the Thai-WEN Task Force, criminal justice officials have access to more resources and applicable legislation. Wildlife traffickers can be more effectively investigated and prosecuted using this approach.

The Lao-WEN Task Force combines the Department of Forest Inspection, Environmental Police Department, Department of Customs, the Office of the Supreme People's Prosecutor, and more. Officers from these agencies work proactively in the most high-risk crime areas, such as the Golden Triangle Special Economic Zone. (See Annex 2 for more details.)

Formal Cooperation

Why should we use formal cooperation?

Formal cooperation is great for requesting criminal evidence and information from another country that will be admissible in court in your own country.



However, it may take many months to gather court-admissible evidence through formal channels.

Therefore, it is important to know specifically what information is needed from the partner country when drafting formal requests.



Draft your mutual legal assistance request after the forestry officer has informally consulted with their cross-border counterparts.



Extradition Requests

If the accused person resides in another country that has an extradition treaty with Lao PDR, you may consider requesting extradition from the country of residence.

For example



For example, in June 2022, a Malaysian man alleged to be a kingpin in a worldwide wildlife trafficking network was arrested in Bangkok by the Royal Thai Police. This suspect was allegedly involved in the illegal trade of ivory, rhinoceros horns, and other endangered animal parts out of Africa. In 2015, he had been previously arrested and fined by Royal Thai Police for smuggling ivory from Africa through southern Thailand, near Malaysia. He also allegedly laundered money for other wildlife traffickers.

This Malaysian man has been a wanted suspect by the U.S. Fish and Wildlife Service. The U.S. Government made a request to the Kingdom of Thailand to extradite the arrested Malaysian man to the United States. Through formal cooperation, this major suspect was handed over to the Thai Office of the Attorney General in July 2022 for extradition to the United States.

What kind of formal assistance can be requested for transnational wildlife crime case files?

Under the ASEAN Treaty on Mutual Legal Assistance in Criminal Matters (2006), you can request assistance to:



Illegal wildlife trafficking is the fourth most profitable global crime after human trafficking. Together with fisheries crime and illegal logging, it generates an estimated USD two trillion per year and involves other crimes, including financial crimes and corruption.

High-level members of wildlife trafficking use the money gained from crime to **purchase land, homes, businesses, zoos, luxury cars, jewelry, and more**. These proceeds of crime may be located in more than one country. Be sure to include financial investigation queries in the mutual legal assistance request.



Supporting Investigations

A forestry officer is investigating a wildlife crime case and requests your guidance. What are the key factors you should advise on?



Review the types of evidence to collect in wildlife crime.



Live animals, animal parts, animal products



Trade permits, business licenses, ownership rights documents, customs documents, invoices, money transfer evidence, accounting logs



Phones, digital tablets, computers, data storage devices, cryptocurrency wallets and keys



Data from digital devices, open-source data, audio and video recordings to show evidence of the crime, association, and communication (See Annex 5 for more details.)



Financial data



Travel records, passenger manifests, baggage tags



Evidence of corruption



Review the ways to collect evidence.



Undercover operations (online and offline)



Following evidence trails



Surveillance



Controlled deliveries of wildlife products



Test purchasing of wildlife products



Informants



Crime tips from hotlines and wildlife NGOs



Wildlife forensic analysis, digital forensic analysis



Review when to best arrest suspects.



Ensure the forestry officers proactively expand the investigation to identify criminal network members before making arrests.



Promote the use of intelligence analysis to identify relationships between the network members, crime patterns, and potential wildlife trafficking kingpins.



After actionable intelligence analysis is produced, work with the forestry officer on which suspects to arrest and in what sequence to maximize the chances of a successful prosecution and disrupt the wildlife trafficking network.



Ensure that evidence is gathered or that there is a plan to seize evidence before it is destroyed.



Review the ways to secure evidence.



Ensure that the forestry officer has stored wildlife exhibits and documental exhibits in a secure location and that these exhibits will not be used illegally in the future.



Seized wildlife exhibits are kept properly preserved at the authorized center.



For digital devices, make sure that passwords are clearly labeled on each device for access by law enforcement officers.



Some wildlife carcasses may be destroyed by pests while in storage. Make sure that samples of the carcasses are sent for expert examination immediately.



Ensure continuity of evidence through correct record keeping and chain-of-custody forms.



Review suspect and witness statements.



Any statement made by the suspect is recorded by the arresting officer after informing the suspect of their rights.



Consider the points to prove the commission of offenses.



Statements are gathered from expert witnesses on wildlife matters.



To protect witnesses, black-out personal contact information of witnesses in statements and any files that will be made available to the defense team.



Review factors in transnational crime cases.



Ensure qualified translations and interpreters are used.



If the suspect is a foreign citizen with more than one passport, then all of their passports are seized and the Immigration Department is informed.



If the suspect is a foreign citizen, they bear a high risk for absconding.



Consult informally with cross-border counterparts on expanding the investigation and draft a mutual legal assistance request.



Prepare for the Wildlife Parts Destruction Ceremony.



Live animals and preserved animal parts are kept until the case proceedings have ended.



For dead animals and perishable animal parts, forestry officers arrange a destruction ceremony. This should be recorded.



Wildlife Laws

What laws are relevant to wildlife crime cases in Lao PDR?



Law on Wildlife and Aquatic Animals



Law on Forestry



Law on Anti-Money Laundering and Counter-Financing of Terrorism



Law on Customs



Law on Anti-Corruption



Law on Drugs and Medical Products, No. 07/NA 2011



Penal Law No.13/NA 2017



Prime Minister Order No. 05 on Strengthening Strictness of the Management and Inspection of Prohibited Wild Fauna and Flora (2018)



Prime Minister Order No. 15 banning the export of all types of unfinished wood products including timber and logs (2016)



Decision on the Establishment and Management of Zoos, Wildlife Farms, Wildlife Rehabilitation and Breeding Centers and Wild Flora Gardens (08 February 2019)



Agreement on the Import, Export and Transit of Animals and Animal Products (18 April 2019)



Decision on the Adoption of the Wildlife and Aquatic Prohibited Category I and Management Category II (25 February 2021)



Bail or Remand

Should the arrested suspect be released on bail?

As you or the forestry officer drafts the written proposal of bail or remand, consider the following risk factors.

Risk Factors to Consider	Low	Medium	High Risk
What is the likelihood that the accused will abscond based on the following aspects?			
• The offense or charge and the seriousness of punishment if found guilty			
• The accused is a foreigner or has more than one nationality			
• The accused has previous convictions			
• The accused has absconded while on bail previously or has avoided justice for prior charges			
• The accused has used aliases and/or has false identification documents			
• The accused has weak ties to his community of residence			
What is the likelihood that the accused or their associates will interfere with witnesses, the investigation, or the prosecution?			
What is the likelihood of the accused bribing criminal justice officials to obstruct justice?			
What is the likelihood that the accused will commit other offenses while not in custody?			
What is the likelihood that the accused will be a danger to the public if he is released on bail?			



Prosecution Considerations

Before prosecuting wildlife crime cases, consider these points.



Level of harm to society of the offense



What is the damage caused to the environment by the wildlife offense?



What is the damage caused to the species by the wildlife offense?



Species victim impact statements (SVIS) have been found to secure more adequate punishment in jurisdictions like Hong Kong and Australia. See www.svis.law.hku.hk for examples.



Relying on a single witness

If witnesses reverse their statements, is there sufficient corroborating evidence to prove the offense?

For example

A witness may originally identify the wildlife trafficking kingpin during the investigation. The forestry officer composes the statement, which the witness signs. His statement is recorded only on a document, not on video.

Later, in court, he claims that he does not know the kingpin and has never seen him before. No other eyewitnesses come forward to identify the kingpin.



Prosecuting high-level targets

Are you only prosecuting low-level targets? If you continue the investigation by following the money, doing controlled deliveries, or talking to informants, can you prosecute higher-level targets?



Timing of arrests

When is the best time to arrest suspects? Have you gathered as much evidence as you can before making arrests (when the publicity will make it difficult to continue to gather evidence or evidence may be destroyed)? Have you frozen assets so they will not disappear?



Admissible evidence for trial

Is foreign evidence in a form the court will accept?

Is electronic evidence in a form the court will accept?

Are witnesses prepared and available to testify?

Is there a clear visual way to present evidence to the court, such as a summary chart?

Confiscation of Property



In wildlife cases, costs incur from conducting the investigation, transporting wildlife, caring for wildlife, storage of wildlife products in climate-controlled warehouses or in freezers.

Conducting financial investigations in parallel with the wildlife crime investigation helps to identify assets that the state can seize to replenish these costs.

High-level wildlife traffickers are involved in this type of crime for the large financial gains and the low risk of punishment. They often spend their profits on luxury items, like expensive cars and jewelry. They also may invest their profits by purchasing land and houses and by operating businesses and zoos. The businesses may be used to facilitate and hide crime, such as using trucks from their used car dealership to transport wildlife products. Zoos are used as a cover to purchase endangered animals and illegally sell them to private individuals.

Remember that these proceeds of crime may be located in more than one country, so include financial inquiries in mutual legal assistance requests.

When drafting the confiscation request, consult with investigators on the variety of assets the suspects gained through wildlife crime.

Case Study of Best Practices



On 27 November 2022, a Bokeo Lao forestry officer alerted a Chiang Khong Thai immigration officer about a wildlife smuggling case in progress in their area of jurisdiction. The Thai immigration officer then coordinated with a Thai wildlife inspection officer at Chiang Khong Border Checkpoint who consulted the Lao forestry officer for more information.

The Lao forestry officer provided information that the wildlife carcass was being smuggled into Thailand by boat across the Mekong River from Bokeo, Lao PDR, to Chiang Khong, Thailand.

The suspect was using a route that was not an official border passageway.

Therefore, that same day, Thai authorities set up a water checkpoint to inspect boats at Jaem Pong. On one of the boats, they discovered a 35-year-old woman who fit the profile shared by the Lao forestry officer.

Thai immigration officers asked her for identity documents. She was not Thai. She was a Lao national. She had no passport, no documents in place of a passport, and no passage permits issued by Thai Immigration.

She hired a boat to carry her across the river into Thailand. The Thai wildlife officer searched the boat and found the wildlife carcass described by the Lao forestry officer. She was importing the carcass of an East Asian porcupine. The porcupine carcass weighed 9.5 kg and was sourced was from Lao PDR.

The East Asian porcupine is specified as a protected mammal under the Thai Ministerial Order on the List of Protected Wildlife of 2003, which supplements the Thai Wildlife Conservation and Protection Act of B.E. 2562 (WARPA 2019).



The Thai wildlife officer found that she had no permit from the Thai Department of National Parks, Wildlife and Plant Conservation to possess or trade this protected species of wildlife.

She was arrested and charged for immigration and wildlife offenses.

She pled guilty to the charges when questioned by the Thai police inquiry officer. She was held in police custody and in court detention throughout the investigation.

The prosecutor objected to any request she made to the court to be released on bail. The reasons given by the prosecutor were that the offenses rendered high punishment and that there was a high risk of her absconding if released on bail.

Thoeng Provincial Court in Chiang Rai, Thailand, fined her 11,000 Thai baht (approximately 300 USD) and sentenced her to 8 months of imprisonment. Her prison sentence was suspended for 2 years. The porcupine carcass was confiscated.

Annex 1: References

- Participant input from “Building the Capacity of Thai Prosecutors on the Enforcement of Wildlife Laws” in Chiang Rai, Thailand, in January 2022
- Participant input from “Knowledge Sharing Seminar with Thai Judges to Raise the Priority of Wildlife Cases in The Golden Triangle” in Chiang Rai, Thailand, January 2022
- Participant input from “Training and Knowledge Exchange with Lao Prosecutors on the Prosecution of Wildlife and Forestry Cases” in Lao PDR in Vang Vieng, Lao PDR, in May 2022
- Participant input from “Knowledge Sharing Seminar with Lao Judges to Raise the Priority of Wildlife Cases in The Golden Triangle” in Vientiane, Lao PDR, June 2022
- Participant input from “Cross-Border Collaboration Meeting” hosted by Lao P-WEN in Bokeo, Lao PDR, August 2022
- ASEAN Treaty on Mutual Legal Assistance in Criminal Matters (2006)
- Lao PDR Law on Criminal Procedure (2017)
- Lao PDR Law on Wildlife and Aquatic Life (2007)
- Lao PDR Law on Forestry (2021)
- Lao Wildlife Law and Forest Law Enforcement Network (Lao WEN) Operation Manual (2021)
- Thailand Criminal Procedure Code (2019)
- Thailand Wildlife Conservation and Protection Act B.E. 2562 (WARPA 2019)
- Rapid Reference Guide on Applicable Offenses to Trafficking of Critically Endangered Species in Thailand, 2nd Edition 2020

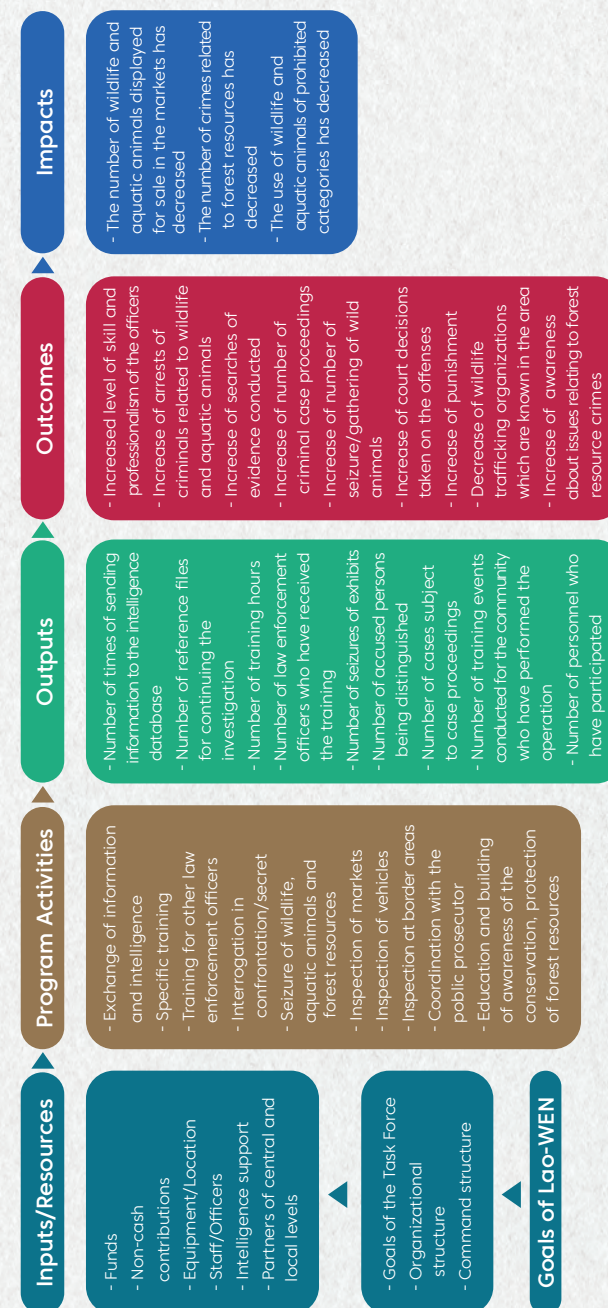
Annex 2: Lao-WEN

These entities can be contacted for support to expand investigations in Lao PDR:

Lao Wildlife Law and Forest Law Enforcement Network (WEN)

- Department of Forest Inspection, Ministry of Agriculture and Forestry
 - o To lead inspections and investigations of wildlife and forestry cases
- Department of Forestry, Ministry of Agriculture and Forestry
 - o To inspect CITES certificates for falsification or counterfeiting
 - o To keep seized exhibits
- Faculty of Forest Science, National University of Laos
 - o To conduct forensic scientific analyses of exhibits
- Department of Environmental Police of the Ministry of Public Security
 - o To conduct preliminary investigations and handover the case to Forestry investigators
- Department of International Police of the Ministry of Public Security
 - o To support searches and inspections of transnational crime targets and coordinate cross-border transfers of prisoners
- Department of Customs of the Ministry of Finance
 - o To handover suspects and seized exhibits to forestry officials in cases violating the Wildlife and Aquatic Law and the Forestry Law
- Department of Inspection of the Ministry of National Defense
- Department of Border Military of the Ministry of National Defense
 - o To inspect and patrol natural resources along borders
 - o To conduct preliminary investigations and handover the case to Forestry investigators
- Department of Anti-Corruption and Investigation of the State Inspection Administration
- Anti-Money Laundering Intelligence Office of the Bank of Lao PDR
 - o To provide financial intelligence reports related to environmental crime
- INTERPOL & ASEANAPOL
- Office of the Supreme People's Prosecutor
- World Wide Fund for Nature (WWF)
- Wildlife Justice Commission (WJC)
- U.S. Department of Justice Regional Resident Legal Advisor, based in U.S. Embassy Vientiane
- Related embassies

Annex 3: Model of Lao-WEN Coordinating Team and Investigation Task Force



Annex 4: Thai-WEN

These entities can be contacted for support to expand investigations in Thailand:

Thailand Wildlife Enforcement Network (Thai-WEN)

- Natural Resources and Environmental Crime Division (NED), Royal Thai Police
- Department of National Parks, Wildlife and Plant Conservation (DNP)
- Yieow Dong Task Force (YDTF) of the DNP
- Royal Forest Department
- Department of Special Investigations of the Ministry of Justice
- Thai Customs Department
- Thai Immigration Department of the Royal Thai Police
- Thai Bankers' Association (TBA)
- Anti-Money Laundering Office (AMLO)
- National Anti-Corruption Commission (NACC)
- Office of the Attorney General of Thailand
- Department of Provincial Administration, Ministry of Interior
- INTERPOL & ASEANAPOL
- Wide Fund for Nature (WWF)
- Wildlife Justice Commission (WJC)
- U.S. Department of Justice Regional Resident Legal Advisor, based in U.S. Embassy Vientiane)
- Related embassies

Annex 5: Example of Evidential Phone Analysis

The use of criminal intelligence analysts is an important resource to consider for strengthening wildlife crime cases, especially in complex cases that involve digital data. The extraction of digital data from computers and phones is becoming more common. At the same time, the production of evidence from digital data to prove criminality is becoming a common investigative practice. Criminal intelligence analysts can identify key offenders and crime patterns in complex wildlife crime cases.

During a Wildlife Justice Commission case in 2015, investigators identified a Bangkok-based Indian national who was operating as a wildlife supplier. He was found to be trafficking wildlife from India to Malaysia by air and then into Thailand via the land border usually by courier.

The Wildlife Justice Commission supported the Royal Thai Police with collecting information on his criminality, which involved the offer of lion and leopard cubs for sale. Following his offer, the suspect was arrested on 11 February 2021 and found with a live leopard cub in his possession.

The suspect's mobile phone was seized during the arrest. A full data download was extracted from the phone and provided to the Wildlife Justice Commission for analysis. The Royal Thai Police requested that the phone data be analysed with the main aim of providing an evidential product to support the prosecution of the suspect.

The role of the analyst is also to assist in identifying possible areas or gaps that the accused suspect can use as their defense, such as:

• Is the mobile phone attributable to the defendant?

- o The defendant may claim that the seized phone does not belong to him.
- o To refute this claim, the analyst conducts a subscriber check and produces an attribution chart.
- o The analyst also looks for other supporting factors in the phone data, such as selfies on the phone taken by the suspect and personal details including bank accounts, top contacts (likely to be family and friends), and text messages (may indicate his place of work).

• Is the offense attributable to the defendant?

- o The suspect may claim that he did not commit any offense.
- o To refute this claim, the analyst first establishes the following parameters.

What is the aim of the evidential product?

For example, the analyst shows contact between an undercover operative and the suspect to prove active involvement in wildlife trafficking.

What are the key points to consider?

These points may include what phone numbers or accounts the undercover operative and the suspect were using to communicate and what the date of the wildlife transaction was.

Are there any other key dates or information that need to be highlighted to assist the prosecutor?

Who is the audience?

Is there a need for evidential products to be simplified? What type of content can better communicate the findings (colour coding, analytical charts, storyboards)?

What are the potential gaps in the evidence?

Are there any gaps in the evidence that can be exploited by the defendant?

The analyst may also provide recommendations to the investigator or the prosecutor on how to fill those gaps.

Annex 6: Species Victim Impact Statement Examples

Species victim impact statements (SVIS) have been found to secure more adequate punishment in jurisdictions like Hong Kong and Australia.

For SVIS examples, see the following websites:

- The University of Hong Kong
www.svis.law.hku.hk
- WWF
www.greatermekong.panda.org
- Wildlife Justice Commission
www.wildlifejustice.org