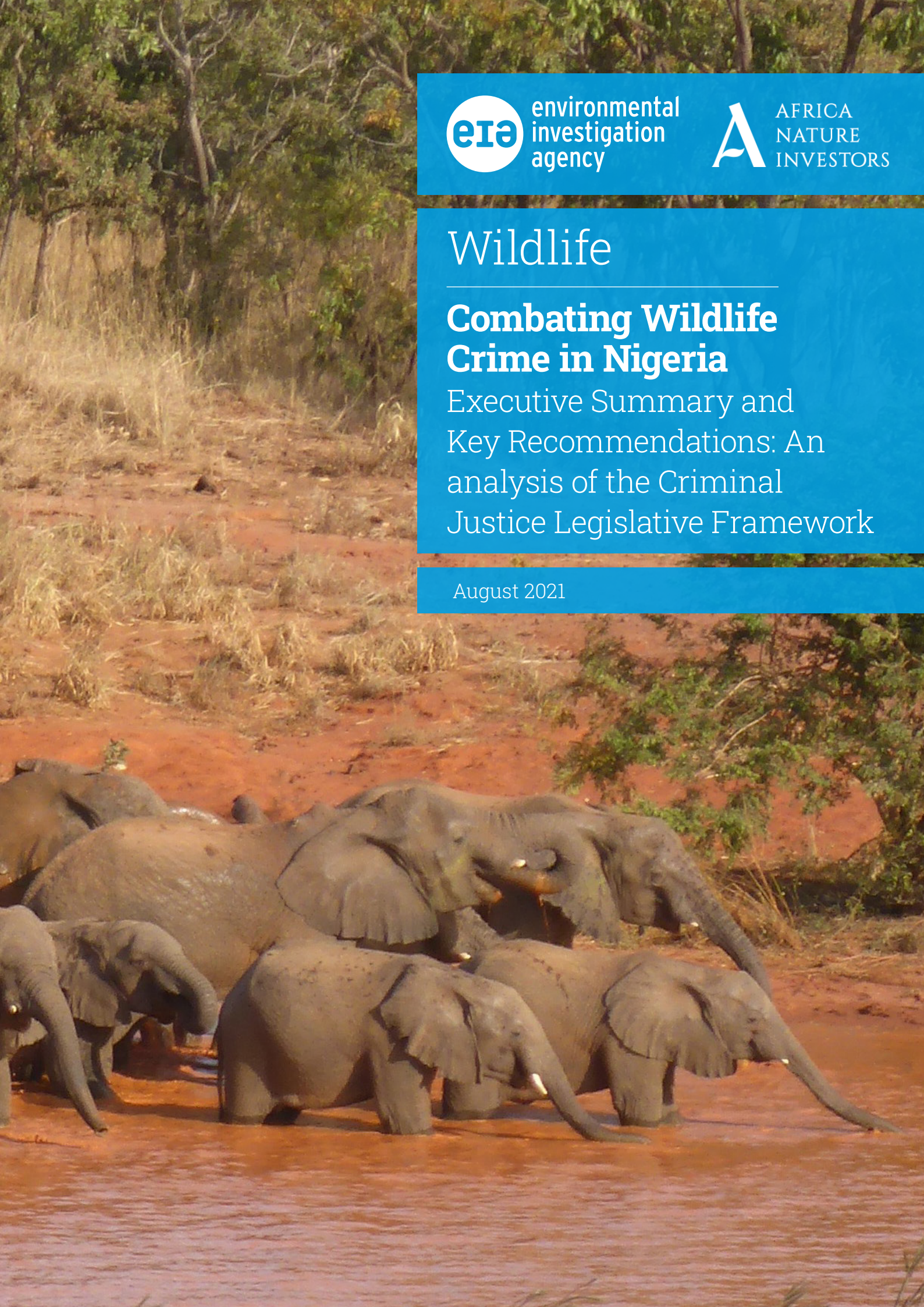


Wildlife

Combating Wildlife Crime in Nigeria

Executive Summary and
Key Recommendations: An
analysis of the Criminal
Justice Legislative Framework

August 2021



Executive summary

1. This report, commissioned by the Environmental Investigation Agency UK (EIA) in partnership with Africa Nature Investors Foundation (ANI) and supported by the U.S. Department of State, Bureau of International Narcotics and Law Enforcement Affairs (INL), is the first of its kind to undertake an in-depth legislative analysis of the federal wildlife-related laws of Nigeria alongside those of six states identified as key for addressing wildlife crime in Nigeria, namely Adamawa, Kano, Lagos, Rivers, Cross River and Taraba States. It builds on recommendations made by the EIA in its report of 2018 regarding Nigeria's progress on its National Ivory Action Plan (NIAP) which included the need to conduct an assessment under the auspices of the International Consortium for Combatting Wildlife Crime (ICWC). This report's focus on legislation will complement such an effort that will in due course be undertaken by the UN Office on Drugs and Crime (UNODC).

2. Nigeria is a federation of 36 states and one Federal Capital Territory (FCT Abuja). Each of the 36 states is a semi-autonomous political unit that shares powers with the federal government as provided under the Constitution. Each state has its own legislative body and its own Attorney General (AG) and Director of Public Prosecutions (DPP) and many have their own game reserves and laws concerning wildlife within. Those laws are not aligned with other states or with federal-level laws governing protected areas. In addition, many national authorities hold a mandate over wildlife crime, including investigation and prosecution powers. This creates a situation where there are no clear lines of oversight, coordination or management of wildlife crime investigation or prosecution. The ability of criminal elements to exploit weaknesses and loopholes in legal frameworks, including the grey areas that exist where multiple agencies overlap in mandate as is the case in Nigeria, has long been recognised as a significant factor in the failure of countries to meet the challenge of curbing such crimes.

3. It is clear that the challenges of improving Nigeria's ability to counter wildlife trafficking from and to its borders are immense. The key will lie in cooperation between the various agencies, which must strive to agree a unified approach to the handling of crimes involving protected species. These crimes must be prioritised in the short term to address the unenviable reputation that Nigeria has acquired in this context. Targeted and surgical interventions will be required to build Nigeria's capacity for a short, sharp and impactful response to these crimes. In the longer term, the resources required are substantial if Nigeria is to create a coherent legal framework to address these and other emerging crimes against the planet's biodiversity.



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Above: White-bellied pangolin (*Phataginus tricuspis*) in Cross River National Park, Nigeria

Front cover: African savanna elephants (*Loxodonta africana*) at a water hole in Yankari Game Reserve, Nigeria. Photo ©Wildlife Conservation Society Nigeria, 2021

“It is clear that the challenges of improving Nigeria's ability to counter wildlife trafficking from and to its borders are immense. The key will lie in cooperation between the various agencies, which must strive to agree a unified approach to the handling of crimes involving protected species.”



Key findings

Legislation

4. At the federal level, the laws governing international wildlife trafficking in Nigeria are relatively weak as compared to jurisdictions in East and Southern Africa. The draft law attached to Nigeria's 2018 NIAP progress report (the National Wildlife Species Protection Act – Endangered Species (Control of International Trade and Traffic) Amendment Act 2015) represents an improvement and support to pass it should be a priority. It does need some review alongside the draft Forestry Law and the draft National Park Act to ensure harmonisation in terms of criminal offences at the very least. Further, the offences it contains, while an improvement, could be further extended to capture the full range of relevant offences and vital investigative and ancillary powers.¹ As it stands, the best laws for prosecuting cases involving large-scale seizures are to be found not in the wildlife-specific laws but customs and money laundering laws.

5. At the state level, the disparity between states and their wildlife-specific laws is significant. However, the process of addressing the required changes would likely take years, if not decades, to push through across all 36 states. The focus should therefore be on the federal laws and, given that the issue of obtaining a 'fiat' or permission from the federal-level AG for a state prosecutor to manage a federal case is seen as relatively straightforward, it is quite possible for state-level prosecutors to navigate the existing federal laws (and new ones) to manage cases involving key species. The starting point is to raise awareness of those laws.

6. In parallel, where appetite and resources permit, it would be desirable to scope and undertake the harmonisation of state-level laws to achieve parity with each other and at the federal level. This can be through amendment, repeal and/or passage of new state-level laws (see summary of recommendations below).

7. Many agencies – in particular, Nigeria Customs Service (Customs), National Park Service (NPS) and the National Environmental Standards and Regulations Enforcement Agency (NESREA) – hold the power to 'compound' rather than prosecute an offence, i.e., on admission of the accused and payment of a fine, these agencies discontinue any further action. The power to compound is a potential incentive for corrupt practices. However, it is equally true that the lack of funding from central government to, for example, the NPS or the state-level park services is such that compounding addresses is a necessary requirement for the operation of some of these authorities. Rather than seeking wholesale removal of this power, e.g. through a standalone amendment law, discussions should be had with the relevant agencies to agree upon a standardised approach to compounding. For instance, compounding in any case involving a protected species should never be allowed or this could be framed less stringently and specific offences relating to protected species could be identified as ineligible for compounding and set out in an agreed MoU between agencies or within a policy document for each agency.

Prosecutions

8. Every prosecutor interviewed in the course of this report stated they had never seen a prosecution of wildlife crime either at the federal level or the state level. For some, the first time they ever considered offences against wildlife was in the course of being interviewed for this report. Awareness of the applicable federal laws and state laws was virtually nil. Coordination with Customs, NESREA, the police, NPS or state-level reserve officers was unheard of in the context of wildlife crime. The customs authorities, responsible for a significant number of detections at Nigeria's ports and borders, had not conducted a single prosecution internally until 2019,² but had instead handed matters over to NESREA without oversight, follow-up or any further engagement. This is despite having an in-house prosecution department with power to prosecute not just under its own law but any offence connected with a customs violation and comprising five officers in Lagos and at least one, often two or three, in each state.

9. The disparity in laws, coupled with a lack of awareness of the existing laws both at state and federal level means that the use of fiats is not even considered by state prosecutors. There are also overlapping mandates between relevant agencies and so a targeted response, at least in the short term, is merited. It is recommended that the focus should be upon making the best use of the existing legal framework using a multi-agency coordinated approach – as stated above, the best laws for prosecuting cases involving large-scale seizures are to be found not in the wildlife-specific laws but customs and money laundering laws. Thus, support should be provided to key agencies with the mandate to enforce such laws, particularly the Customs prosecution department and the Economic and Financial Crimes Commission (EFCC), while bringing in state and federal prosecutors as well as NESREA alongside to build, in parallel, capacity and awareness of these crimes. This might be done in the following way:

- identify and prioritise states for intervention and support according to prevalence of wildlife crime and/or the proximity to key ports and points of entry and exit into and out of Nigeria. Criteria for selection will have to be determined with input from relevant stakeholders;
- support the HQ-level Customs offices and the prosecution units of EFCC,
- NESREA, NPS and relevant state DPP's offices to prosecute wildlife crime and related offences, including to codify their decision to charge and adopt a process of written and continuous review. The Federal DPP has such a code and so could be looked upon as a facilitator of such a process. This 'code' would identify the thresholds at which charges could be laid and provide guidance on other prosecutorial functions such as selection of charges, inter-agency consultation, plea bargaining considerations, and more. The initial focus should be at HQ-level Customs and other key agencies

sending nominated officers to work on this exercise. For state prosecutors, support may then be deployed for state-level formal adoption;

- in the short term, particular focus should be on a coordinated multi-agency approach involving Customs, EFCC, NESREA and potentially other agencies. Customs has been largely responsible for the large-scale seizures reported in recent years including the large-scale seizure of ivory, pangolin and other wildlife species in January 2021. Engagement with EFCC and the Nigerian Financial Intelligence Unit (NFIU) is also essential to strengthen investigations and prosecutions of money laundering and corruption associated with wildlife crime, while building necessary parallel capacity in other agencies such as NESREA and the federal DPP's office. This is because the laws applicable to international wildlife trafficking can extend to money laundering, tax evasion, fraud and corruption offences. The federal- and even state-level DPP's offices would be a better home for such prosecutions than even Customs or NESREA. In the short term however, mentoring of investigators and prosecutors in the key agencies mentioned above would be welcomed, perhaps with the use of a pilot programme focusing on wildlife crimes;
- the support to prosecutors as appropriate (Customs, EFCC, DPP, NPS and NESREA (which is currently home to 16 prosecutors)) would further focus upon navigating the existing laws applicable to wildlife trafficking and to the creation of a prosecution toolkit for such crimes. This must also include appreciation of the relevant evidential laws particularly in relation to admissibility of digital evidence and the disposal of exhibits prior to conclusion of trial (i.e., where subject to decay). Training on plea bargaining provisions and active case management provisions under the Administration of Criminal Justice Act 2015 should be a key component, as should discussion and agreement regarding court venue (the High Court may be a better venue for all such cases, given its original jurisdiction over criminal matters³ and the level of experience required of judges in this court). Any limits on jurisdiction over wildlife legislation should be identified and potential options to overcome such limitations through legislative amendments should be explored;
- in particular, support should be provided (in the short to medium term) to the Customs prosecution department on prosecution-led investigation and compilation of case files for in-house prosecutions with advocacy training. In addition, there is appetite for investigator training and the development of codes of conduct governing search and seizure, interview and more – the UK's Police and Criminal Evidence Act 1984 may act as a potential source of material to aid this development, in particular Codes A to H. Such a code for internal use within Customs could be developed in parallel to prosecution training outlined above in order to build long-term capacity and ensure that all relevant parties to any investigation are aware of the relevant processes and safeguards;

- with plans afoot to establish a specialist wildlife crime office (SWCO), it is essential that prosecution services are included whether they sit within the Federal DPP's office, the Customs authority, EFCC or NESREA. This can include a move to second prosecutors from these agencies into a 'case progression' unit with the SWCO – in this way, all agencies can be seen to have a stake in any seizure and capacity can be built in parallel towards achieving success at trial;
- training of Customs, NESREA, EFCC and DPP prosecutors alongside the Central Authority should be provided in order to support mutual legal assistance and extradition applications;
- support to build a witness support fund should be provided – this is an issue raised by state- and federal-level prosecutors alike. This may take the form of providing assistance in articulating and quantifying the need so that a request can be made to central government. Alternatively, liaison with NGOs can be considered to support priority cases in this way. The issue of corruption and how such funds would be administered would be a concern but as the 2012 initiative undertaken by the UK Crown Prosecution Service clearly articulated – 'no witness, no justice'.

Trial without delay, sentencing and the judiciary

10. The Administration of Criminal Justice Act 2015 and the federal-level practice direction on active case management (aimed at speeding up criminal trial) has yet to filter down to the states' high courts and magistrates' courts. The culture of adjournments is rife across the country, stymieing even the best investigation and prosecution of any case.

11. Further, awareness of wildlife crimes among the judiciary, as with prosecutions, is virtually nil. There is a need for support to the judiciary at both the federal and state levels (in priority areas) for training, awareness and more detailed scoping on the functioning of these courts with a view to identifying key interventions. Digitisation is often cited as a necessary requirement along with internet access (this can be said for prosecution offices too) to enable both speedy sharing of files and information and to simply provide access to relevant laws and procedures.

12. There is no sentencing practice that can be identified in the context of wildlife crime due to the fact that so few cases have been prosecuted. However, Nigeria has a strong framework in relation to sentencing and, with the passage of the federal-level practice directions on sentencing in 2016, it is one of the few countries on the continent that has set out prescriptive sentencing guidelines. However, this only applies to a limited category of offences and within the FCT. Another practice direction was also issued in 2015 focussing upon corruption and related offences for all High Courts. While 'environmental impact' is considered in both practice directions as a factor for sentencing, and while the 2016 practice direction provides for 'offences against the

State', which arguably could include wildlife offences, it would be desirable to clearly articulate a sentencing practice within the context of wildlife (and even forestry) crime. Both practice directions provide a precedent that can be utilised and it is recommended that engagement with the Chief Judge of the Federal High Court be undertaken with a view to extending this approach to wildlife trafficking cases and that Chief Judges in key states be engaged to consider adoption of the same. This would ensure a consistent (and deterrent) approach to sentencing and, in particular, could address the issue of foreign nationals and deportation with a clear guideline that imprisonment must be served before a deportation and not in lieu.

13. The lack of any central database for previous convictions is another hurdle – at the state level, prosecutors advised that unless the accused had been sentenced before in that particular court room and was recognised by someone in that court as having been convicted there, there was little prospect of identifying recidivist offenders. This is particularly crucial for certain laws where sentencing is elevated on the basis of a second conviction. Creation of even a limited database for use by the agencies involved in investigation of such crimes would be highly beneficial if that information can be properly and securely shared at the right time with the right individuals. The Nigeria CITES Management Authority formed a Joint Task Force in Combatting Illegal Trade of Wildlife Resources⁴ comprising several agencies such as the police, INTERPOL, Nigeria Customs Service, Nigeria Immigration Service, NESREA, the Ministry of Justice and other agencies through which proper awareness, dissemination and exchange of information through which proper awareness, dissemination and exchange of information can be facilitated. This Task Force, however, is not tailored for operational inter-agency law enforcement collaboration to support investigations and prosecution of wildlife trafficking in the country. A further agreement was reached in 2020 for stakeholders to create a database of seizures (and to ensure all relevant agencies had sight of any such seizures); this could and should be extended to include information about both convictions and arrests of accused persons.

International cooperation

14. In terms of international cooperation – extradition and mutual legal assistance – Nigeria has a strong legislative framework for both. However, as with domestic prosecutions, the use of these powers in relation to international wildlife trafficking has not been utilised. The advent of a new law on mutual legal assistance demands that the central and competent authorities receive training/sensitisation and practical support in putting these measures into place.

Key recommendations

Legislation

1. To prioritise and review the draft Endangered Species (Control of International Trade and Traffic) Amendment Act 2015 in order to:

- address the range of offences provided within the draft;
- ensure a sufficient range of investigative, sentencing and ancillary powers are available;
- ensure all relevant offences qualify for extradition and mutual legal assistance;
- to harmonise, at a minimum, the range of offences with those contained within the draft Forestry Act and draft National Park Services Act.

2. Where appetite and resources permit, to scope and undertake harmonisation of state-level laws and federal laws in order to achieve parity, prioritising states particularly impacted by transnational wildlife trafficking. This could take the form of amendment of existing laws, repeal and passage of a new law or repeal of the offences and penalties provisions only. Given the Constitutional dominance of federal laws, the focus on state-level laws may be upon the categorisation of species and the extent to which this is relevant to particular state-specific offences that are not captured in the federal laws.

3. To seek agreement on the power of certain agencies to 'compound' offences, e.g., through identification of a threshold above which such a power would not be exercised, or to seek wholesale revocation of this power in relation to protected species.

Investigations*

4. To include the federal prosecution authority within the SWCO, expected to be established soon.

5. To support the development of a Memorandum of Understanding (MoU) as to investigative and prosecutorial ownership of major seizures made by authorities (usually Customs) in Nigeria with possible secondment of prosecutors from NESREA, EFCC, NPS and Customs to either the SWCO or a 'case progression unit/prosecution unit' within Customs which, to date, is responsible for the majority of seizures. This would be with a view to ensuring prosecution-led coordinated multi-agency investigations from an early stage.

6. Within Customs, there is also appetite for investigator training and the development of codes of conduct/protocols for the exercise of certain powers of investigation, such as search and seizure, arrest, detention and interview. The development and training of these tools could be done in parallel to the prosecution

training in order to enhance the investigation and prosecution-led case building capacity within customs. Lessons learned from this could be extended to other agencies, such as NESREA, depending on capacity.

* Note: this report did not consider investigative capacity, only mandates under legislation.

Prosecutions

7. To build awareness among prosecutors as to the relevant and applicable laws both at the federal and state level and within the relevant agencies themselves. Prioritising states for such support could be based on prevalence and/or proximity to key points of entry/exit. For state-level prosecutions, the issue of fiat might be explored for certain thresholds e.g., could an MoU be created to enable an automatic fiat in certain cases?

8. To build capacity for prosecutions within the authorities that hold a prosecution mandate alongside the Federal DPP and the Office of Attorney General of the Federation (AGF). This is to build the quality of prosecution-led investigations. With Customs being the main authority responsible for detection and seizures, and given that it holds a prosecutorial mandate alongside other key agencies, the short-term recommendation is to develop a coordinated multi-agency approach and to target the building of prosecution capacity within Customs, EFCC, NESREA and others in partnership. This will involve codifying the decision to charge, developing strong prosecution policies to ensure consistency and transparency in decision-making – something recommended by every prosecutor, whether to adopt or, where it exists, to implement. Further support in developing drafting and advocacy skills is also recommended. The development of prosecutorial guides on wildlife crime, international cooperation and the implementation of existing federal-level practice directions would be included.

9. Support for a witness-support fund, which will entail quantifying the costs of witness attendance at court, and consideration of how such a fund would be administered.

Trial and sentencing

10. Support to the judiciary and prosecution services in implementing the Administration of Criminal Justice Act 2015 and the federal-level practice direction on active case management in the Federal Capital Territory with a view to decreasing trial times and adjournments. The principles of active case management contained with the practice direction should be extended across the country – scoping of appetite and methodology should be explored with the judiciary.

11. Sensitisation of the judiciary at the federal and state levels regarding wildlife crime.

12. Development of an addendum to the Federal Capital Territory Courts (Sentencing Guidelines) Practice Direction of 2016 to include international wildlife trafficking alongside discussion with both federal- and state-level Chief Judges regarding adoption for all federal high courts and relevant state high courts.

13. Support for digitisation of case files in priority courts identified as wildlife crime hotspots in order to enhance trial without delay.

14. Support for the development of a central database for previous arrests and convictions, a matter relevant for sentencing powers over recidivist offenders.

International cooperation

15. Training of central and competent authorities (particularly those within Customs, NESREA, NPS and the DPP) in relation the new Mutual Legal Assistance in Criminal Matters Act 2019, and extradition procedures.

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