

MATTOS FILHO >

Mattos Filho, Veiga Filho,
Marrey Jr e Quiroga Advogados



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VARELA**



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ILLEGAL WILDLIFE TRAFFICKING AND ITS RELATION TO TRANSNATIONAL ORGANIZED CRIME IN LATIN AMERICA AND THE CARIBBEAN

ARGENTINA - BECCAR VARELA
**BRAZIL- MATTOS FILHO AND DALLEDONE & ADVOGADOS
ASSOCIADOS**
**BOLIVIA - INTERNATIONAL ENVIRONMENTAL LAW
PROJECT LEWIS & CLARK LAW SCHOOL**
COLOMBIA - BRIGARD URRUTIA ABOGADOS S.A.S
ECUADOR - NOBOA, PEÑA & TORRES
GUATEMALA – QIL+4 ABOGADOS
MEXICO - GALICIA ABOGADOS
PERU - ESTUDIO RODRIGO, ELÍAS & MEDRANO
URUGUAY - GUYER & REGULES

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INTRODUCTION

Latin America and the Caribbean have an exceptional natural wealth. The particularities of eco-regions such as the Amazon Rainforest, the Andes Mountains and the Caribbean Coral Reefs, among others, generate a vast diversity of ecosystems, species and resources. The region plays a fundamental role in the fight against illegal wildlife trafficking, as its high levels of biodiversity and endemic species make it a strategic point for criminal networks.

The illegal trafficking of species is categorized as the third most lucrative criminal activity and represents one of the greatest dangers to biodiversity. Such criminal activity is often intrinsically related to drug and arms trafficking. However, wildlife crime is often overlooked. The rise of this criminal activity is due to the growing expansion of the illegal market for wild species at international level, which is fed by a constant demand for species, particularly those categorized as endangered or that are economically important.

This report provides an analysis of the intersection between administrative and criminal law with respect to illegal trafficking of wildlife. Specifically, it addresses the current situation regarding illegal trafficking of species in certain countries in Latin America, the link and challenges between the use of environmental, administrative and criminal laws, and proposes recommendations for strengthening the use of existing jurisdictional environmental laws, regulations and sanctions, and cooperation within the region and beyond, including the U.S.

Discussions addressing the primary regulatory instruments and practical experiences associated with combatting illegal wildlife trafficking are based on contributions from legal experts from the following jurisdictions: Colombia, Argentina, Uruguay, Bolivia, Brazil, Peru, Ecuador, Mexico, Guatemala and the United States. The conclusions in this document were obtained from the analysis of the applicable legal frameworks in each jurisdiction, as well as interviews with NGO officials as well as administrative, criminal and police authorities in each of the jurisdictions.

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ARGENTINA – BECCAR VARELA

Angeles Murgier, Francisco Zavalia y Mariana Salgado

1. Legal Framework Governing Wildlife Trafficking and Associated Offenses

Argentina is a signatory to multilateral treaties and conventions related to Wildlife Trafficking, the Environment, and Transnational Organized Crime. The following include the most relevant to this work, which, in accordance with the Constitution (CN), have been adopted as federal law: CBD, Nagoya Protocol, CITES, Lima Declaration on Illegal Wildlife Trade, CMS, RAMSAR, Protocol to Amend RAMSAR, United Nations (UN) Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, the Inter-American Convention against Corruption, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the UN Convention against Transnational Organized Crime, UNCAC, and the International Convention for the Suppression of the Financing of Terrorism, among others.

Argentina is a federal, institutional democracy and is composed of 23 provinces and one autonomous city, the City of Buenos Aires. Provinces retain all powers that have not been delegated to the federal government in conformity with the CN.¹ Because the power to protect the environment basically falls within the police power, according to the federal structure of the CN, as a principle, such power is vested in the provinces, and only in some specific cases -this is, when a federal interest is involved-, in the federal government. The federal government is vested with the power to enact civil and criminal liability systems and to legislate about the minimum standards.²

Federal Law 22,421 on Wild Fauna Conservation of 1981 (FCL) declares that wild fauna living in our territory, including its protection, conservation, propagation, repopulation and rational use is a matter of public interest. It establishes that all Argentine inhabitants must protect wildlife. Regarding regulatory mechanisms for challenging wildlife trafficking, both the FCL and the local regulations on CITES provide for registries and authorizations by the Ministry of the Environment and Sustainable Development (*Ministerio de Ambiente y Desarrollo Sostenible* or MAyDS). Basically, they provide for: (a) a *certificate for the importation, exportation and re-exportation of fauna and hunting trophies* for export, import and re-export activities related to live wildlife animals, including their hides, skins and other products and byproducts; and (b) a *provisional certificate for transit of imported wildlife* to move live animals and wildlife products and byproducts when they are imported from the point of entry into the country to a warehouse outside the federal jurisdiction. The FCL and its supplementary regulations also provide for proceedings to be conducted before the MAyDS to prove the origin, transfer and request waybills for wildlife transport. The provincial authorities issue waybills for activities carried out within their respective provincial territories. The FCL provides for the following penalties: special

¹ Section 121 of the National Constitution establishes: “*The provinces reserve to themselves all the powers not delegated to the Federal Government by this Constitution, as well as those powers expressly reserved to themselves by special pacts at the time of their incorporation.*” Pursuant to section 126 of the Argentine Constitution, the provinces are not authorized to exercise the powers delegated to the nation. Among other acts, the provinces are not permitted to enact civil, commercial, criminal, and mining codes.

² According to the CN, the authorities have the duty to protect the environment, ensure the rational use of natural resources and preserve the natural heritage and the biological diversity. In turn, the General Environmental Law sets forth the national environmental policy principles, goals and instruments.

disqualifications, suspensions or cancellations of sport hunting licenses, disqualifications or closures of premises, fines³ and seizures.

Argentina does not have updated and systematized information on wildlife trafficking. The MAYDS conducted 917 inspections between 2012 and 2016, and 13 fines were imposed between 2016 and 2017 aggregating AR\$ 989,583 (approximately USD14,000) and that 13,084 animals were confiscated between 2011 and 2016 (*see annex I*).

According to the 2018 State of the Environment Report, it arises that, as regards SDG Goal 15.7,⁴ the MAYDS has implemented a project to simplify administrative proceedings and created a National Registry of Wildlife Operators.⁵

At the civil society level, there are some organizations focused on this issue. In particular, the “Illegal Wildlife Trafficking Program” of the NGO Aves Argentinas was created in 2014 and seeks to generate strategic information, share it and achieve synergies among stakeholders - controlling and monitoring agencies, NGOs, communities, claimants- to work jointly (*see annex I*).

Regarding criminal aspects, the FCL supplements the Argentine Criminal Code (ACC). On criminalization of wildlife trafficking, the FCL lists a number of crimes (poaching, wildlife predation and hunting with prohibited procedures) and the penalties applicable to them, ranging from 1 month to 3 years’ imprisonment and special disqualification from 3 to 10 years depending on each case. The most serious crime described by the FCL is that carried out in an organized way or with the assistance of three or more people.⁶ It also regulates illegal wildlife trade, establishing the same penalties for those who “*knowingly transport, store, buy, sell, industrialize or otherwise trade in parts, products or by-products from poaching or predation*” (Section 27).⁷

In addition, Federal Law 22,415 (the Customs Code - CC) does not contain special provisions on animals, but rather they are considered as included in the applicable general system. Although in many cases when the market value of the goods is less than AR\$500,000 (approximately USD7,000), wildlife trafficking could be treated as a mere customs offense sanctioned with fines, there have been some court decisions that have considered it to be aggravated smuggling, with penalties ranging from 4 to 10 years’ imprisonment.⁸

³ Fines were updated in November 2019 and currently range from AR\$31,277 (USD 440 approximately) to AR\$25,022,000 (approximately USD 352,425) (Decree 797/2019). As from the information available on the MAYDS web site, 13 fines were imposed in 2016/2017 in the aggregate amount of AR\$989,583 (approximately USD14,000) for breaches of the FCL. The previous fines were too low and did not serve as a deterrent. Actually, one of the recitals of this Decree states that: “... the amounts of the fines have become outdated and obsolete, and devoid of deterrent effects on potential infringers, as well as punitive power compared to the damages caused, ...”

⁴ Goal 15.7. establishes: “Take urgent actions to put an end to poaching and to the trafficking of protected flora and fauna species and address both the supply and demand of illegal flora and fauna products”.

⁵ This registry systematizes into a single database the information of all individuals or legal entities engaged in the transiting and trading of wildlife live specimens, products and byproducts. This registry is managed fully online and enables an agile process so that any operator may apply for registration from anywhere in Argentina without the need to travel to the City of Buenos Aires. As regards SDG goal 15.6, at present there is a project developed jointly with the UNDP-GEF to promote the enforcement of the Nagoya Protocol on Access and Benefit Sharing in Argentina.

⁶ Sections 24 to 26.

⁷ A bill to reform the ACC is well in progress. The bill includes those crimes provided for in supplementary special laws into the main body of the ACC, and these special offenses are included within a particular title of crimes against wildlife or other animals, with minimum changes to the current regime and similar penalties (Sections 453 to 456). It also includes biodiversity crimes.

⁸ For example, courts have concluded that protected species included in Appendix I to the CITES are to be considered as merchandise subject to absolute prohibition (Section 865 g) or as a conduct able to affect public health in some specific cases of poisonous specimens (Section 865 h). The CC establishes that the penalties applicable to smuggling will similarly apply to those who start performing smuggling but do not consummate it for circumstances beyond their control (Chapter III), and includes the crime of concealment with penalties up to 3 years’ imprisonment for those who “*acquire, receive or take part in any way in the acquisition or receipt of any merchandise that according to the circumstances should be presumed to come from smuggling*” (Chapter IV). Anyone in possession of foreign exotic species may be considered as perpetrator of this crime (Section 874, 1.d), and if it is a habitual activity or its perpetrators are public officials, military or security forces, sanction is aggravated with jailing up to 4 years (Section 874, 3.a&b).

2. Relationship Between Wildlife Trafficking, Transnational Organized Crime and Corruption

Argentina does not treat wildlife trafficking as a form of organized crime. As mentioned in part I above, Argentina has ratified international instruments concerning transnational organized crime and corruption. Both Argentine criminal justice authorities and administrative regulators cooperate closely with those in foreign countries. Law 24,767 of 1997 provides the foundation for the system of international legal cooperation on criminal matters (LCC). It provides the rules of procedure applicable for international legal assistance and extradition followed by Argentina. In addition, in cases where there is no treaty binding Argentina with the requesting government, it establishes the conditions under which the assistance will be provided. Criminal assistance will be provided even if the offence giving rise to the extradition process has not been provided for in Argentine law. Several bilateral and regional international treaties have been entered into which provide rules for mutual assistance on criminal matters, including for example obtaining evidence.

The LCC does not establish a specific mechanism concerning seizing of assets. However, for this type of measure, which may affect rights protected by the CN (such as the right to property), it provides that the offence should be provided for under Argentine laws and the order should be issued by a court, for matters such as: (i) a house search; (ii) surveillance of individuals; and (iii) interception of correspondence or communications.

Argentina has entered into the UN Convention against Corruption through Law 26,097, which enables confiscation of proceeds of crime and property or other items used for offences under the Convention.

There are no rules restricting compliance with investigations started in other countries where those acts are not being investigated in Argentina. Extradition Law 24,767 provides for a “national option”, meaning that if the extradition of an Argentinean citizen is required, the citizen may opt to be placed on trial in Argentina (as long as a bilateral treaty does not provide otherwise).

3. Governance and Justice Systems Concerned with Wildlife Trafficking

The enforcement agency under the FCL⁹ and the multilateral treaties and conventions related to the Environment is the MAyDS. At the provincial level, the 23 provinces have environmental agencies, mainly at the ministerial or secretariat level. The City of Buenos Aires (CABA) also created its own agency.

The main provisions under criminal law that govern and punish the perpetrators of crimes are the ACC and special supplementary criminal laws, which are applicable throughout the Argentine territory.¹⁰ Federal and local enforcement agencies and courts are responsible for the investigation and prosecution of crimes. In this regard, the Federal Criminal Procedure Code (CPC) applies in courts of the CABA and in federal courts across the country and local Criminal Procedure Codes apply in the provinces. Federal courts are assigned to conduct smuggling, narcotic, bribery and corruption investigations among other crimes, and have broad powers under the CPC, including requesting reports from public and private agencies and ordering procedural

⁹ At places subject to the exclusive jurisdiction of the Federal Government, as well as in international and inter-provincial trade.

¹⁰ The enactment of the ACC is an authority specifically delegated by the provinces to the national government in the national Constitution, and thus the provinces cannot issue regulations that supersede it.

and precautionary measures, aimed at avoiding and preventing obstruction to investigations and the escape of criminals.

All national and provincial police forces are at the serve of the Federal Judiciary, as court assistants, to perform, execute and/or comply with its orders. The authority of a Federal Court is limited geographically to Argentina. The authorities and the judiciary co-operate in practice with overseas regulators. There are no special procedures or guidance for investigating these crimes. Lastly, the Public Prosecutor's Office (*Ministerio Público Fiscal* or MPF) is an independent body within the judicial system. The following are specialized offices within the purview of the MPF: Administrative Investigations,¹¹ the PROCELAC (*Procuraduría de Criminalidad Económica y Lavado de Activos*),¹² PROCUNAR (*Procuraduría de Narcocriminalidad*),¹³ and UFIMA (*Unidad Fiscal para la Investigación de Delitos contra el Medio Ambiente*).¹⁴ Also, the Anticorruption Bureau, directly subordinate to the Executive Branch within the Ministry of Justice, is a key player in the fight against corruption and has the following powers, among others: request information, obtain expert opinions, conduct preliminary investigations, file criminal complaints with the Federal Judiciary, etc.

4. Conclusion: Positive Trends and Space for Change

From our research we consider the following as noteworthy highlights for Argentina:

- i. The general perception among different players¹⁵ is that wildlife trafficking is not sufficiently prioritized in the public agenda and not sufficiently understood (poor education translates into lack of awareness by the society in general about this matter and its consequences). Also, there is an increasing demand of wildlife, its products and byproducts.
- ii. Argentina does not treat wildlife trafficking as a form of organized crime. Wildlife trafficking is not a serious crime associated with other crimes.
- iii. The offenders who are punished/prosecuted for wildlife trafficking are those who form part of the first link in the chain and are more heavily exposed, leading to the “criminalization of poverty” as the most vulnerable people are punished. If investigations took it as a *delito complejo* (a crime which in itself constitutes two or more crimes), this situation could be overcome and the focus could be placed on the other parties involved in the crime, mainly the agents involved in the following stages of trafficking and trading, i.e. the leaders of wildlife trafficking rings.
- iv. As regards criminal judicial aspects, it should be noted that the FCL is a “blanket” criminal statute (i.e. a statute that defines a penalty for a criminal offense, which is defined in another law), enacted by a *de facto* government which does not contemplate the competent jurisdiction of federal courts to investigate crimes. These three factors have been the subject of different issues raised in court mainly related to the principle of culpability governing criminal affairs and the constitutionality of the categories of

¹¹ This is a special prosecutor's office within the Public Prosecutor's Office. It investigates and promotes the investigation of crimes concerning corruption and administrative irregularities.

¹² A unit within the attorney general's office designed to combat money laundering and other economic crimes. PROCELAC has six operational areas: Money Laundering and Terrorist Financing, Economic and Banking Fraud, Capital Market, Tax Crimes and Smuggling, Crimes against Public Administration and Bankruptcy.

¹³ A Prosecutor's Office created to fight against drug trafficking and all kind of drug-related crimes, design a criminal policy, institutional organization and intervention strategies according to gravity, complexity, magnitude and extent of drug crimes.

¹⁴ This unit specialized in environmental crimes is led by a Federal Prosecutor and one of its main objectives is to promote preliminary investigations and support ongoing ones, referring to events that violate the FCL and the Federal Hazardous Waste Law.

¹⁵ Mainly arising from articles and interviews with representatives of civil society organizations and former ministry officials.

- offenses. Different treatment has been given by the courts to these cases which shows a lack of political and criminal coordination at a national level.¹⁶
- v. Admission of the need to (a) make amendments to the criminal provisions of the FCL and also of the need to include a title on environmental crimes into the Argentine Criminal Code (according to the bill to reform the ACC), and (b) promote a Federal Biodiversity Act on to establish minimum standards regarding wildlife harvest, sustainable use and tracking mechanisms across jurisdictions.
 - vi. Few administrative penalties are imposed for illegal trafficking. There are not many records of such penalties (as they are not published by the MAyDS) and, so far, the amounts have been insignificant (see Part I).¹⁷ In addition, the authorities have expressly acknowledged that administrative penalty procedures are slow and, in many cases, the actions become time-barred (thus rendering prior control and monitoring efforts useless).
 - vii. Argentina does not have updated and systematized information on wildlife trafficking. The lack of statistics and databases hinders the possibility of a serious and in-depth analysis of this issue and provides fertile ground for the growth of organized crime and prevents the development of a strategic plan.
 - viii. Admission of the need to improve coordination of wildlife management needs across jurisdictions.
 - ix. As a positive aspect, we highlight that Argentina is a signatory to multilateral treaties and conventions related to Wildlife Trafficking, the Environment, and Transnational Organized Crime, and has internal laws that criminalize wildlife trafficking and has established regulatory mechanisms for challenging wildlife trafficking. There is also a growing trend towards digitalizing permits and registries related to these matters to giving more transparency and traceability to the mechanisms already in place. Below follow our preliminary recommendations/suggestions on areas for improvement.
 - a. Treat wildlife trafficking as a form of organized crime.
 - b. Improve the (national and provincial) government's abilities to document, survey and prepare diagnoses on trade routes, identification of the most trafficked/wanted species and sites where pressure from hunters is higher to coordinate and focus efforts.
 - c. Provide training to security forces, MAyDS officials and local authorities, members of the Judiciary, customs officers, MPF and other players.¹⁸
 - d. Organize talks and workshops for the community intended to raise awareness about the fauna, specially focusing on the illegally traded species of each specific region. Furthermore, increase advocacy, communication and dissemination campaigns, preparation of printed and digital materials to raise awareness and to boost the role of society as an active player in the solution process.
 - e. Achieve a more coordinated approach among the different offices/agencies listed in III. above. The MPF has different offices with qualified personnel to conduct

¹⁶ The general rule on jurisdiction is that ordinary provincial courts will have competent jurisdiction to deal with these crimes, whereas federal courts will have competent jurisdiction under exceptional circumstances, such as when different jurisdictions are involved or in case of smuggling of species (subject-matter jurisdiction). The UFIMA has adopted an interesting, although still debatable, opinion in this regard by asserting that the jurisdiction of federal courts constitutes a guarantee for all Argentine citizens, supported by the provisions of the FCL that have declared wildlife as a matter of public interest and also by the concept of "shared resources" with reference to animal species that may be found in more than one province.

¹⁷ The penalties do not have a deterrent effect and are not consistent with the "damages caused." Additionally, judicial decisions are not communicated to the MAyDS. This could prevent the MAyDS from granting authorizations to those convicted in criminal proceedings.

¹⁸ Coordinated actions with the National Service of Agri-Food Health and Quality are also important to avoid trafficking of wildlife meat products (i.e. an establishment may be selling guanaco meat on a repeated basis using the same waybill, regularizing the sale of illegal meat).

investigations into organized crime, money laundering, drug trafficking, corruption and wild species trafficking. Therefore, this type of crimes should not be treated as isolated and separate offences but as a problem that combines different modalities and that should be understood not only at a national level but also as part of a transnational ecosystem.

- f. Strengthen administrative procedures with the aim of improving their agility, traceability and transparency. Even more, enhance penalties to improve its deterrence effectiveness.

BRAZIL - MATTOS FILHO AND DALLEDONE & ADVOGADOS ASSOCIADOS

Antonio Reis, Rômulo Sampaio, Júlia Massadas and Caio Fortes de Matheus

Introduction

Brazil is one of the most biodiverse countries in the world, with 116,016 species of animals cataloged (BOEGER et al, 2020), which correspond to between 10 and 15% of all known species (MMA, 2020). Among the species analyzed, 1,182 are threatened with extinction, with hunting/capture being the fifth major threat factor (ICMBio, 2018).

Precisely because of this, Brazil is also one of the main targets of wildlife trafficking, turning over an average of US\$ 900 million, which is equivalent on average to 15% of the amount generated by this illegal activity in the world (RENTAS, 2019).

Therefore, it is clearly important to understand this complex natural system, and to develop appropriate legal regulations for its preservation. For this purpose, this study aims to present an overview of the wildlife trade in Brazil, as well as the main legal instruments for environmental regulation of the sector and its correlation with corruption and transnational organized crime.

To this end, the methodology used is based on bibliographic and documentary research regarding legislation, national action plans and existing regulatory instruments that aim to curb such practices, in addition to the collection of data on the reality that prevails in the country on this question.

1. Provisions of the Brazilian Legal System regarding Trafficking of Wildlife and Associated Crimes

At an international level, Brazil is a signatory to several treaties and conventions aimed at protecting the environment and wildlife. Among the most important are the ratification of the Convention on Biological Diversity (CBD), promulgated by Decree no. 2,519/1998 and on the basis of which the country developed National Biodiversity Strategies and Action Plans (EPANBs).

Specifically regarding the trafficking of species, there is also the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), which establishes robust regulation regarding the activity and prohibits the trade of species threatened with extinction. The convention was ratified internally by Decree no. 76,623/1975. In addition, several decrees, ordinances, and resolutions were enacted to regulate the issue in Brazil.

An ecologically balanced environment is a right of all citizens, provided for in article 225 of the Constitution of the Federative Republic of Brazil of 1988 (CFRB/88). In this scenario, the Brazilian Federal Constitution imposes on the Public Authorities (§1, item VII) the obligation of protection of fauna and flora, prohibiting any practices that place their ecological function at risk, that cause the extinction of species or subject animals to cruelty.

In order to regulate the constitutional provisions and protect natural environments and species, Federal Law no. 9,985/2000 instituted the National System of Nature Conservation Units (SNUC) in Brazil, establishing, among other measures, Wildlife Refuges and Wildlife Reserves. In its art. 53, it also provides that the Brazilian Institute for the Environment and Renewable Natural Resources (IBAMA) must periodically prepare and

2. Correlation between Wildlife Trafficking, Transnational Organized Crime and Corruption

Regarding the fight against organized crime, Brazil is a signatory to the United Nations Convention against Transnational Organized Crime, promulgated by Decree no. 5,015/2004. Regarding an approach specifically aimed at combating corruption, Brazil is also a party to the United Nations Convention Against Corruption (UNCUC), promulgated by Decree no. 5,687/2006; the Inter-American Convention against Corruption (CICC), promulgated by Decree no. 4,410/2002; and the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD), promulgated by Decree no. 3,678/2000.

However, despite adherence to international treaties and legislative and institutional efforts to adopt measures to combat organized crime and corruption, Brazil still faces many difficulties to effectively curb such practices. And, as international studies point out, the presence of corruption and organized crime is strongly linked to the advance of wildlife trafficking (UNODC, 2020).

In Brazil, this problem is also present. Trafficking often covers more than one sector, feeding itself on legal loopholes and, mainly, failures in the investigation and punishment of these crimes. According to the RENCTAS report, there are about 400 criminal gangs specialized in animal trafficking in the country. Of these, 40% are also involved in other criminal activities, such as drug trafficking.

Another factor to consider is the expansion of criminal activity to the digital sphere, especially through the use of social networks, which has made it even more difficult to stamp out these crimes. In Brazil, this is aggravated by the absence of specific legislation, aimed at online wildlife trade. In addition, the Brazilian regulatory framework and institutions lack the necessary infrastructure and face many challenges to ensure proper investigation of criminal activities.

3. Governance and Justice System Regarding Wildlife Trafficking

In order to enforce the legal provisions, the system adopted for environmental protection in Brazil is made up of several agencies at federal, state, and municipal levels responsible for exercising the powers of policing, investigating, prosecuting and adjudicating crimes.

The National Environment System (SISNAMA) is organized on the basis of a consultative and deliberative body (National Environment Council - "CONAMA"), a central body (Ministry of the Environment - "MMA"), executive bodies at the federal level (Brazilian Institute of the Environment and Renewable Natural Resources - "IBAMA" and Chico Mendes Institute for Biodiversity Conservation - "ICMBio"), in addition to numerous executing agencies at state and municipal levels.

In addition, the governance model adopted relies on the performance of the Public Prosecutor's Office (federal and state) as a representative of civil society, and also the Federal, Civil and Military Environmental Police of the States in helping to repress these crimes.

4. Conclusion: Positive Trends and Need for Change

In view of the above, it is observed that, despite the initiatives already in place to curb trafficking of species and to fight transnational organized crime and corruption in Brazil, there is still a lot to be done to make the legal and regulatory provisions effective, to ensure proper protection of Brazilian biodiversity and punishment of environmental crimes practiced in this regard.

Among the problematic aspects, we highlight the lack of differentiation between minor crimes committed individually and the actions of transnational criminal organizations that carry out high-value transactions for which the fines are insignificant. The absence of explicit and specific legal provisions for illegal trade through the internet also facilitates this criminal practice.

We also point out as harmful some institutional and regulatory policy aspects related to: (i) the endemic corruption that exists in the country; (ii) the excessive fragmentation of environmental agencies; (iii) the lack of incentives, funds and sufficient qualified personnel to investigate and adequately punish the crimes committed; (iv) deficiencies in the collection, analysis and dissemination of data related to wildlife trafficking, which makes it difficult to adopt effective measures for its eradication.

In this regard, we consider it urgent to adopt in Brazil legislation that specifically provides for the transnational traffic of wildlife, which should be in addition to expansion of the institutional capacities of the Brazilian environmental agencies, so that the legal provisions become effective.

This report briefly discusses Bolivian law and policy relating to wildlife trafficking, defined for purposes of this report as trafficking of wild fauna. In addition to analysis of the Bolivian legal regime directly governing wildlife trafficking, this report examines associated offenses that tend to accompany wildlife trafficking in practice (e.g., membership in an organized criminal group, money laundering). Finally, this report includes select observations regarding the operation of Bolivian law and policy in practice.

1. Legal Framework Governing Wildlife Trafficking and Associated Offenses

As concerns global multilateral environmental agreements (MEAs) bearing on wild fauna and habitat, Bolivia is a party to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the Convention on Biological Diversity, the Convention on Migratory Species, the Ramsar Convention, and the World Heritage Convention. Without discounting the importance of the separate question of domestic implementation, Bolivia's broad participation in MEAs is commendable.

At the regional level, Bolivia recently signed the Lima Declaration on Illegal Wildlife Trade following the first High Level Conference of the Americas on the Illegal Wildlife Trade.¹⁹ Although the Lima Declaration does not contain legally binding commitments, it is remarkable for its tailored focus on wildlife trafficking and its promotion of concrete actions and strategies. For instance, the Lima Declaration recognizes that poaching and illegal wildlife commerce should be treated as “serious crimes,” and that sophisticated financial investigation is necessary to track the proceeds of wildlife offenses.

In addition to MEAs, Bolivia is also a party to the UN Convention Against Transnational Organized Crime (UNTOC) and the UN Convention Against Corruption (UNCAC). Both of these instruments have the potential to be powerful allies in the fight against illegal wildlife trafficking and associated crimes. For instance, in cases with a transnational element, UNTOC and UNCAC provide a framework for mutual legal assistance (MLA). MLA is a formal process for one government to receive certain forms of legal assistance from another government. Such assistance can include, *inter alia*, execution of searches and seizures, compelled testimony from witnesses, and the tracing of proceeds of crime. MLA is also contemplated in the Inter-American Convention on Mutual Assistance in Criminal Matters, to which Bolivia is a party.

Turning to domestic law, Bolivia's Constitution includes a general duty of nature stewardship, providing that the State shall “guarantee the conservation of natural forests . . . , their sustainable use, [and] the conservation and recovery of flora, fauna and degraded areas.”²⁰ At the statutory level, this general duty finds more specific expression in, *inter alia*, (1) Decree Law No. 12301—Law of Wildlife, National Parks, Hunting, and Fishing;²¹ and (2) Law No. 1333—Law of the Environment.²²

Decree Law No. 12301 establishes the baseline framework governing permitted and prohibited activities related to wildlife in Bolivia. However, it is important to note that this law, while still valid in some respects, does not reflect many of the more critical rules related to legal and illegal international commerce. Those rules are set forth in a separate instrument, Supreme Decree No. 3048, discussed below. Moreover, the regulated-hunting scheme embodied in Law No. 12301

¹⁹ *Declaración de Lima sobre el Comercio Ilegal de Vida Silvestre* (Oct. 4, 2019).

²⁰ Constitución Política del Estado, Art. 307 (2009).

²¹ Decreto Ley No. 12301—Ley de Vida Silvestre, Parques Nacionales, Caza y Pesca (1975).

²² Ley No. 1333 del Medio Ambiente (1992).

was radically altered in 1990 through Supreme Decree No. 22641, which established a default ban of most hunting activities, subject to separately authorized exceptions.

For its part, Law No. 1333 of the Environment builds on the basic framework of Decree Law No. 12301 by clarifying some of the permitted and prohibited activities related to wildlife, articulating an administrative sanction regime, and creating linkages with the criminal system. Notable provisions include Articles 52-57 (containing the basic rules regarding wild flora and fauna), 99-102 (detailing administrative infractions and procedures), and 103-115 (dealing with “environmental crimes”). Within the latter set of Articles, Article 111 provides a penalty of up to two years’ imprisonment, plus a fine “equivalent to the value” of the specimen, for anyone who “incites, promotes, captures, and/or commercializes” wildlife derived from unauthorized hunting.²³ Compared to penalties available in other countries in the region, this penalty is rather light. Moreover, as discussed below, the relationship between the “environmental crimes” section of Law No. 1333 and the general Penal Code appears to be a source of confusion and frustration for government and civil society alike.

In addition to these laws, Bolivia maintains various decrees, orders, and other regulatory instruments relevant to the fight against wildlife trafficking. Three of the most important are (1) Supreme Decree No. 22641 (as modified through Supreme Decree No. 25458), dealing with take;²⁴ (2) Supreme Decree No. 3048, addressing international trade;²⁵ and (3) Administrative Resolution No. 014/2020, dealing with domestic wildlife markets.²⁶

In response to indiscriminate hunting and trafficking in Bolivia in the 1980s, Supreme Decree No. 22641 erected a general ban against hunting, harassing, capturing, and collecting wild fauna. The ban is technically only a default rule; with a permit, hunting and associated activities are allowed. In 1999, Bolivia modified the baseline hunting ban through Supreme Decree No. 25458, which introduced a system of permitted hunting following development of species-specific sustainable use plans.²⁷

In 2017, Bolivia revamped its domestic implementation of CITES through Supreme Decree No. 3048. This decree implements all of the key CITES requirements, including designation of a Management Authority and Scientific Authority; prohibition of trade in violation of CITES; imposition of penalties for trade in violation of CITES; and confiscation of specimens illegally traded or possessed. Supreme Decree No. 3048 articulates with the general ban on take (Supreme Decree No. 22641 and associated decrees, discussed above) by establishing a default rule that prohibits trade in wildlife, both domestically and internationally. Supreme Decree No. 3048 establishes exceptions to this rule, but they are limited. For purposes of domestic trade, trade is only allowed when (1) it is established that the specimen derives from lawful harvest under an authorized management plan, (2) the trade complies with the relevant national quota system, and (3) in the case of CITES Appendix II species, there has been a non-detriment finding. These same basic conditions apply to exports, re-exports, and imports of CITES-listed species. As implemented, this system prohibits the vast majority of exports of CITES-listed animal species from Bolivia. In fact, among animal species listed on either Appendix I or II, legal exports are currently only permitted in the case of caiman (*Caiman yacaré*) and vicuña (*Vicugna vicugna*).²⁸

²³ *Id.* at Art. 111.

²⁴ Decreto Supremo No. 22641—Veda General e Indefinida, Art. 4 (1990).

²⁵ Decreto Supremo No. 3048—Comercio Internacional de Especies Amenazadas de Fauna y Flora Silvestre (2017).

²⁶ Resolución Administrativa No. 014/2020 (2020).

²⁷ Decreto Supremo No. 25458 (1999).

²⁸ Interview with anonymous government official (Oct. 2019).

In April 2020, in response to the COVID-19 pandemic, Bolivia's Ministry of Environment and Water issued Administrative Resolution No. 014/2020.²⁹ This resolution prohibits the use of wild animals as food and medicine throughout the country, with only a limited exception for subsistence hunting by recognized indigenous communities. On the topic of penalties, the resolution contemplates the development of a fine schedule (to be determined) and is without prejudice to available criminal remedies.

With respect to criminalization of wildlife trafficking, there are two key laws: Law No. 1333 and the general Penal Code. As mentioned above, Articles 103 through 115 of Law No. 1333 describe several "environmental crimes" related to wildlife, with Article 111 providing a penalty of up to two years' imprisonment, plus a fine "equivalent to the value" of the specimen, for anyone who "incites, promotes, captures, and/or commercializes" wildlife derived from unauthorized hunting.³⁰ On its face, this Article would seem to criminalize most activities related to unlawful take and trafficking of wildlife.

However, recent prosecutions suggest that authorities sometimes bring charges under the Penal Code—and not Law No. 1333—in cases involving wildlife crimes. While the Penal Code contains an Article criminalizing "prohibited hunting and fishing" (Article 356), the Penal Code does not explicitly identify wildlife trafficking (including transportation, import, export, sale, purchase, and offers for sale or purchase) as a crime. The closest the Penal Code comes is Article 223. Article 223, addressing "destruction or deterioration of goods of the State and national wealth," criminalizes acts that "destroy[], deteriorate[], extract[] or export[] a property belonging to the public domain, a source of wealth, monuments or objects of national archaeological, historical or artistic heritage[.]"³¹ Article 223 of the Penal Code provides for imprisonment of between one to six years; the maximum penalty is thus significantly higher than its counterpart under Law No. 1333. Although Bolivian courts have embraced the idea that Article 223 encompasses at least some instances of wildlife trafficking (for example, a Bolivian court recently applied Article 223 to convict a couple found offering jaguar parts for sale),³² it is not an ideal fit.³³ At a minimum, the relationship between Law No. 1333 and the Penal Code would benefit from clarification.

2. Relationship Between Wildlife Trafficking, Transnational Organized Crime and Corruption

Globally, wildlife trafficking is often the province of organized crime. While research on the organized character of wildlife trafficking in Bolivia is limited, Bolivia possesses several legal tools to combat the organized-crime aspects of wildlife trafficking.

First, the Penal Code does an admirable job of covering the various permutations of corruption that often facilitate or otherwise interact with wildlife trafficking. Second, the Penal Code criminalizes the use of fraudulent instruments (*e.g.*, hunting licenses, transportation documents, customs declarations, and CITES permits). Third, the Penal Code articulates two crimes relevant to criminal teamwork in many circumstances: (1) participation in an "unlawful association," and (2) participation in a "criminal organization."³⁴ Finally, and perhaps most importantly, Bolivia made amendments in 2012 to the money laundering provision to include "environmental crimes"

²⁹ Resolución Administrativa No. 014/2020 (2020).

³⁰ Ley No. 1333 del Medio Ambiente, Art. 111 (1992).

³¹ Código Penal, Art. 223.

³² *Sentencia con 3 y 4 Años de Cárcel a 2 Chinos por Caso Tráfico de Colmillos*, LOS TIEMPOS (Nov. 11, 2018).

³³ Interview with Mariana Da Silva Loayza (Aug. 2020).

³⁴ Código Penal, Art. 132, 132 bis.

as valid predicate offenses for purposes of the crime of money laundering.³⁵ Although this term is not defined, it would seem to easily cover money laundering flowing from wildlife trafficking.

Unfortunately, based on desk research and interviews with government and non-government actors alike, it does not appear that Bolivia routinely takes advantage of these tools. Financial investigations, in particular, seem to be almost non-existent in the context of wildlife trafficking.

3. Governance and Justice Systems Concerned with Wildlife Trafficking

The primary law enforcement and prosecution authorities charged with fighting wildlife trafficking and related crimes in Bolivia are (1) the Ministry of the Public Prosecutor/Attorney General's Office, (2) the Forestry and Environmental Police ("POFOMA"), and (3) the Special Police Force in the Fight Against Crime ("FELCC"). Other important law enforcement authorities include the Bolivian customs agency, the Unit of Financial Investigations (tasked with investigating money laundering), and the Special Police Force in the Fight Against Narcotrafficking (insofar as drug interdiction efforts may sometimes uncover evidence of wildlife trafficking).

The degree to which Bolivian authorities prosecute individuals for wildlife trafficking is difficult to discern. While some high-profile prosecutions have garnered news coverage, civil society actors complain that wildlife trafficking and other environmental crimes are given little priority.³⁶ Moreover, unlike neighboring Peru, Bolivia does not maintain a specialized prosecution division strictly devoted to environmental crimes.

For its part, the Bolivian judiciary also suffers from a lack of specialization and an inadequate appreciation of the harms that flow from wildlife crime. There are at least two factors behind this dynamic. First, according to a former criminal judge and prison authority, judges sitting in criminal cases do not generally consider environmental crimes, including crimes involving wildlife, to be "real crime."³⁷ Second, the tribunal constitutionally tasked with exercising primary jurisdiction over non-criminal environmental cases—the Agro-Environmental Tribunal³⁸—has in practice focused far more heavily on issues of land rights and agricultural matters rather than environmental offenses as such.³⁹ In short, the Agro-Environmental Tribunal's disparate emphasis on the "agro" side of its jurisdiction has weakened the environmental rule of law and its visibility in Bolivia.

4. Conclusion: Positive Trends and Space for Change

Based upon select interviews and an independent survey of existing laws and practices, it is apparent that Bolivia has the *potential* to be a regional leader in the fight against wildlife trafficking. "Potential" is the right word, for while Bolivia possesses much of the legal infrastructure necessary to combat wildlife trafficking, the country suffers from both formal legal gaps and shortcomings in practice.

To build on its successes, this report recommends that Bolivia prioritize the following matters:

³⁵ *Id.* at Art. 185 bis., as amended by Law No. 262—Law of July 30, 2012 (2012).

³⁶ Interview with Mariana Da Silva Loayza (Aug. 2020).

³⁷ Interview with Tomás Molina Céspedes (Dec. 2019).

³⁸ Constitución Política del Estado, Art. 189 (2009). See also Tribunal Agroambiental, ÓRGANO JUDICIAL Y LA JURISDICCIÓN AGROAMBIENTAL, available at <http://www.tribunalagroambiental.bo/index.php/atribuciones/>.

³⁹ Interview with anonymous former government official (Nov. 2019).

Revise Penal Code to Specify Wildlife Trafficking as a Crime: Compared to other nations in the region, Bolivia’s Penal Code fails to address wildlife trafficking with specificity. Bolivia should consider revising its Penal Code to ensure consistent prosecution and adjudication of wildlife crimes. The Peruvian Penal Code may be instructive in this regard.⁴⁰

Take Advantage of Revised Money Laundering Provision to Target Organized Wildlife Traffickers: To facilitate investigation and prosecution of individuals and groups profiting from wildlife trafficking, Bolivia should prioritize use of Article 185 bis. to target money laundering of the proceeds of wildlife trafficking. As amended, Article 185 bis. recognizes “environmental crimes” as valid predicate offenses for purposes of a money laundering charge. This is a powerful tool; not every nation in the region has such a law at its disposal.

Capacity-Building for Administrative, Enforcement, Prosecutorial, and Judicial Authorities: Bolivia should reorient administrative, enforcement, prosecutorial, and judicial authorities to view wildlife trafficking (a) as serious crime requiring penal remedies, and (b) as complex crime that is frequently associated with other crimes and transnational elements. Relatedly, Bolivia should re-orient its investigative and prosecution efforts to target the leaders of wildlife trafficking rings. Current efforts tend to focus on seizures and arrests of the individuals directly involved in poaching, transportation, and retail sale. While these lower-level individuals are often the most visible—and thus the easiest to interdict and prosecute—they are also easily replaceable. Stopping wildlife trafficking requires prosecuting the leaders and beneficiaries of trafficking rings, individuals who are often not so exposed.

COLOMBIA – BRIGARD URRUTIA ABOGADOS

Guillermo Tejeiro, Ricardo Forero, Camila Harmelly Bermúdez & Andrés Bornacelli
Ángeles Murgier, Francisco Zavalía y Mariana Salgado

1. Legal Framework Governing Wildlife Trafficking and Associated Offenses

The Colombian legal system has approached the illegal trafficking in wildlife species from three directions: (i) for one, it has been classified as a matter of national relevance because it affects the nation’s natural and cultural wealth and poses a threat to the environment, both of which being elements under special constitutional protection;⁴¹ (ii) for another, in terms of

⁴⁰ See Código Penal del Perú, Art. 308-313.

⁴¹ The Constitutional Court has established a consistent approach as concerns jurisprudence on this matter, as evidenced in rulings T-411 (1992), C-399 (2002), C-632 (2011), C-499 (2015), T-622 (2016) and T-325 (2017).

environmental administrative law, illegal wildlife trafficking is a violation of the obligations set forth in the country's environmental regulations and may thus trigger a process of environmental sanctions leading to a possible declaration of responsibility and the levying of fines; and (iii) finally, criminal law targets conduct that is prejudicial to the environment and natural resources. There follows a brief description of each of the aforementioned thematic lines.

In the Latin American and Caribbean region, Colombia is a pioneer in the introduction of a national policy geared towards the prevention and control of illegal trafficking in wildlife species.⁴² In 2002 the Ministry of the Environment and Sustainable Development (MADS) promulgated a national strategy which aimed to identify, prioritize, guide, articulate and implement actions that would diminish criminal activity that jeopardizes wildlife. This strategy is part of the 1997 National Biodiversity Policy and the National Policy for the Comprehensive Management of Biodiversity and its Ecosystemic Services (PNGIBSE), which was issued in 2012.

In the context of the aforementioned strategy, MADS in 2014 undertook a national diagnostic of the situation regarding wildlife in Colombia. The study found that between the years 2005 and 2009 there were 224,000 seizures of wildlife species in possession of individual persons, of which 60% took place in the Caribbean region, the so-called "coffee axis" and the District of Bogotá. It was also pointed out that most seizures were associated with land and riverine transit routes, in particular those located in tourist corridors.

Based on these findings and on the evaluation of progress made on the national strategy to prevent and control illegal wildlife trafficking, new goals were set and activities planned for the year 2020, in association with four lines of action, as follows: (i) monitoring and control of illegal wildlife trafficking; (ii) handling and disposal of seized and/or impounded specimens; (iii) promotion of productive alternatives; and (iv) participation of civil society.

The protection of biodiversity is a cross-cutting issue in the Colombian legal system. There are multiple provisions on the matter and these have been incorporated to the Constitution, Legislative Decree 2811 (1974), Law 99 (1993) and Decree 1076 (2015). Said protection has been strengthened by means of international instruments such as the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), ratified by Law 17 (1981),⁴³ the Convention on Biological Diversity (CBD), ratified by Law 1665 (1994) and the Protocol Concerning Specially Protected Areas and Wildlife of the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region, ratified by Law 356 (1997).⁴⁴ In addition, and as a supranational source, Colombia is governed by Decision 523 (2002) of the Andean Community of Nations (CAN), leading to the formulation of a Regional Biodiversity Strategy for Countries of the Tropical Andes.

Furthermore, a number of institutions have become consolidated in the state's legal scaffolding whose functions are keyed towards fighting illegal wildlife trafficking. Law 99 (1993) created a Special Division of Environmental and Natural Resources at the National Police, whose work is to support environmental authorities, territorial entities and communities in their efforts to defend and protect the environment. As regards customs, Decree 1071 (1999) establishes that the

⁴² Interview with the *Wildlife Conservation Society – Colombia*, Monday 3 August 2020.

⁴³ Declared enforceable by Constitutional Court ruling C-012 (2004).

⁴⁴ Declared enforceable by Constitutional Court ruling C-401 (1997).

Customs Directorate is obligated to carry out activities which aim to avoid violations associated to trafficking in wildlife species in its regular customs-related transactions. An Environmental Crimes Investigation Team was introduced at the Central Directorate of the Judicial Police (DIJIN) by means of Administrative Instruction 015 (2000), a subgroup of which is dedicated exclusively to wildlife.

Now then, from the point of view of administrative law, illegal wildlife trafficking is governed by the provisions found in Law 1333 (2009), which establishes the procedures for imposing environmental sanctions, and in Resolution 2064 (2010), which regulates measures to be taken upon preventive seizure, the restitution or forfeiture of terrestrial and aquatic fauna and flora.

Based on the regulations mentioned in the foregoing, environmental authorities are competent to carry out preventive forfeiture and/or seizure of individual specimens of wildlife or wildlife products as well as to decide how to dispose of said specimens by means of a duly reasoned administrative act. Alternatives are as follows: (i) Attention and Assessment Centers; (ii) animal shelters; (iii) zoos and aquariums; (iv) release in case of native species; (v) Attention, Assessment and Rehabilitation Centers; (vi) wildlife farms; (vii) network of friends of wildlife; (viii) wildlife owners; (ix) setting free into semicaptivity; and (x) destruction, incineration and/or disablement. In order to decide upon provisional or final disposal of individual specimens, interinstitutional collaboration among the various environmental authorities is fundamental. The ideal, of course, is that the animals be returned to their natural habitat or at least to areas with similar climate conditions.⁴⁵

As mentioned earlier, illegal wildlife trafficking involves the violation of environmental obligations, for which reason it is possible that by means of a process of environmental sanctions the competent authority may declare the offender guilty, impose daily fines of up to 5000 times the current minimum statutory monthly wage and order the definitive forfeiture of the fauna in question, among other measures.

As regards criminal liability, the Colombian Penal Code, dating from the year 2000, includes a title which makes reference to crimes *against natural resources and the environment*. Among the crimes described therein it is worth highlighting the *illegal use of natural resources*, as set forth in article 328 of the Penal Code and makes it possible to prosecute those who “*appropriate, introduce, exploit, transport, keep, traffic, trade, explore, use or benefit from specimens that are the product of or form part the fauna, forest, flora, hydrobiological, biological or genetic resources of Colombian biodiversity.*” The penalty for this crime increases “*when the species are classified as endangered, at risk of extinction or are migratory, rare or endemic to the Colombian territory.*”

In addition, Law 1453 (2011) introduced the crime of *illegal handling of exotic species*, by means of which it is possible to prosecute those who “*in violation of existing regulations introduce, transfer, manipulate, experiment with, inoculate or propagate exotic wildlife and invasive species that endanger human health, the environment and species which are part of Colombian biodiversity.*” The Penal Code also establishes as a crime the *violation of borders for the purpose of exploiting or using natural resources* (article 329) and the crime of *illicit fishing activities* (article 335).

⁴⁵Interview with officials of the environmental authority of the city of Bogotá (District Environmental Secretariat), Forestry and Wildlife Subdivision, 31 July 2020.

2. Relationship Between Wildlife Trafficking, Transnational Organized Crime and Corruption

Colombia ranks second in the world regarding biodiversity. As concerns wildlife, it is first in birds and orchids, second in amphibians, butterflies and freshwater fish, third in reptiles and fourth in mammals. This natural wealth, combined with the human population's social and economic conditions, have led to illegal wildlife trafficking.

Regarding criminal organizations associated to wildlife trafficking, the DIJIN has identified a staggered modus operandi based on a distribution of roles as (i) gatherers, usually inhabitants in a particular region who tend not to know the activity is criminal; (ii) groups of transporters; and (iii) groups of traders.⁴⁶ In principle, the Colombian Penal Code is meant to pursue all links in the chain; however, the authorities are of the opinion that wildlife trafficking is mainly the result of ignorance of the law, a form of cultural expression or a form of subsistence-level economic exploitation.⁴⁷ This attitude diminishes the proportion between investigations, sanctions or convictions and the number of seizures made.

It is important to point out that from both the penal and administrative spheres, the authorities take as indication of an organized criminal activity the number of individual specimens seized, because it is thought that if the number is high a commercial purpose is more likely. For this reason, seizures made at airports and bus stations tend to be more effective, as it becomes easier to prove the intention to transport wildlife out of the country *en route* to international markets.⁴⁸

Illegal wildlife trafficking, which is framed as a crime against natural resources and the environment, is usually associated to other violations of the law, such as conspiracy to commit a crime, asset/money laundering and customs fraud, among others. Generally speaking, the authorities and judicial operators seek to prosecute offenders for crimes connected to trafficking, because these are more onerous and effectively dissuasive. Notwithstanding, the profile of persons involved in illegal trafficking do not usually fit the characteristics of those involved in crimes associated to conspiracy or asset laundering, and in practice severe penalties or sanctions are imposed in only a few cases.

As regards asset / money laundering, it is worth noting that article 323 of the Penal Code establishes a closed list of predicate offenses that give rise to this conduct, and those associated to natural resources and the environment are not among them. Therefore, the laundering of assets or money obtained by committing a crime listed in the aforementioned article can only be prosecuted if it takes place in tandem with other crimes, such as unlawful enrichment or conspiracy to commit a crime, which are in fact included in the list of predicate offenses. Officials at the environmental authorities point out that there is a disconnect between investigations related to illegal wildlife trafficking and other activities common to criminal organizations. This not only makes it more difficult to collect evidence, but also overlooks the close relation that exists between trafficking in drugs, weapons and persons. As concerns institutional corruption in connection with illegal wildlife trafficking, it is worth noting that in most cases, omission on the

⁴⁶ Hernández, M. & Linares, J. (2018). El Tráfico de Especies Silvestres como Empresa del Crimen Organizado. *National Police (DIJIN)*. Retrieved from: <https://www.policia.gov.co/sites/default/files/trafico.html>

⁴⁷ Ibid. 2 & 5.

⁴⁸ Interview with Claudia Urrutia, director of the environmental authority of the city of Bogotá (District Environmental Secretariat), Wednesday 29 July 2020.

part of environmental authorities is associated to lack of resources and the fact that culturally it is considered normal to have certain animal species as pets or a food source.⁴⁹

3. Governance and Justice Systems Concerned with Wildlife Trafficking

In the Colombian legal system, illegal wildlife trafficking is prosecuted through ordinary criminal courts and administrative authorities by means of procedures leading to environmental sanctions and undertaken by national, regional and local environmental authorities. Officials at some of the environmental authorities note that the most significant challenge they face when prosecuting these types of activities is the need to overcome the assumption that those who traffic in wildlife do so without knowing their conduct is illegal, because it is a deeply-rooted cultural practice, or in any case as a means of subsistence, given their precarious economic conditions. Currently, in Colombia the index of criminal and administrative investigations associated to illegal wildlife trafficking is very low when compared to the records of seizures. And this, in turn, is because the authorities do not find the activities of transgressors to be legally relevant behavior.

4. Conclusion: Positive Trends and Space for Change

Colombia has a robust legal system with which to fight illegal wildlife trafficking, and for 17 years a national strategy has been in place to prevent and control this criminal activity. This has strengthened its response capacity. Notwithstanding the foregoing, it is necessary that the various sectors join forces around the lines of protection set forth in the national strategy and promote cooperation between the different state institutions and with private organizations whose mission is to protect biodiversity. The greatest challenge in the struggle against illegal wildlife trafficking is the need to overcome the social barrier that normalizes and considers this illegal activity to be of only minor importance. Although the protection of biodiversity in Colombia is positioned as a topic of national interest, it is fundamental that the struggle against illegal wildlife trafficking also be recognized as a priority in the legal system and therefore be approached both from a preventive and reactive perspective.⁵⁰

ECUADOR – NOBOA, PEÑA & TORRES

Rafael Pástor V, Marcia Montaña and Nicole Aguirre

1. Legal Framework Governing Wildlife Trafficking and Associated Offenses

Ecuador is a unitary state with a decentralized administration, highly diverse and recognized worldwide due to the bountiful flora and fauna it contains per square meter. Many of the species are endemic, such as giant tortoises, marine iguanas, blue-footed boobies, and others. Furthermore, there are sixty protected areas incorporated to the National Protected Areas System (SNAP), encompassing approximately 20% of the country. In these parks, monitoring is undertaken periodically by the institutions involved in species preservation, given that many of them are at constant risk due to illegal trafficking. For the purpose of safeguarding biodiversity, Ecuador was the first country to recognize nature as a subject of rights in its Constitution (2008),

⁴⁹ Ibid. 5.

⁵⁰ Ibid 8.

and has been prolific in its subscription to many international conventions in matters of environmental protection and conservation, among which there stand out the Convention on Migratory Species of Wild Animals; the Inter-American Convention for the Protection and Conservation of Sea Turtles; the UN Convention on the Law of the Sea; and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

Ecuador also has a national legal framework that seeks to meet the same preservation objective, among which are the Constitution of the Republic of Ecuador (2008); the Comprehensive Organic Penal Code (COIP, 2014); the Organic Environmental Code (CODA, 2017) and its Enabling Regulations (RCODA, 2019) and Ministerial Agreement No. 084, issued by the Ministry of the Environment, which established the technical regulations for the enforcement of Art. 256 of the Comprehensive Organic Penal Code (2015).

In order to struggle against this type of illegal activities a number of public institutions work in coordination, among them the Ministry of the Environment and Water (MAAE), as the governing body for national environmental policy; the National Police, which has created an Environmental Police Unit (UPMA); the ECU911 Comprehensive Security Service; the Ecuadorian Judiciary Branch; the Ecuadorian Armed Forces; the Office of the Attorney General; the Customs Agency; the Ecuadorian Postal Service; and the Intelligence Secretariat.

As a penal matter, crimes against wildlife are defined in Article 247 of the COIP, which seeks to preserve protected species in particular. Its Article 256 attributes responsibility for determining the scope of serious damage and the creation of a list of protected, endangered, threatened, endemic, cross-border and migratory species of flora and fauna to the National Environmental Authority (MAAE). This is a typical case of blank criminal laws, meaning that legislators have not fully described the criminal offense, only the penalty, leaving it to the redaction of other legal provisions, which in this case would be of lesser regulatory rank and be enacted specifically through Ministerial Agreement No. 084.

It is important to highlight that in Ecuador wildlife is protected by a mixed system, both penal and administrative, and it is therefore an oddity that since the conception of Ecuador as a multicultural and plurinational country, article 315 of CODA notes that subsistence and ancestral practices, as long as they don't have a commercial purpose, shall not be considered to be violations. The aforementioned body of laws establishes as serious violations (art. 317) whenever a person does not have an administrative permit to hunt, fish, capture, collect, transport or make use of wildlife species, and a very serious offense is considered to take place if the species in question is migratory or endangered (art. 318). Wildlife itself is defined in article 82 of RCODA and is duly safeguarded, in general terms, by article 87 of the same regulations. It is not required as a condition that these species be on the protected list, as is necessary in penal cases.

As concerns penalties in criminal matters, in the instances of crimes against wildlife, (art. 247) a conviction may be followed by a one to three-year prison term, as well as restrictions of property rights that imply seizures and fines, applicable to both natural and juridical persons. These fines may vary in the former case from four (US\$1,600.00) to ten (US\$4,000.00) basic monthly unified salaries, and in the latter between 100 (US\$40,000.00) and 300 (US\$120,000.00) basic monthly unified salaries.

For its part, and in a parallel fashion, article 257 of COIP makes reference to full-fledged restoration, and expressly notes the following: "The sanctions set forth in this chapter will be

applied concomitantly with the obligation to fully restore the ecosystems and the obligation to compensate, repair, and indemnify those persons and communities affected by the damage done.”

As concerns administrative matters, penalties are established in art. 320 of CODA, among which it is worth highlighting the fines; the seizure of native, exotic or invasive wildlife and any instruments used to commit the transgression; and the temporary suspension of the activity or the official permit, among others. The regulations establish three types of violations, classified as minor, serious and very serious. Specifically, and with regards to wildlife protection, these are classified as serious (article 317, CODA) and very serious (article 318, CODA), and the Competent Environmental Authority is called upon to impose a fine to be calculated depending on the economic capacity of the transgressor, the seriousness of the violation, and any aggravating or attenuating circumstances which may apply. Based on prior analysis, fines may vary between five (US\$2,000.00) and 200 (US\$80,000.00) basic monthly unified salaries.

Much as in a penal case, situations resolved by administrative means also call for mandatory restoration and reparation by the offender of the environmental damage done, as per article 6 of CODA.

2. Relationship Between Wildlife Trafficking, Transnational Organized Crime and Corruption

Ecuador is a party signatory to the UN Convention Against Transnational Organized Crime, which establishes its scope of application in article 3, paragraph b), restricting itself to crimes considered “serious”, meaning that a sentence would entail a prison term longer than four years, as per article 2, paragraph b) of that same instrument. Thus crimes against wildlife as set forth in article 247 of COIP do not meet the definition to fit in this category.

As concerns national regulations, COIP does in fact include a specific penal definition for organized crime. It is found in article 369 and defines a member of a criminal organization to be “[that person] who agrees to be part of a structured group of two or more persons who, in a permanent or reiterative manner, finance in any way, exercise leadership or plan the activities of a criminal organization, for the purpose of committing one or more crimes punishable by terms of imprisonment longer than five years, whose ultimate aim is to obtain economic or other material benefits. [Such a person] will be sanctioned with imprisonment ranging from seven to ten years. Other collaborators will be sanctioned with a prison sentence ranging from five to seven years.” Consequently, crimes against wildlife would not qualify under article 369 quoted herein. However, the penal definition of unlawful association found in article 370 of COIP does in fact apply: “whenever two or more persons associate for the purpose of committing crimes punishable with imprisonment for a period of less than five years, each person will be sanctioned, for the act of association alone, with imprisonment of three to five years.”

It is worth noting that article 20 of COIP describes the concurrence of offenses, and that this would allow for the accumulation of penalties in cases of several autonomous and independent crimes. In this regard Dr. Jorge Zavala Egas is of the opinion that “if there is an unlawful association on the part of those who commit the crime against wildlife, the judge is obligated to determine if there exists a single unit of conduct suitable to two categories of crimes (conceptual concurrence) or if there are two units of conduct defined in two categories of crimes (factual concurrence). In the former case, the more serious sanction is imposed; in the latter, the two sanctions are added up.”

3. Governance and Justice Systems Concerned with Wildlife Trafficking

Ecuador is a country with a regulatory, institutional and procedural framework that allows for the prosecution of administrative crimes and offenses. Procedures in criminal cases may be started in an ordinary manner, through accusations, supervisory reports, judicial orders and directly, whenever the offense is flagrant. It is the Office of the State Attorney General which, through its prosecutors, must lead the criminal proceedings needed to prosecute crimes against wildlife; for its part, the judiciary, through the courts, must decide upon the matter of culpability and sentencing. The Environmental Authority's role is that of accuser, its interest being to see the procedure concluded with a verdict of guilty and a sentence being imposed. There are also collaborative authorities, such as the National Police, the Armed Forces, the Customs Agency and the ECU911 Comprehensive Security Service, among others, who provide support, whether before the formal onset of the judicial process or during its course.

It should be highlighted that article 5 of the COIP describes the procedural principles and establishes in numeral 9 that criminal proceedings do not exclude the exercise of the administrative route, which implies that a person who has committed a crime against wildlife may also be subject to administrative penalties. On this point it is worth noting the interdependence with the National Environmental Authority, which pursuant to article 256 of COIP has the power to define and delimit the extent of the damage caused in cases of crimes against the environment and nature.

Further, upon considering the violation brought to its attention, the Environmental Authority has the power to impose sanctions through an administrative procedure that is subject to the regulations governing CODA, RCODA and the Organic Administrative Code (COA). It must be taken into account that taking legal action is generalized in Ecuador, given that article 71 of the Constitution specifically establishes that nature is subject to rights and that ultimately, any person who considers that these have been violated may begin an action and seek redress. Indeed, the Constitution enshrines several principles that govern the matter, such as objective responsibility and reversal of the burden of proof (applicable in administrative procedures as well), among others.

Nonetheless, both at administrative and penal levels, there are exceptions for reasons of plurinationality, given that indigenous peoples and nations are allowed to hunt, fish or capture animals for purposes of subsistence, traditional medicine or domestic consumption. This has led to situations of conflict, in particular with the National Environmental Authority, because an illegal wildlife meat market has emerged, for instance in the case of monkey meat in the area of influence of Yasuní National Park.

4. Conclusion: positive tendencies and potential for change

To sum up, the country has twenty years of experience on the subject, which has allowed for engendering a particular legal culture. This has translated into the initiative Ecuador has taken regarding the constitutional development of environmental issues, to the point of becoming the first country in the world to enshrine certain fundamental principles such as that nature is a subject of rights, as well as the acknowledgement of good living, or *Sumak Kawsay*.

Unquestionably, these constitutional principles have generated debates and discussions that have paved the way for the academic and doctrinal analysis of environmental issues (anthropocentric position) and the rights of nature (biocentric position). Although formally there exist no environmental law schools, judges and lawyers have developed their own expertise and have trained themselves while positioning the country as an autodidactic model for initiatives on the subject. That said, on occasion, this weakness has been detrimental to the specialized management needed when dealing with emblematic cases.

Ecuador has an environmental legal framework that is sufficiently robust so that public institutions working on environmental protection are clear regarding their respective roles and the procedures they need to follow as they pursue achievement of their goals. Along the same lines, the environmental legislation functions as a point of departure for the transformation of the legal culture among the citizenry, in such a way that they come to see themselves as empowered to protect nature and the environment.

Another factor worth highlighting is that Ecuadorian regulations are based on international conventions, instruments and lists, which means that said regulations remain at the vanguard as the latest internationally required changes are included.

Notwithstanding its several strengths, the country still needs to improve in areas such as lack of specialization, mentioned earlier, because this has led to some blurring of criminal and environmental matters. Put otherwise, experts in criminal law on occasion apply their knowledge to environmental cases without taking into account considerations specific to the latter. This situation is then replicated in the public sphere because there are no specialized courts or prosecutors, when this is an extremely pertinent aspect. Broad-based and thorough technical knowledge is of the essence in order to gain a full understanding of the issues at stake.

Likewise, and taking into account that its biodiversity is a phenomenon that distinguishes Ecuador worldwide, the penalty for crimes against wildlife (one to three years imprisonment) is not in keeping with the constitutional principles that protect nature, notwithstanding the fact that its preservation has been declared “in the public interest.” Thus, when comparing prison terms to those in countries such as Colombia (up to 13 years) and Peru (up to 7 years), who are parties to joint plans with Ecuador to fight these types of crimes, there is a stark difference when it comes to applying sanctions.

This has for a consequence that the message received by society may appear contradictory and even one of relative impunity. In order to strengthen the wildlife protection system, it is indispensable there be more training and education on the subject, both among civil society and the authorities.

Upon evaluating the legal situation regarding the environment from an internal point of view, we would like to cite Dr. Hugo Echeverría’s words to the effect that “these types of crimes must be considered to be instances of organized crime, not environmental crimes. They should not be considered green-collar but rather white-collar crimes, and prison terms should decidedly be increased to over four years.”

Finally, Dr. Andrés Martínez-Moscoso is of the opinion that “in addition to those elements which are specific to organized crime, it is necessary to come clear with the exceptions established by law in the criminal and environmental spheres, for example when it comes to hunting for subsistence purposes on the part of indigenous peoples. The goal must be to stop the emergence of an informal market in the meats of protected species.”

GUATEMALA – QIL+4 ABOGADOS

Gabriela Roca, Luis Pedro Martínez Valdeavello y Fernanda Monzón Arroyo

1. Legal Framework Governing Wildlife Trafficking and Associated Offenses

At international level, as regards the environment in general and, specifically, wildlife trafficking, Guatemala is signatory to the following instruments:

- Inter-American Convention on Human Rights⁵¹ and its additional protocol on Economic, Social and Cultural Rights (San Salvador Protocol)
- The UN Convention on the Law of the Sea (CONVEMAR)
- The Free Trade Agreement between the Dominican Republic, Central America and the United States of America (DR-CAFTA)
- The UN World Heritage Convention
- The Convention on Nature Protection and Wild Life Preservation in the Western Hemisphere
- The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), ratified by Guatemala in 1979⁵²
- The UN Convention on Biological Diversity
- The Inter-American Convention for the Protection and Conservation of Sea Turtles⁵³
- The International Convention for the Regulation of Whaling⁵⁴

As concerns national legislation, the Constitution of the Republic of Guatemala (CPRG) has declared the conservation, protection and improvement of the country's natural heritage to be in the national interest. This mandate has been emphasized and recognized by the Constitutional Court as part of its jurisprudence.⁵⁵

Taking the foregoing into account, a number of laws and regulations have been passed intended to regulate different aspects on the matter. Among these legal norms we highlight the Protected Areas Law (Decree No. 4-89 and its enabling regulations); the Environmental Protection and Improvement (Decree No. 68-86); and the General Hunting Law (Decree No. 36-04), which establish a set of measures necessary for the efficient conservation, development and use of natural resources.

⁵¹ See Consultative Opinion OC-23/17 of 15 November 2017 and the ruling of 26 September 2019 in Escaleras Mejía vs. Honduras, Series C, No.361, both handed down by the Inter-American Human Rights Court regarding the right to a healthy environment, as set forth in article 26 of the Convention.

⁵² Guatemala included the following species to Appendix III of CITES: *Mazama temama cerasina* (red brocket, type of deer); *Odocoileus virginianus mayensis* (white-tailed deer); *Tamandua mexicana* (type of anteater); *Burhinus bistriatus* (stone curlew, bird); *Crax rubra* (great curassow, bird); *Ortalis vetula* (plain chachalaca, bird); *Penelopina nigra* (highland guan, bird); and *Meleagris ocellata* (wild turkey, bird).

⁵³ <http://www.iacseaturtle.org/docs/Texto-CIT-ESP.pdf>

⁵⁴ <https://iwc.int/convention>

⁵⁵ In a ruling found in court file no. 3095-2006, the Constitutional Court declared that "... the state function aims to avoid and counteract the depredation of flora and fauna, as well as the irrational exploitation of natural resources, without which it is impossible to ensure a healthy environment. Actions must be taken that protect [natural resources] and their adequate use, for collective benefit ...". Further, in court file no. 1491-2007, the Constitutional Court established that: "... the obligation of the state is not limited to preventing damage to the environment, but rather the positive exercise of taking actions to preserve it is ineluctable, for the purpose of avoiding that others destroy it ...".

Notwithstanding the legislation currently in force, there is no specific public policy encompassing the matter of illegal wildlife trafficking. Instead, policy tends to deal with matters concerning flora and fauna, their protection and use.

Notwithstanding the foregoing, Guatemalan legislation seeks to protect wildlife and classifies specific crimes, as well as associated violations. Illegal wildlife trafficking as such was introduced to Guatemalan legislation on 9 December 1996 by means of a Protected Areas Law stating that this crime is committed by those who “*illegally transport, exchange, trade in or export specimens, dead or alive, or parts of or derivatives of endangered wildlife, as well as species which are endemic and/or found on lists of endangered species*⁵⁶ published by the National Council for Protected Areas (CONAP).”

Such crimes are punishable by imprisonment of 5 to 10 years and a fine of Q\$10,000.00 to Q\$20,000.000 (approximately US\$1,300.00 to US\$2,600.00). Concerning associated crimes, the legislation punishes these illicit activities as a crime that infringes against the nation’s natural and cultural heritage.⁵⁷ Also punishable is the exportation of live animals or their hides; the introduction to the country of species without due permit; and illegal trade in wildlife.⁵⁸ All these crimes entail the same prison sentences and fines.

2. Relationship Between Wildlife Trafficking, Transnational Organized Crime and Corruption

Guatemala has ratified the UN Convention Against Transnational Organized Crime (Palermo Convention) and its protocols. It has also ratified the Inter-American Convention Against Corruption and the UN Convention Against Corruption. At national level, the Law Against Organized Crime (Decree 21-2006) provides for and regulates the definition of “organized criminal group” or “criminal organization.” It is worth noting that illegal wildlife trafficking is not included among the list of crimes established by law to constitute the domain of criminal organizations.

In an interview granted the digital outlet *Soy502*, Aura Marina López, a prosecutor at the Public Ministry for Environmental Crimes, indicated that the ministry has identified a number of international networks that operate inside Guatemala and traffic in animals.⁵⁹

In remarks made to another communications medium, the director of CONAP’s Division of Forest and Wildlife Management stated that the first National Strategy Against Illegal Wildlife Trafficking will soon be presented. The Strategy seeks to eradicate this type of crime, commonly linked to drug trafficking and organized crime.”⁶⁰ Such declarations notwithstanding, no case has been found in which trafficking in wildlife has been criminally prosecuted together with a crime related to corruption or organized crime.

⁵⁶ As part of the aforementioned list, CONAP recently made known the ten (10) most endangered species, as follows: (i) scarlet macaw; (ii) jaguar; (iii) blue-headed parrot; (iv) tapir; (v) anteater; (vi) river turtle; (vii) black caiman; (viii) orange-breasted falcon; (ix) howler monkey; and (x) puma.

⁵⁷ Article 81 bis. of Decree 4-89, Congress of the Republic, “Protected Areas Law.”

⁵⁸ Article 29 of Decree 8-70, Congress of the Republic, “General Hunting Law.”

⁵⁹ <https://www.soy502.com/articulo/especies-exoticas-guatemala-sobreviven-jaula>. Retrieved on 27 July 2020.

⁶⁰ Op. cit.

3. Governance and Justice Systems Concerned with Wildlife Trafficking

The Ministry of the Environment and Natural Resources is the entity charged with environmental protection. For its part, CONAP is the highest body regarding oversight and coordination of the Guatemalan Protected Areas System (SIGAP). It is also responsible for compliance with CITES.

In the justice sector, the Civil National Police (PNC) has its Nature Protection Division (DIPRONA), which focuses on crimes against nature and the environment. For its part, the Public Ministry, through its Environmental Prosecutor's Office, is in charge of criminal investigations in cases where the protected legal asset is the environment. Finally, the bodies competent to hear environmental crimes are the same lower criminal courts which receive cases of drug trafficking. In the case of environmental crimes, however, there is only one court in the entire country that specializes in the matter, located in the municipality of San Benito, in the department of Petén.

It is worth pointing out that the Wildlife Conservation Society (WCS)⁶¹, an expert entity on the subject, works closely with both CONAP and DIPRONA.

As for the administration of justice, the Public Ministry does not carry statistics exclusively on illegal wildlife trafficking. Still, in its First⁶² and Second⁶³ Annual Reports, for the years 2018-2019 and 2019-2020, respectively, some pertinent statistics are included regarding the prosecution of environmental crimes. The institution reports the introduction of 1,802 complaints related to environmental crimes over the period from 2018 to 2020. During that time, 1,252 complaints on environmental grounds were dismissed, both in court and at the prosecutorial level. There were 293 requests for a criterion of opportunity, meaning that the Office of the Prosecutor abstained from pressing criminal charges because an agreement was reached to repair the damage caused.

Notwithstanding the fact that there is a relatively high rate of closure of criminal proceedings, as indicated by the Guatemala WCS, the investigations are still hampered by work overload and insufficient resources with which to follow up on all complaints introduced. Specifically on the issue of lacking resources, and as part of the Public Ministry's Strategic Plan for 2018-2023, which seeks to expand the coverage of the environmental prosecutor's offices in those parts of the country with the highest number of environmental crimes, such offices were created in the departments of Escuintla and Zacapa in 2019. By the year 2021 Guatemala will thus have five specialized prosecutor's offices.

As concerns the prosecution of these criminal complaints in the period indicated earlier, the Public Ministry reports that 377 cases were prosecuted in criminal courts. There were 101 convictions, while 9 persons were absolved. Unfortunately, the judiciary doesn't have updated statistics on cases of illegal wildlife trafficking. However, the last time a report was issued by the National Center for Judicial Analysis and Documentation (*OJ Statistical Report No. 6, 2006-2008*), a total of 221 cases related to this crime were prosecuted in the period described.

⁶¹ <https://guatemala.wcs.org/>

⁶² <https://mp.gob.gt/noticias/2019/05/28/primer-informe-anual/> Retrieved on 30 July 2020.

⁶³ <https://www.mp.gob.gt/transparencia/info/res/source/Articulo%2010:%20Informaci%C3%B3n%20P%C3%BAblica%20de%20Oficio/29%20Otra%20informacion/2020/SEGUNDO%20INFORME%20ANUAL%20M%202019-2020.pdf>. Retrieved on 27 July 2020.

It is of particular relevance that 142 of the cases were introduced to courts in the department of Petén, which has borders with both Mexico and Belize. The department of Izabal, which borders on Honduras, is the department with the second-highest number of cases (33). From 2005 to 2008 there were only 18 convictions for illegal wildlife trafficking; on three occasions the accused were found not to be guilty.

4. Conclusion: positive tendencies and potential for change

After undertaking an analysis of the national and international legal framework, it is worth noting the effort made by Guatemala to join and ratify most international instruments related to the protection of flora and fauna and the fight against illegal wildlife trafficking. Both public institutions and civil associations that work on this issue frequently hold workshops and undertake awareness-raising campaigns. The Public Ministry and the Judiciary Branch have both engaged in the struggle against illegal wildlife trafficking, focusing on the creation of prosecutor's offices and courts specializing on environmental issues in those parts of the national geography where most cases occur.

Notwithstanding the foregoing, there is room for improvement, since the most serious problem faced by the country is the lack or scarcity of resources, which makes it more difficult to provide adequate protection to the environment in general and wildlife in particular. Among these difficulties it is worth highlighting the scarce number of personnel allocated to the prosecutor's offices. To cite only one example, there are only five prosecutors for the entire Petén region, which covers some 36,000 km². The situation regarding insufficient resources is aggravated by the reduced number of police in the most exposed parts of the country.

This scarcity of resources has for a corollary a work overload that makes it next to impossible for prosecutors to deepen their investigations of the accusations received and thus dismantle the national and international criminal organizations. It is alarming that in Guatemala the law against organized crime makes no mention of illegal wildlife trafficking among the crimes that may be attributed to an organized criminal group or a criminal organization. In practice this means that only the lowest link in the organizational chain is punished, while the international or national network remains untouched. It is therefore recommended that an international effort be made to support Guatemala and to link illegal wildlife trafficking to organized crime and/or corruption, in order to tackle this problem at the source.

MEXICO – GALICIA ABOGADOS

Mariana Herreros, Gabriela Spir, Verónica Palacios y Pedro Portal

1. Legal regulatory framework regarding wildlife trafficking and related crimes

In Mexican legislation any international treaties the country has ratified are considered to be hierarchically equal to the Constitution. Mexico adhered to CITES on 2 July 1991 for the purpose of joining the worldwide struggle against illegal wildlife trafficking. Basically, CITES establishes the procedures to be followed by participating countries in order to achieve adequate regulation of international trade in those species included in the pertinent Appendices⁶⁴ (I, II y III)⁶⁵, by means of a system of permits and certificates.

Mexico designated the Secretariat of the Environment and Natural Resources (SEMARNAT) as the CITES Administrative Authority, by conduit of the General Directorate for Wildlife (DGVS).⁶⁶ Among its faculties are to issue authorizations for the import, export or reexport of wildlife specimens, their parts or derivatives, whether or not the species are listed in the CITES Appendices.

The National Commission for the Knowledge and Use of Biodiversity (CONABIO)⁶⁷ was designated as the scientific authority charged with advising the DGVS to ensure that international trade in the species included in the CITES Appendices is regulated using the best scientific, technical and commercial evidence available, with the aim of verifying their conservation and sustainable use.

Mexico is also a member of the North American Commission on Environmental Cooperation (CCA),⁶⁸ and works with Canada and the United States on matters of common environmental interest, such as fostering legal and sustainable trade in species protected by Appendix II of CITES and the Inter-American Convention for the Protection and Conservation of Sea Turtles.

Likewise, Mexico part of the Canada/Mexico/U.S. Trilateral Committee for Wildlife and Ecosystem Conservation and Management, whose goals are to propitiate a continental perspective on the conservation and sustainable use of biological resources, as well as to contribute to mitigating threats to the species and ecosystems shared by the three countries.

As for combatting transnational organized crime, Mexico on 4 March 2003 ratified the UN Convention Against Organized Crime (Palermo Convention).

⁶⁴ In Appendix I, on endangered species, 151 of these are found in Mexico; 2,364 in Appendix II; and in Appendix III there are 23 species from other countries, distributed nationwide.

⁶⁵ Species: I. Endangered. Trade is prohibited and allowed only under exceptional circumstances; II. Not necessarily endangered at present, but may become endangered if trade is not regulated; and III. Species protected by the legislation of a particular country, and cooperation with other countries is necessary to prevent or restrict exploitation.

⁶⁶ General Wildlife Directorate. CITES Structure in Mexico. 30 July 2020, Secretariat of the Environment and Natural Resources. Website: https://www.biodiversidad.gob.mx/planeta/cites/autoridad_administrativa_ley.

⁶⁷ National Commission for Knowledge and Use of Biodiversity. (2000) Scientific Authority on Mexican Biodiversity. 30 July 2020. Website: https://www.biodiversidad.gob.mx/planeta/cites/autoridad_cientifica

⁶⁸ Commission for Environmental Cooperation. Sustainable trade in Wildlife Species. 30 July 2020. Website: <http://www.cec.org/es/category/aplicacion-de-la-legislacion/comercio-sustentable-de-especies-de-vida-silvestre-es-2/>.

Article 4 of the Mexican Constitution enshrines every person's right to a healthy environment for his/her development and well-being. This provision also declares that the state must ensure respect for this right and that environmental deterioration and damage will generate liabilities for those who cause it. Article 27 establishes that the nation at all times has the right to regulate the use of natural elements susceptible to appropriation, for the purpose of protecting its conservation and the country's balanced development. This provision also orders that the necessary measures be taken to ensure there are adequate supplies, uses, reserves and plans as concerns lands, waters and forests, with the aim of preserving and restoring the ecological balance, as well as avoiding the destruction of natural elements.

The General Law on Ecological Balance and Environmental Protection (LGEEPA) establishes the overall framework on environmental matters and lays the foundation for the sustainable use of wildlife. More specifically, on 3 July 2000 the General Wildlife Law (LGVS) went into force, thus enabling article 3 of the Constitution on the question of sustainable use of flora and fauna.

The LGVS sets forth a system of authorizations needed for the import, export or reexport of wildlife specimens, their parts or derivatives listed in the CITES Appendices. In effect, it prohibits the import, export, reexport and trading of any type of marine mammal or primate (as well as their parts or derivatives), with some exceptions, mainly when the purpose is scientific research. The Official Mexican Norm NOM-059-SEMARNAT-2010 identifies the species or populations of wildlife who are at risk in Mexico and establishes criteria for the inclusion, exclusion or change of risk classification, by means of a method by which to evaluate the risk that they may become extinct. A total of 2,606 species are described⁶⁹ in four risk categories: (i) probably extinct in the wild; (ii) endangered; (iii) threatened; and (iii) subject to special protection.

International cooperation has been and continues to be an essential mechanism by which to effectively combat illegal wildlife trafficking.

Some of the regulatory instruments used to control illegal wildlife trafficking include the establishment of seasons during which the hunting or fishing of certain species is allowed or prohibited, the latter in some cases permanently, such as the fishing ban on Totoaba (*Totoaba macdonaldi*) in the Gulf of California, in place since 1975⁷⁰, the total prohibition of fishing with gill nets and other specific techniques,⁷¹ and the creation of Wildlife Conservation and Management Units, whose purpose is to ensure the sustainable use of species such as the Desert

⁶⁹ Among them amphibians, birds, mushrooms, invertebrates, mammals, fish, plants and reptiles.

⁷⁰ Official Federal Record. (1 August 1975). AGREEMENT establishing closure for the species Totoaba, *Cynoscion MacDonaldi*, in waters of the Gulf of California, from the mouth of the Colorado River to the Fuerte River in Sinaloa on the east coast, and the Colorado River to Concepción Bay in Baja California, on the west coast. 5 August 2020, Secretariat of Industry and Commerce. Website: http://www.dof.gob.mx/nota_detalle.php?codigo=4786520&fecha=01/08/1975.

⁷¹ Official Federal Record. (30 June 2017). AGREEMENT by which the arts, systems, methods, techniques and hours are established for fishing activities using small vessels in marine waters under the federal jurisdiction of the United States of Mexico in the northern Gulf of California, as well as areas for landing and the use of systems by which to monitor said vessels. 5 August 2020, Secretariat of Agriculture, Cattle-Ranching, Rural Development, Fishery and Food. Website: https://www.dof.gob.mx/nota_detalle.php?codigo=5488674&fecha=30/06/2017.

Bighorn Sheep,⁷² and the establishment of Natural Protected Areas (NPA), which are intended to safeguard one or several species of flora or fauna in the ecosystems they inhabit.

The federal government has also created Refuge Zones for several wildlife species such as the loggerhead sea turtle (*Caretta caretta*) in Magdalena Bay and the Gulf of Ulloa⁷³ and the Gray Whale.⁷⁴ Some places have been designated as priority areas for the conservation of species or ecosystems, as is the case for instance of the Jaguar, for whom such areas were created as part of the National Strategy for Jaguar Conservation, in compliance with the Action Program for the Conservation of the Jaguar Species (*Panthera onca*).⁷⁵

Because Mexico is a country of origin, transit and destination of multiple wildlife species, it has been able to coordinate and collaborate with several national and international actors, such as the International Organization of Criminal Police (INTERPOL)⁷⁶ for purposes of monitoring the illegal trade, exchange of information and implementation of joint actions. In this regard, the Federal Prosecutor for Environmental Protection (PROFEPA)⁷⁷ has worked with the CCA to train more than 80% of its seaport, airport and land border personnel (PAF) on matters relating to wildlife and CITES.

As concerns PAF inspections, PROFEPA carries out preventive actions of a phytosanitary nature as well as inspections to ascertain the legality of imports and exports of wildlife specimens, products and subproducts.

These instruments have been effective in the protection and recovery of certain species. That said, PROFEPA has only limited staff and operates on a small budget. This weakens its efforts to fight illegal activities in its purview. Nor does it have sufficient human, technical and economic resources with which to struggle against the wildlife trafficking networks used by organized crime.

It used to be the case that the capture, hunting, fishing and illegal wildlife trafficking was seen and dealt with as a strictly environmental problem, for which reasons violations in the matter were considered only an administrative offence. Eventually, they came to be classified as a crime on 6 February 2002. Currently, illegal wildlife trafficking is defined as a crime in article 420,

⁷² Félix Lizárraga, María. (2006). Unidades de manejo para la conservación de vida silvestre (uma) de borrego cimarrón (*Ovis canadensis*) en el estado de Baja California Sur, México: análisis, propuestas y recomendaciones para su manejo. 5 August 2020, Northeastern SC Biological Research Center. Website: <http://dspace.cibnor.mx:8080/handle/123456789/163>.

⁷³ Official Federal Record (5 June 2018). AGREEMENT establishing a refuge for the loggerhead sea turtle (*Caretta caretta*) in the Gulf of Ulloa, in southern Baja California. 5 August 2020, Secretariat of the Environment and Natural Resources. Website: https://www.dof.gob.mx/nota_detalle.php?codigo=5525056&fecha=05/06/2018.

⁷⁴ Official Federal Record (24 May 2002). AGREEMENT establishing a refuge to protect species of great whales of the *Mysticeti* and *Odontoceti* suborders, in marine areas that are part of Mexican territorial waters and over which Mexico exerts its sovereignty and jurisdiction. 5 August 2020, Secretariat of the Environment and Natural Resources. Website: http://dof.gob.mx/nota_detalle.php?codigo=733639&fecha=24/05/2002.

⁷⁵ National Commission of Natural Protected Areas. (2009). PROGRAM OF ACTION TO CONSERVE THE SPECIES Jaguar (*Panthera onca*). Mexico, D.F.: Secretariat of the Environment and Natural Resources.

⁷⁶ Mexico was a member of Operation Chameleon, which led to the arrest of Anson Wong, the most wanted reptiles smuggler in the world.

⁷⁷ Mexico has also cooperated with INTERPOL on operations Thunderbird, Madre Tierra, Thunderstorm and Amazonia.

section IV of the Federal Penal Code (CPF) under the title “Crimes Against the Environment and Environmental Management.”

Said article establishes that a crime is committed by anyone who *“illegally undertakes any activity for the purpose of trafficking, or captures, possesses, transports, collects, introduces or extracts from the country any specimen, its products or derivatives, including any genetic resources of a wildlife species, whether terrestrial or aquatic, during closed seasons and which are held to be endemic, threatened, endangered, subject to special protection or regulated by any international treaty to which Mexico is signatory.”*

The objective penal elements have been defined in a case decision handed down by the Supreme Court of Justice.⁷⁸ However, these are considered misdemeanors that do not lead to prison on remand, and persons arrested *in flagranti* on these charges are usually released very soon.

On the other hand, for the purpose of fighting the illegal traffic in the swim bladders of Totoabas (*Totoaba macdonaldi*), wildlife trafficking was included as a form of organized crime by means of a reform to the Federal Law Against Organized Crime of 7 April 2017. Thus if three or more people organize to undertake, whether on a permanent or reiterated basis conduct which, of themselves or in conjunction with other activities, have for their aim or outcome the crime of wildlife trafficking, they will be sanctioned as members of organized crime.

The pursuit, investigation, arrest, processing, sentencing and carrying out of sentences for crimes committed by persons who are members of a criminal organization come under a different legal framework than the prosecution of any other crimes. The law contains several precautionary measures, investigative techniques and enforcement of judgements (based on the Constitution) that facilitate combatting and judicial procedures against transgressors of the laws against organized crime.

Administrative offences in cases of wildlife may be sanctioned with: (i) a written warning; (ii) a fine⁷⁹ of between MXN\$4,344.00 and MXN\$4,344,000.00; (iii) the temporary, partial or total suspension or revocation of any corresponding authorizations, licenses or permits; (iv) the temporary or definitive, partial or total closure of the facilities or sites at which the activities leading to the respective violation occurred; (v) administrative arrest for up to 36 hours; and (vi) the seizure of wildlife specimens, their parts or derivatives, as well as the instruments directly related to the violation of the law.

The penalty established for trafficking ranges from one to nine years in prison and a fine of up to MXN\$260,640.00. An additional three years and a fine of up to MXN\$86,880.00 can be imposed whenever the conduct in question takes place in or affects a National Protected Area, or for commercial purposes.

The penalty in cases of organized crime is determined according to the function of the suspect within the criminal group: (i) in case he/she has an administrative, leadership or supervisory role, it is of eight to sixteen years of imprisonment and a fine of up to MXN\$2,172,000.00; and (ii)

⁷⁸ Case decision 135/2017 (10a.). Handed down by the First Chamber of the Supreme Court of Justice on 29 November 2017.

⁷⁹ Fines are calculated based on an updated unit of measurement (an economic referent in Mexico), which for the year 2020 is of MXN\$86.88.

those not holding such positions may be sentenced from four to eight years of imprisonment and a fine of up to MXN\$1,042,560.00.

In cases involving organized crime, precautionary detention may be ordered during the investigative stage. Here the objective is to hold the suspect for a maximum period of forty (40) days in order to ensure the success of the investigation, protect persons or legal assets, or avoid that the indicted person evades justice. It is also possible to order unofficial remand prison, which allows that during the investigation of felonies, a suspect be held in prison until sentencing.

Special treatment may be afforded to insured assets subject to seizure, and it is possible to use the expired ownership law regarding any rights or assets that are used as instruments, objects or are a product of criminal conduct.

2. Relation between wildlife trafficking, organized transnational crime and corruption

The Palermo Convention provides a broad-based and flexible legal foundation for collaboration on matters such as extradition, reciprocal legal assistance and international cooperation. As concerns anticorruption, Mexico is signatory to the UN Convention Against Corruption (UNCC), which establishes several preventive anticorruption measures, classifies different types of crimes, offers guidance on ways in which to effectively enforce the law, and makes possible international cooperation, recovery of assets and exchanges of information.

In order to struggle effectively against this scourge while complying with the commitments made under the UNCC, several new laws or reforms to already existing ones were passed. The main regulatory instruments are: (i) the General Law on the National Anticorruption System, intended to fight and prevent corruption through collaboration among the Federation, its entities, and individuals; (ii) the Federal Law to Prevent and Identify Operations Using Resources of Illegal Origin (Anti-Money Laundering Law), the aim of which is to prevent and detect any acts or operations involving resources of illegal origin; and (iii) the General Administrative Liability Law, which establishes violations and sanctions applicable to civil servants and individuals who incur in acts of corruption. Along the same lines, there are several definitions of criminal offences in the CPF related to corrupt practices committed by civil servants and individuals.

According to the Financial Action Task Force Report on Money-Laundering and the Illegal Wildlife Trade⁸⁰ the link between wildlife trafficking and corruption is undeniable, and although organized crime may not be involved, the struggle against trafficking in species (transnationally in particular), must take place while taking into account its financial dimensions. This means the investigation start with the acts of corruption and money-laundering involved. It is evident that international trafficking in species promotes and simultaneously is made possible and indeed depends on corruption at Mexican entry ports and customs, as well as in those of the country of destination of the species. Clearly criminals take advantage of the weaknesses in the Mexican financial system and end up damaging it further by means of fraudulent practices, bribes and tax evasion. Although it is key to identify and disrupt these financial flows, including the recent practice of e-commerce and digital payments, unfortunately the financial trace left by trafficking in species is rarely, if ever, investigated.

⁸⁰ FATF. (June 2020). Money-Laundering and the Illegal Wildlife Trade. 5 August 2020, FATF, Paris, France. Website: <http://www.fatf-gafi.org/publications/methodandtrends/documents/money-laundering-illegal-wildlife-trade.html>.

The links existing in organized crime between drug and human trafficking and the illegal wildlife trade are becoming clearer by the day. One of the most obvious examples is the trafficking of Totoaba swim bladders. In Mexico, multiple investigations have shown that this illegal fishing and trafficking in the swim bladders of Totoaba, an endangered species endemic to the Gulf of California, has come under the control of organized crime in the past few years. Because of the price fetched by this part of the fish it has come to known as the “cocaine of the sea” in black markets in China and other Asian countries, and prices run to US\$45,000.00 and US\$50,000.00, making it a very attractive and lucrative business for criminal organizations. In addition, the permanent ban on fishing with gill nets in certain parts of the Gulf of California, has left fishermen in San Felipe and other areas in the region without alternatives for legal fishing, which in turn makes it easier for criminal networks to recruit them.⁸¹

In the opinion of Gabriel Calvillo Díaz,⁸² wildlife trafficking makes itself manifest at several levels. The most complex is when it is undertaken by organized crime, the emblematic example of which are the Totoaba cartels; the next level is association to commit a crime by three or more persons, such as occurs in the trafficking with jaguars, which, as the Mexican organization *Jaguar Conservancy* notes, are a strategic element in conservation, yet continue to be poached; then come local markets, which in most cases can be attributed to social conditions, such as the poverty of hunters/traffickers who seek to obtain immediate payment from pet buyers, or those who consume these animals as local food items. Here a clear example is Charco Cercado in San Luis Potosí, where community members sell wildlife species by roadside. A final level is that where the country is used as a springboard between the country of origin of the species being trafficked and its end-destination, a phenomenon closely related to corrupt practices.

3. Legal and administrative systems related to wildlife trafficking

PROFEPA is the authority charged with carrying out inspections, surveillance, establishing security measures and imposing administrative sanctions on matters related to wildlife.

Inspection and surveillance procedures are subject to compliance with essential procedures, which must always begin with an inspection order.

PROFEPA also has the authority and obligation to denounce environmental crimes before the corresponding Public Ministry (MP). SEMARNAT provides the technical or expert findings requested by the MP or judicial authorities when introducing the accusations.

Unfortunately, these inspection and surveillance procedures have not been updated substantially since 1988, which means that in practice PROFEPA lacks the tools with which to truly prevent, investigate and punish wildlife trafficking. These limited powers undercut the possibility of detecting illegal activities regarding the trade in wildlife outside the country’s ports of entry and exit, and depends in great measure on the existence of accusations introduced by third parties. Furthermore, PROFEPA lacks investigative and preventive methods, nor does it have a budget

⁸¹ Vaquita marina: el negocio detrás de la extinción. 10 August 2020. Website: <https://cnnespanol.cnn.com/2017/12/07/vaquita-marina-extincion-trafico-negocio-totoaba/>.

⁸² Former Deputy Prosecutor and Director General for Federal Crimes Against the Environment and Litigation at PROFEPA.

sufficient for combatting this crime in an efficient manner, in particular when dealing with criminal groups and organized crime.

In 2016 a bill was introduced to the Senate⁸³ intended to modify Title Six of the LGEEPA, which regulates precisely this matter. In the document, legislators acknowledged that PROFEPA requires new attributions that would allow for analyzing data bases, using satellite maps and other information, gather pictures using drones and unmanned aerial vehicles, as well as carrying out the monitoring and surveillance of information available on internet and other sources of information on wildlife trafficking. To date, this reform has yet to be passed.

From a criminal perspective, the Mexican system is accusatory, and different government authorities may intervene, having separate functions in the procedure. These are as follows: (i) the MP, an administrative body that investigates and prosecutes crimes; (ii) the Supervisory Judge, charged with ensuring the legality of the investigation and determining the cautionary measures to be taken and linking procedural strands; and (iii) the trial court, which is charged with determining the existence of the elements constituting a crime.

As noted earlier, trafficking in wildlife is seen as a misdemeanor, except if committed as part of the activities of organized crime, for which reason perpetrators arrested *in flagranti delicto* are usually released almost immediately. Arrest orders are subject to compliance with numerous requirements which, taken together, hinder the effective prosecution of these crimes.

4. Conclusion: positive tendencies and potential for change

Since becoming a party signatory to CITES, Mexico has taken some important steps, both at national and international levels to improve its efforts to combat illegal wildlife trafficking. However, still to be overcome are legal, economic and de facto barriers (such as corruption and organized crime) which continue to undermine the process.

Under the current government, PROFEPA, as the administrative, verifying and sanctioning authority on matters concerning wildlife, has a very reduced budget. Therefore, it has not been possible to conclude many administrative procedures already begun, and the number of inspectors available to attend to the accusations introduced is limited. In addition, PROFEPA is an utterly outdated organization, lacking the tools it needs to truly prevent, investigate and punish wildlife trafficking. We believe it is important to review and take up once again the bill introduced with the aim of reforming Title VI of LGEEPA, as a means of endowing PROFEPA with greater and better faculties with which to prevent and investigate these crimes.

From a criminal perspective, the prosecution of environmental crimes has been accelerated by the implementation of a new accusatory system and their inclusion as a form of organized crime. However, the criminal definition should place it in the catalogue of felonies, in order to gain access to specific mechanisms and investigative techniques, even when not necessarily linked to organized crime. If the illegal demand for wildlife specimens, their parts and derivatives is to be

⁸³ Bill introduced for the purpose of becoming a decree intended to reform Title Six of LGEEPA by reforming, adding and repealing several provisions in the General National Assets Law; the General Sustainable Forestry Development Law; the General Law to Prevent and Comprehensively Manage Waste; the Law on Biosecurity of Genetically Modified Organism; the LGVS; the General Climate Change Law; Findings of the United Commissions on the Environment and Natural Resources (firstly its legislative studies, and secondly, the legislative studies of the Senate of the Republic). 18 October 2016.

halted, it will be necessary to add “purchase” and “consume” as crucial verbs in the criminal definition, as a way of sanctioning also the end-user or consumer of illegal wildlife trafficking.

Another area of opportunity is to link the crime of trafficking in wildlife to several mechanisms designed to eradicate corruption. It may be possible to more directly integrate attention to this problem to existing anticorruption legislation and public policy. One possible strategy could be to include it to the catalogue of vulnerable activities listed in the Anti-Money-Laundering Law, specifically those directly related to commerce in wildlife, as well as certain activities carried out near protected areas or places inhabited by animals who are also under protection.

In this regard, the Financial Action Task Force (FATF) recommendations should be followed, among which are that when undertaking wildlife trafficking investigations, parallel analyses be conducted in pursuit of money-laundering activities; that funds should be made available to train expert authorities to cooperate among themselves; that to discourage wildlife trafficking it must be considered to identify, freeze and confiscate associated assets, including those that go beyond the species being trafficked; and that countries must ascertain that crimes related to such international trafficking be treated as predicate offences⁸⁴ related to money-laundering.

As noted in the CICDVS, there is no solution to international trafficking in wildlife species that can be adapted to all possible situations. When formulating effective measures, it is important to identify local patterns and that the concerns of local communities be acknowledged and integrated to the policy and legislation in order to achieve the most effective and comprehensive strategy possible, as a means of dealing with the particular needs of each case.

It is necessary also to have a comprehensive strategy that involves awareness-raising in the communities, as well as their active participation in the fight against illegal trafficking. Programs must be created that encourage them to denounce these types of crimes. It is likewise necessary to create alternative livelihoods for community members living in conditions of poverty who trade in wildlife as their only subsistence alternative.

⁸⁴ Predicate offences are defined in article 2 h) of the Palermo Convention as crimes from which a product is derived that may constitute material for another crime that is defined in article 6 of the Convention, which in turn regulates the penalization of laundering the product of these crimes.

PERU – RODRIGO, ELIAS & MEDRANO ABOGADOS

Francisco Tong, Milagros Mutsios y Patrick Pinedo

In Peru, wildlife protection has led to a number of actions taken and regulations enacted by the state and its institutions. Among these are: (i) the ratification of international treaties, such as the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and the Convention on Biological Diversity; (ii) writing into the Constitution the protection of biological diversity and the sustainable use of natural resources, including wildlife; (iii) the passage of sectoral regulations applicable exclusively to wild animals,⁸⁵ hydrobiological resources⁸⁶ and aquatic mammals,⁸⁷ among other specific species; and (iv) in terms of criminal law, it is considered to be an environmental crime punishable with imprisonment to traffic illegally in wildlife species, whether terrestrial or aquatic, as is the illegal extraction of aquatic species and depredation of forest fauna.

Unfortunately the legal framework described herein has not contributed to preventing or controlling the illegal trade in wildlife species in an effective manner. Indeed, between 2010 and 2018 there have been on average 800 interventions per year linked to illegal interprovincial and cross-border wildlife trafficking. However, this figure can serve as no more than a reference, since due to the lack of systematised information between the institutions charged with wildlife control and protection, it is impossible to provide an exact number of interventions or prosecutions of cases.

In addition, between the years 2009 and 2012, some 13,033 live animals were seized, and in 2014 alone around 4,000 specimens. Notwithstanding, because these crimes were not traced, it is impossible to determine the origin of the animals and species upon seizure, nor can it be assured that they can be returned to the ecosystem they were taken from.⁸⁸

To this must be added that the demand for wildlife continues to be extremely high. In fact, in Peru **the main cause behind the trade in wildlife is the demand for pets, but the volumes in the illegal market for parts (as souvenirs or decorations) and meat are likewise worrisome.**⁸⁹ According to a recent nationwide IPSOS survey, 14% of those interviewed have or have had a wild animal as a pet, and a similar percentage said they would consider buying one.⁹⁰

⁸⁵ Forestry and Wildlife Law, Law No. 29763, enabling regulations for wildlife management, passed by Supreme Decree No. 019-2015-MINAGRI; and the enabling regulation for forest and wildlife management in Campesino and native communities, passed by Supreme Decree No. 021-2015-MINAGR

⁸⁶ General Fishery Law, passed by Decree Ley No. 25977 and its enabling regulation by Supreme Decree No. 012-2012-PE

⁸⁷ Law No. 26585 and its enabling regulation passed by Supreme Decree No. 002-96-PE, intended to protect and conserve minor cetaceans.

⁸⁸ Webinar on the topic “How not to be an Accomplice of Illegal Wildlife Trafficking,” 23 July, 2020.

⁸⁹ Interview with experts Rosa Vento and Jorge Luis Martinez. *Wildlife Conservation Society* - Peru. 11 August 2020.

⁹⁰ Si compras, eres cómplice: Lanzan campaña contra el tráfico ilegal de animales silvestres. Setiembre, 2017. <https://www.actualidadambiental.pe/si-compras-eres-complce-lanzan-campana-contra-el-trafico-ilegal-de-animales-silvestres/>

Furthermore, the main locations where these crimes are committed are at local markets, leading to the conclusion that **the illegal consumption of wildlife species is as food, the holding of rituals or other alternative uses.**⁹¹

As a consequence, the eradication of this crime depends on the forging of alliances with bordering countries and the countries of destination of the fauna illegally extracted from Peru, as well as raising awareness among the population of its illegality.

In such a scenario, punitive faculties have been granted to a number of authorities so they can impose administrative sanctions and curtail the freedom of persons who trade illegally in wild animals. In administrative law there is the Enabling Regulation for Wildlife Management,⁹² which designates the National Forest and Wildlife Service (SERFOR) and regional governments as forest and wildlife authorities charged with protection. Thus the hunt, capture, collection, possession, purchase, sale transport, trade, import or export of specimens, wildlife products or subproducts, without the corresponding authorization can be sanctioned. Such violations are aggravated in cases of endangered species.⁹³ Sanctions run the gamut from a warning to a fine of up to 5,000 UIT (a sum exceeding US\$ 6 million) and may be accompanied by administrative measures such as the definitive seizure of the specimen(s) or closure of the locale at which the illegal activity was taking place.

In terms of criminal law, illegal wildlife trafficking is regulated in article 308 of the Penal Code and sanctions those who “acquire, sell, transport, store, import, export or reexport wild flora specimens or products and/or **wild animals, without a valid permit or certificate [...]**” (emphasis added). Article 6 of the Forestry and Wildlife Law (Law 29763) defines wildlife resources and specimens (alive or dead, eggs, or any parts or derivatives), individual animals held in captivity, as well as their products and services.⁹⁴ However, species born in marine and continental waters are not included herein, as they are protected by other, specific norms different from those applicable to what is defined as “forest fauna.”

Because of this conceptual differentiation in the sectoral regulation cited above, a modification of article 308 of the Penal Code took place through Legislative Decree No. 1237, which increased the scope of protection to embrace all species, and not only those legally considered to be “forest fauna.” Now there are sanctions in place also for (i) illegal traffic in aquatic species (article 308-A); (ii) the illegal extraction of aquatic species (article 308-B); and (iii) the depredation of forest fauna (article 308-C). In addition, article 309 covers aggravating circumstances linked to illegal commerce in protected species, or those originating in natural protected areas nationwide, taken

⁹¹ National Strategy to Reduce Illegal Wildlife Trafficking (2017-2027) and its Plan of Action (2017 -2022), passed by Supreme Decree No. 011-2017-MINAGRI.

⁹² Passed by Supreme Decree No. 019-2015-MINAGRI.

⁹³ Here it is important to indicate that rights granted for certain uses that may be made of wildlife does not include genetic resources. In such cases, a contract must be signed, as per the Regulation of Access to Genetic Resources, Decision 391 of the Nagoya Protocol, in accordance with that which was expressed in the National Strategy to Reduce Illegal Wildlife Traffic from 2017 to 2027.

⁹⁴ “[...] wild undomesticated species, whether native or exotic, including their genetic diversity, who live in the Peruvian wilderness, as well as domesticated specimens who due to abandonment or any other causes, are similar in their habits to those of wildlife, except for the different species of amphibians who are born in marine and continental waters and who are governed by another set of laws. This Law covers wildlife specimens (dead or alive, eggs and any parts or derivatives) and individual animals kept in captivity, as well as their products and services” (underlining added).

during closed seasons or from lands or territories in possession of native or small farmer communities or are their property, or from territorial reserves or indigenous reserves on which indigenous peoples live in situations of isolation or initial contact.

In view of this regulation, and cut at February 2020, there were 619 criminal procedures underway for the crime of illegal wildlife trafficking, including provinces on the coast, mountains and forests. There have been 52 convictions linked to this crime and a total of 33,720 soles have been paid as civil reparation to the state⁹⁵, seeing as natural resources (such as wildlife) are considered a national heritage and the state has sovereignty over its use.

Nevertheless, at this moment in time illegal trafficking in wildlife is considered an individual crime. This means that persons who committ these acts are sanctioned, but the authorities do not necessarily seek to pursue the agents behind the violation. In this regard, the illegal trade in wildlife is not treated as organized crime, and cannot be until there is a national law defining its exact scope. For this reason, the *Wildlife Conservation Society* - Peru has prepared a bill that introduces the possibility of prosecuting the crime of illegal wildlife trafficking under the Organized Crime Law (Law 30077), including hydrobiological resources, with the trade in endangered species or of species that inhabit natural protected areas, as well as the comission of this crime by civil servants, being considered aggravating circumstance.

Were this change to occur, it would allow for more exhaustive and rigorous criminal investigations, whose aim would be to attack the organizations that engage in illegal wildlife traffic, and not only to begin judicial processes involving individuals for the mere possession of wild animals without delving into the motive or investigating if there has been trafficking or there is a supply and demand network for the specimens in question.

To conclude, there exists a national and international legal framework that contributes to wildlife protection in Peru. However, due to the vast number of regulations, their lack of systematization and the failure to coordinate among all authorities involved, it is not possible to avoid the propagation of the crime being analyzed. The establishment of a systematized data base among the authorities working to control and prevent illegal wildlife trafficking is an effective solution to the need to be in a position to quickly exchange and obtain the information necessary to control the further spread of this crime.

On the other hand, there is in place a legal apparatus that represses illegal wildlife trafficking by imposing monetary penalties and/or imprisonment. Although some practical progress has been made, considering the criminal cases underway, their number still represents only a fraction of the violations, when compared to the network of cross-border trafficking in wildlife. Give this reality, it is essential to define this transgresion as a type of organized crime, so it can be effectively prosecuted.

Finally, society too plays a crucial role in the elimination of this crime, as it determines the degree of demand and supply. As a result, it is urgent to raise awareness among the population of the negative effects of the illegal traffic in wildlife, ranging from its effect on the ecosystem to the validation of a commercial network of trade in animals that involves the comission of related crimes to perpetutate itself.

⁹⁵ ZAPATA, Manuel. “Alcances Generales del Tráfico Ilegal de Fauna Silvestre y su Protección desde el Derecho Penal”. In: *Gaceta Penal & Procesal Penal*. No. 128. Lima: February 2020, pags.128-139.

URUGUAY – GUYER & REGULES

Beatriz María Spiess, Fiorella Arenas, Josemaria Motta and Rodrigo Goncalvez

1. Legal Framework Governing Wildlife Trafficking and Associated Offenses

In the international sphere, Uruguay has adhered to the main international conventions regarding the environment and transnational organized crime. As concerns specifically wildlife trafficking, it has ratified the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), which has been incorporated to the legal framework via Decree-law No. 14.205. Its enabling regulations are contained in Decree No. 550/2008. These describe, among other things, the requirements and/or documentation needed to transport – import exotic animals inside the country. For its part, the Convention on the Conservation of Migratory Species of Wild Animals became part of the legal framework through Law No.16.062, while the Convention on Biological Diversity did so by means of Law No. 16.408.

There are also a number of regulations that protect the environment. These are not only of legal or regulatory rank, but are enshrined in the Constitution itself, where article 47 declares environmental protection to be of general interest, which means among other things that there exist fundamental rights which may be restricted by laws designed to protect the environment.

Fauna is specifically protected in the Law to Protect National Fauna (No. 9.481), known as the “Fauna Law”), which sets forth the regulation and prohibition of poaching in general and the capture of particular species. The law establishes that the conservation and exploitation of national fauna, including all wild zoological species (mammals, birds, etc.) found in Uruguayan territory at any time of year, are subject to the control, oversight and regulation by the state. It also, with some exceptions, forbids the hunting of zoological species, whether indigenous or free.

Concerning the notion of hunting, the regulations define it very broadly, so it includes the destruction of habitats (for example, gathering rhea eggs) and the use of traps (even if hunting is not involved). While hunting is not considered an environmental crime, there does exist the classification of “abusive hunting,” which seeks to protect not the life of the animal, but rather property.

As a rule, the regulations prohibit the hunting of certain species during the entire year. For instance, pampas deer were declared an endangered natural monument, for which reason they may not be hunted under any circumstances. There are, however, some exceptions: (i) hunting of some species is allowed with a permit issued by the competent authority; (ii) hunting of some species is allowed, depending on the season; and (iii) there are species that may be hunted. On the other hand, there is a list of priority species for conservation that offers guidance as regards policy on conservation and sustainable development.

For its part, Decree N° 565/981 declares wildlife to be in the national interest and defines it as *“all animal species living in the wild, which are undomesticated and within the jurisdiction of*

the Republic, are hereby declared to be in the national interest.” By this are meant both autochthonous species (indigenous fauna) and species introduced from elsewhere (exotic fauna).

As for aquatic fauna, Law No.19.175 declares the conservation, research, sustainable development and responsible use of hydrobiological resources and ecosystems to be in the general interest.

In order to transport and/or import exotic animals to Uruguayan territory without violating the customs law and possibly committing the crime of smuggling exotic animals, it is mandatory to comply with the requirements and documentation described in CITES and Regulatory Decree 550/2018.

According to the national legal framework, for a person to commit the crime of smuggling he/she must necessarily violate customs law, which can be shown to be the case from an administrative standpoint. A customs violation is understood to be any action the aim of which is to introduce or remove merchandise from the customs area, either clandestinely or by violent means, without the corresponding documentation, and which will result in the loss of revenue or a violation of the requirements essential to the definitive import or export of particular types of merchandise as set forth by law and special regulations, even when not pertaining to customs.

The crime of smuggling is punishable by a sentence ranging from three months to six years imprisonment, unless it causes a loss of revenue in excess of 5.000.000 indexed units (USD 542.19), in which case the range increases from two to six years imprisonment.

2. Relation between wildlife trafficking, organized transnational crime and corruption

Uruguay has adhered to international instruments regarding transnational organized crime and corruption: it incorporated to its internal regulations the UN Convention Against Corruption (Law No. 18.056) and the UN Convention Against Transnational Organized Crime and its Protocols (Law No. 17.861). In addition, Uruguay has encouraging data regarding control over corruption and the perception of corruption in the public sector, and the country is well-positioned in the Corruption Perception, Corruption Control and Financial Secrecy Indexes.

As concerns asset and money-laundering, Uruguay has passed the Comprehensive Law Against Money Laundering (Law No. 19.574), which brings together and consolidates the earlier provisions applicable to the prevention of asset and money laundering and the financing of terrorism. The Comprehensive Law regulates the subjects obligated to report operations (such as for instance, non-profit organizations, lawyers and accountants under certain conditions, among others) and introduces additional preceding crimes leading to money or asset-laundering, such as tax evasion, in compliance with standards set forth by the Organization for Economic Cooperation and Development (OECD) and smuggling (for example, of exotic animal) when their real or estimated worth is higher than 200.000 indexed units (approximately USD 21.500).

Recently, and in part due to an investigation of alleged asset-laundering on the part of an Argentinian businessman who intended to build a private zoo on his property, exotic and autochthonous specimens of birds (macaws, a turquoise-fronted parrot), capybaras, lamas, alpacas and rheas were impounded. Sentencing has yet to take place, but the Public Prosecutor's

Office has requested that for this and other crimes this person be sentenced to 11 years imprisonment and that all his assets be seized.

3. Legal and administrative systems related to wildlife trafficking

The National Directorate of the Environment (DINAMA) has competencies regarding wildlife protection. In addition to the reception and investigation of complaints, it is the authority competent to grant possession permit, permission to hunt and permits to transport and own fauna. In its article 208, Law 16.320 grants competencies to police, customs and navy officers, empowering them to control and repress wildlife violations nationwide.

At penal level, in our legal framework investigative powers rest with the Public Ministry, while the Office of the Attorney General is the body in charge. Judges are distributed depending on competencies previously determined by the Supreme Court of Justice, and decide on matters of criminal liability from a penal standpoint. Based on the specific accusations of possession and collection, over the past few years there have been numerous inspection procedures backed by search warrants in locations where birds were being held in captivity. Hundreds of specimens belonging to around eighty species have been forfeited, among which are some included in CITES, such as the turquoise-fronted parrot (*Amazona aestiva*) and giant toucan (*Ramphastos toco*). A common space in which wildlife is sold are town or city markets.

In 2019 “*Operation Amazonas*” made headlines as an example of the judicial and administrative system acting together against wildlife trafficking. In the context of a routine highway control checkpoint, a car was searched and in its trunk police found four titi monkeys, 68 orange-winged amazon parrots, forty canaries and three toucans. This led to a series of searches by the Ministry of the Interior and more than five hundred specimens of different exotic species were recovered, among them red tegus, red-crested cardinals, four-toed hedgehogs, turtles and tortoises, canaries and a large variety of fish and birds such as lovebirds, black-chinned siskins and speckle-faced parrots.⁹⁶

According to a report available on the website of the Departmental Zoological System, it is rather worrisome that in terms of internal and regional wildlife trafficking, Uruguay is essentially a country of transit for exotic animal originating mainly in Brazil and Paraguay. Among species seized from smugglers most are birds, but also reptiles, arachnids, insects and mammals.

4. Conclusion: positive tendencies and potential for change

In Uruguay, environmental protection is enshrined in the Constitution and the country has both national and international regulations that establish mechanisms and provide tools with which to struggle against and prevent illegal wildlife trafficking. Robust regulations regarding asset or money-laundering and the financing of terrorism contribute to discourage trafficking.

⁹⁶ For more information see the following link: <https://www.elpais.com.uy/informacion/policiales/operacion-amazonas-incautaron-especies-animales-exoticos-uruguay.html#:~:text=En%20Uruguay%2C%20cerca%20de%2020,m%C3%A1s%20buscados%20son%20ciudadanos%20uruguayos.>

It is clear from the regulations currently in force that the criteria used to protect wild animals encompasses considerations such as whether the species involved is part of Uruguayan fauna and had some fundamental importance among the indigenous populations in the region. Both criteria are used to protect biodiversity.

There are cases of inspections and prosecutions that allow for reaching the conclusion that the regulations are being enforced. Every month the Departmental Zoological System takes in dozens of animal species that are seized from traffickers by DINAMA. The System is charged with ensuring the proper recovery of these animals so they can be returned to their natural environment. This is crucial, as the procedure in Uruguay does not end with forfeiture, but rather seeks to include, whenever viable, to reinsert the animals to the wild, in keeping with the Animal Life and Wellbeing Law (No. 18.471).

Still, it is very difficult to determine if the degree of practical enforcement of the regulations is optimal, and if there is a growing or diminishing tendency as regards the detection of wildlife trafficking schemes. To have on hand duly gathered and systematized information that is easy to access by the public would contribute to visibilise and trace events regarding the matter.

In addition, it must be mentioned that in Uruguay there is no such thing as a specifically environmental crime. At one point a bill was introduced to Parliament, but it was shelved in early 2020. Among other things, it classified as crimes the hunting, fishing, capturing and killing of wildlife living in natural protected areas and created the crime of trafficking in protected fauna and flora: *“Those who traffic in specimens of fauna or flora of species and subspecies included in the appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora and its amendments, in violation of the provisions in said Convention, shall be punished with 6 (six) months to 8 (eight) years of imprisonment.”*

CONCLUSIONS

The phenomenon of trafficking in species is particularly complex and involves considerations and problems that have to do with legal, economic and cultural matters in each of the countries studied herein. For this reason, it is necessary to tackle the issue of illegal wildlife trafficking from a comprehensive point of view. While jurisdictions in Latin America and the Caribbean take different public policy, penal and administrative approaches, it is nonetheless possible to identify some common challenges and opportunities in the region that are useful when looking for ways in which to fight this scourge in a more far-reaching manner. There follow a number of cross-cutting conclusions and recommendations which are keyed to strengthening the struggle against illegal wildlife trafficking.

1. All jurisdictions are signatory to international instruments⁹⁷ associated with the protection of diversity and the fight against wildlife trafficking. In this regard, it is necessary that efforts should aim to ensure the implementation of these treaties and public policies. It is necessary to strengthen the control and follow-up instruments of public policies which aim to control illegal wildlife trafficking.
2. Putting a halt to the illegal traffic in wildlife species must become a priority in the various legal frameworks. Doing so will have a direct impact on the budget and thus the effectiveness of the environmental, judicial and police authorities charged with protecting biodiversity. It is therefore necessary that in some jurisdictions there be institutional reforms that prioritize the struggle against illegal wildlife trafficking among the different operations undertaken by administrative and judicial authorities. Among other possibilities, these changes may materialize in an increase of specialized officials and operations associated to this illegal activity.
3. It is clear there are weaknesses as concerns the training of officials, and in some jurisdictions the authorities in charge of the matter are not experts. This is so because although in several Latin American and Caribbean jurisdictions there are administrative and police authorities specializing in environmental crimes, they usually are not given a primary role in the institutional flowchart. It is also worth noting that the legal frameworks in Uruguay and Ecuador have no authorities specializing in the environment, and that Guatemala is the only country that reports having a specific court to hear environmental crimes.
4. In some jurisdictions there are public policy guidelines on the matter. However, they lack the enabling regulations needed to put them into practice. In addition, it is necessary to promote the harmonious collaboration between national, regional and local authorities whose functions are associated with the struggle against illegal wildlife trafficking.
5. Along the same lines, it is necessary to foster international cooperation between jurisdictions in Latin America and the Caribbean, in order to strengthen follow-up and

⁹⁷ The jurisdictions included in this Report are all in countries signatory to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and the Convention on Biological Diversity (CDB), among others.

control mechanisms, as well as the exchange of good practices in the struggle against illegal wildlife trafficking. The American Bar Association Rule of Law Initiative (ABA ROLI) is promoting institutional strengthening by means of initiatives such as this Report. In doing so, ABA contributes to national and international coordination in the region.

6. In most jurisdictions, trafficking in wildlife is not associated with organized crime, which makes it more difficult to investigate and dismantle national and international trafficking networks.
7. Furthermore, in some jurisdictions it is necessary to strengthen the criminal justice system so it incorporates or reforms specific procedures, definitions, sentences and guidelines that would allow it to adequately prosecute these types of crimes.
8. Institutional corruption and money or asset-laundering are inseparable elements of illegal wildlife trafficking. Jurisdictions must therefore use a comprehensive approach to the struggle against this crime.
9. It is necessary to empower the different ethnic (native) communities so they help to raise awareness on the question of wildlife trafficking and subsistence hunting, in such a way that the exceptions allowed for in the various jurisdictions are not abused.
10. It is recommended to implement mechanisms that offer vulnerable communities subsistence alternatives other than participation in the wildlife trafficking chain.
11. As a rule, there is a failure to generate, systematize and disseminate information associated to trafficking in wildlife species. It is necessary to strengthen information systems and transparency in data collection.

1. Interviews

- (i) Javier García Espil, National Director of Biodiversity and Water Resources (*Director Nacional de Biodiversidad y Recursos Hídricos*) (May 2016 to March 2018), National Director of Water and Aquatic Ecosystem Environmental Management (*Director Nacional de Gestión Ambiental del Agua y los Ecosistemas Acuáticos*) (March 2018 to December 2019) and CITES Administrative Authority (April 2017 to March 2018) in the MAYDS.
- (ii) Federico Lopez Bouille, CITES Administrative Authority (April 2019 to January 2020) in the MAYDS.
- (iii) Teresita Iturralde, Fundación Rewilding Argentina (f/k/a Fundación Flora y Fauna).
- (iv) Claudio Bertonatti, Fundación de Historia Natural Félix de Azara (miembro del Consejo Científico Asesor).
- (v) Ramiro Gonzalez, in charge of the Federal Prosecutor's Office No. 7 and UFIMA Specialized Attorney.
- vi) Diego Verdún, Comisario de la División Prevención de Delitos Internacionales, División Interna de INTERPOL.
- (vii) Néstor Roncaglia, ex Jefe de la Policía Federal Argentina y Vicepresidente por las Américas de INTERPOL.

2. Information available on the Internet

(i) MAYDS:

- Proceedings of the monitoring area of the National Bureau of Biodiversity (*Dirección Nacional de Biodiversidad*). Number of infringement records drawn up and notified by the fauna monitoring area. 917 infringement records were drawn up between 2012 and 2016, commencing with 151 records in 2012 and 255 records in 2016 (the information available does not refer to the type of penalties imposed or the infringements committed).
See <http://datos.ambiente.gob.ar/dataset/fiscalizacion-de-fauna/archivo/52fa3a64-83be-4aed-b590-a2425bf8cfdd>
- Administrative penalties imposed by the MAYDS for the violation of the FCL. Thirteen fines were imposed in 2016 and 2017 (considering both years) in the aggregate amount of AR\$ 989,583 (approximately USD 14,000).
See <http://datos.ambiente.gob.ar/dataset/sanciones-administrativas-aplicadas/archivo/bf57fac3-d227-4360-a2e9-63b492a459bb>
- Wildlife trade. 107,215 authorizations for the import and export of wild fauna and flora were granted between 2012 and 2017.
See <http://datos.ambiente.gob.ar/dataset/comercializacion-de-fauna-silvestre/archivo/f1000f91-ce4d-4a48-9f04-babe46f156c4>
- Confiscations from illegal wildlife trade. 5,212 animals were confiscated between 2011 and 2015 (broken down by species: birds, crabs, turtles, etc.)
See <http://datos.ambiente.gob.ar/dataset/decomisos-por-comercio-ilegal-de-especies/archivo/d02014ae-bc2a-4e72-a25f-384f0ac45d03>
- Confiscation of illegally traded species by type (animals seized, animals rescued, products and byproducts, ammunitions and meat in kilograms). 13,084 specimens were confiscated between 2011 and 2016.
See <http://datos.ambiente.gob.ar/dataset/decomisos-por-comercio-ilegal-de-especies/archivo/7b289472-6318-4199-a23d-627666ca04ec>

(ii) Aves Argentinas

Information on the Illegal Wildlife Trafficking Program is available at

https://www.avesargentinas.org.ar/tr%C3%A1fico?gclid=CjwKCAjw34n5BRA9EiwA2u9k30B73VpZ84B9XAiHqGfC7bvz-Hn1oDxyTkYxt0x34ydlZb8ofkfMRoC1e0QAvD_BwE

ANNEX II.

BRAZIL - RENNÓ, PENTEADO, REIS & SAMPAIO LAWYERS

Brazilian legislation and that regarding the protection of wildlife

1988 Constitution of the Federative Republic of Brazil. Available at:

<http://www.planalto.gov.br/ccivil_03/constituicao/constituicaocompilado.htm>. Accessed on: July 22, 2020.

Art. 225. Everyone has the right to an ecologically balanced environment, a good of common use of the people and essential to a healthy quality of life, imposing on the Public Authorities and the community the duty to defend and preserve it for present and future generations.

§ 1 To ensure the effectiveness of this right, it is incumbent upon the Public Authorities: (...)

VII - to protect the fauna and flora, prohibiting, in accordance with the law, practices that place their ecological function at risk, cause the extinction of species or subject animals to cruelty.

Decree no. 2,519, of March 16, 1998. Promulgates the Convention on Biological Diversity, signed in Rio de Janeiro, on June 5, 1992. Available at:

<http://www.planalto.gov.br/ccivil_03/decreto/D2519.htm>. Accessed on: July 22, 2020.

Decree no. 6,514, of July 22, 2008. Provides for administrative infractions and sanctions regarding the environment, establishes the federal administrative process for investigating these infractions, and makes other provisions. Available at:

<http://www.planalto.gov.br/ccivil_03/_Ato2007-2010/2008/Decreto/D6514.htm>. Accessed on: July 24, 2020.

Art. 24. Kill, chase, hunt, catch, collect, use specimens of wildlife, native or on a migratory route, without the proper permission, license, or authorization from the competent authority, or in disagreement with that obtained:

Fine of:

I - R\$ 500.00 (five hundred reais) per individual of a species not included in official lists of risk or threat of extinction;

II - R\$ 5,000.00 (five thousand reais), per individual of a species included in official lists of Brazilian fauna threatened with extinction mentioned or not in the Convention on International Trade in Endangered Species of Wild Fauna and Flora - CITES.

§ 1 The fines will be doubled if the infraction is practiced for the purpose of obtaining a pecuniary advantage.

§ 2 If it is impossible to apply the criterion of a unit of a species for setting the fine, the amount of R\$ 500.00 (five hundred reais) per kilogram or fraction thereof will be applied.

§ 3 The same fines apply to:

I - whoever prevents the breeding of fauna, without a license, authorization or in disagreement with that obtained;

II - whoever modifies, damages, or destroys a nest, shelter or natural breeding site; or

III - whoever sells, exhibits for sale, exports or acquires, keeps, has in captivity or deposit, uses or transports eggs, larvae or specimens of wildlife, native or on a migratory route, as well as products and objects therefrom, originating from unauthorized breeding sites, without due permission, license or authorization from the competent environmental authority or in disagreement with that obtained.

IBAMA no. 93, of July 7, 1998. Regulates the import and export of live specimens, products and subproducts of Brazilian wildlife and exotic wildlife, and makes other provisions. Available at: <<http://www.sema.df.gov.br/wp-conteudo/uploads/2017/09/Portaria-IBAMA-n%C2%BA-93-de-1998.pdf>>. Accessed on: July 28, 2020.

Complementary Law no. 140 of 2011. Sets standards, under the terms of items III, VI and VII of the heading and sole paragraph of art. 23 of the Federal Constitution, for cooperation between the Federal Government, the States, the Federal District and the Municipalities in administrative actions arising from the exercise of common competence regarding the protection of notable natural landscapes, the protection of the environment, the fight against pollution in any of its forms and the preservation of forests, fauna and flora; and amends Law no. 6,938, of August 31, 1981. Available at: <http://www.planalto.gov.br/ccivil_03/LEIS/LCP/Lcp140.htm>. Accessed on: July 24, 2020.

Law no. 5,197, of January 3, 1967. Provides for the protection of fauna and makes other provisions. Available at: <http://www.planalto.gov.br/ccivil_03/leis/L5197.htm>. Accessed on: July 23, 2020.

Art. 1. Animals of any species, at any stage of their development and which live naturally outside captivity, constituting wildlife, as well as their nests, shelters and natural breeding sites are State property, and their use, exploitation, destruction, hunting or capture is prohibited.

Law no. 9,605, of February 12, 1988. Provides for criminal and administrative sanctions derived from conducts and activities harmful to the environment, and makes other provisions. Available at: <http://www.planalto.gov.br/ccivil_03/leis/19605.htm>. Accessed on: July 24, 2020.

Art. 29. Kill, chase, hunt, catch, use specimens of wildlife, native or on a migratory route, without due permission, license, or authorization from the competent authority, or in disagreement with that obtained:

Penalty - imprisonment from six months to one year, and a fine.

§ 1 The same penalties apply to: (...)

III - whoever sells, exhibits for sale, exports or acquires, keeps, has in captivity or deposit, uses or transports eggs, larvae or specimens of wildlife, native or on a migratory route, as well as products and objects therefrom, originating from unauthorized breeding sites, without due permission, license or authorization from the competent environmental authority. (...)

§ 3 Specimens of wildlife are all those belonging to native, migratory and any other species, aquatic or terrestrial, which spend all or part of their life cycle within the limits of Brazilian territory, or Brazilian jurisdictional waters.

§ 4 The penalty is increased by half if the crime is committed:

I - against a rare species or one considered endangered, even if only at the site of the infraction;

II - during a period when hunting is prohibited;

III - during the night;

IV- in violation of a license;

V - in a conservation unit;

VI - with the use of methods or instruments capable of causing mass destruction.

§ 5 The penalty is increased by a factor of three if the crime arises from the exercise of professional hunting.

Law no. 9,985, of July 18, 2000. Regulates art. 225, § 1, items I, II, III and VII of the Federal Constitution, establishes the National System of Nature Conservation Units and makes other provisions." Available at: <http://www.planalto.gov.br/ccivil_03/leis/19985.htm>. Accessed on: July 23, 2020.

Law no. 12,651, of May 25, 2012. Provides for the protection of native vegetation; amends Laws nos. 6,938, of August 31, 1981, 9,393, of December 19, 1996, and 11,428, of December 22, 2006; repeals Laws nos. 4,771, of September 15, 1965, and 7,754, of April 14, 1989, and Provisional Measure no. 2,166-67, of August 24, 2001; and makes other provisions. Available at: <http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2012/lei/L12651compilado.htm>. Accessed on: July 23, 2020.

Law no. 13,123, of May 20, 2015. Regulates item II of § 1 and § 4 of art. 225 of the Federal Constitution, Article 1, paragraph j of Article 8, paragraph c of Article 10, Article 15 and §§ 3 and 4 of Article 16 of the Convention on Biological Diversity, promulgated by Decree no. 2,519, of March 16, 1998; provides for access to genetic heritage, protection and access to associated traditional knowledge and the sharing of benefits for conservation and sustainable use of biodiversity; revokes Provisional Measure no. 2,186-16, of August 23, 2001; and makes other provisions. Available at: <http://www.planalto.gov.br/ccivil_03/_Ato2015-2018/2015/Lei/L13123.htm>. Accessed on: July 23, 2020.

MMA Ordinance no. 43, 2014. Institutes the National Program for the Conservation of Endangered Species - Pro-Species. Available at: <<https://www.icmbio.gov.br/portal/images/stories/docs-plano-de-acao-ARQUIVO/00-saiba-mais/03 - PORTARIA MMA N%C2%BA 43 DE 31 DE JAN DE 2014.pdf>>. Accessed on: July 23, 2020.

CONAMA Resolution no. 457, of June 25, 2013. Provides for the deposit and provisional custody of wild animals apprehended or rescued by the environmental agencies that are part of the National Environment System, as well as from spontaneous delivery, when there is a justified impossibility of the destinations provided for in § 1 of art. 25, of Law no. 9,605, of February 12, 1998, and makes other provisions. Available at: <<http://www2.mma.gov.br/port/conama/legiabre.cfm?codlegi=695>>. Accessed on July 30, 2020.

Brazilian legislation on combating corruption and organized crime

Decree no. 3,678, of November 30, 2000. Promulgates the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, concluded in Paris on December 17, 1997. Available at: <http://www.planalto.gov.br/ccivil_03/decreto/D3678.htm>. Accessed on July 30, 2020.

Decree no. 4,410, of October 7, 2002. Promulgates the Inter-American Convention against Corruption, of March 29, 1996, with reservation of art. XI, paragraph 1, item "c". Available at: <http://www.planalto.gov.br/ccivil_03/decreto/2002/d4410.htm>. Accessed on July 30, 2020.

Decree no. 5,015, of March 12, 2004. Promulgates the United Nations Convention against Transnational Organized Crime. Available at: <<http://www.mpf.mp.br/atuacao-tematica/sci/normas-e-legislacao/legislacao/legislacoes-pertinentes-do-brasil/legislacao-doc/decreto5015.pdf>>. Accessed on: July 22, 2020.

Decree no. 5,687, of January 31, 2006. Promulgates the United Nations Convention against Corruption, adopted by the United Nations General Assembly on October 31, 2003 and signed by Brazil on December 9, 2003. Available at: <http://www.planalto.gov.br/ccivil_03/_ato2004-2006/2006/decreto/d5687.htm>. Accessed on: July 22, 2020.

Bill no. 3,855, of 2019. Establishes measures against corruption and other crimes against public assets and combats the illicit enrichment of public agents. Available at: <<https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=2080604>>. Accessed on: July 28, 2020.

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Acronyms

CFRB/88 - Constitution of the Federative Republic of Brazil of 1988

CGen - Genetic Heritage Management Council
CITES – Convention on International Trade in Endangered Species of Wild Fauna and Flora
CONABIO - National Biodiversity Commission
EPANB - National Biodiversity Strategy and Action Plan
IBAMA - Brazilian Institute of the Environment and Renewable Natural Resources
ICMBio - Chico Mendes Institute for Biodiversity Conservation
IN - Normative Instruction
MMA - Ministry of the Environment

ANNEX III

COLOMBIA – BRIGARD URRUTIA ABOGADOS

Interviews held:

- a. Carolina Urrutia Vásquez. Bogotá District Environmental Secretariat. The interview took place on 29 July 2020.
- b. Claudia Yamile Suárez. Deputy Director of the Bogotá District Forestry, Flora and Fauna Secretariat. The interview took place on 31 July 2020.
- c. Diana Castro. Civil servant at the Bogotá District Forestry Subdivision of the Forestry, Flora and Fauna Secretariat. The interview took place on 31 July 2020.
- d. Luz Dary Acevedo. Head of Health and Trafficking at the Wildlife Conservation Society – Colombia. The interview took place on 3 August 2020.
- e. Andrés Balcázar. Expert in the field of health and trafficking at the Wildlife Conservation Society – Colombia. The interview took place on 3 August 2020.