Wildlife crime in China
Analysis of selected legislation and court cases
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ABBREVIATIONS AND ACRONYMS

ASEAN  Association of Southeast Asian Nations
CAMLMAC  Anti-Money Laundering Monitoring and Analysis Centre
CBD  Convention on Biological Diversity
CITES  Convention on International Trade in Endangered Species of Wild Fauna and Flora
COP  Conference of the Parties
COVID-19  Coronavirus Disease 2019
CPC  Communist Party of China
ECCAS  Economic Community of Central African States
EIA  Environmental Investigation Agency
ELC  Environmental Law Centre
ETIS  Elephant Trade Information System
GAC  General Administration of Customs
INTERPOL  International Criminal Police Organization
IUCN  International Union for Conservation of Nature
IWT  Illegal Wildlife Trade
MEFDD  Ministry of Forestry Economy and Sustainable Development
MIKE  Monitoring of Illegal Killing of Elephants
NBSAP  National Biodiversity Strategy and Action Plan
NFGA  National Forestry Grassland Administration
NICECG  National Inter-Agency CITES Enforcement Coordination Group
NGOs  Non-governmental Organisations
NPC  National People’s Congress
NSC  National Supervisory Commission
SFGA  State Forestry and Grassland Administration
SPC  Supreme People’s Court
TCM  Traditional Chinese Medicine
UNCAC  United Nations Convention Against Corruption
UNESCO  United Nations Educational, Scientific and Cultural Organisation
UNODC   United Nations Office of Drugs and Crime
UNTOC   United Nations Convention on Transnational Organized Crime
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FOREWORD

The significant decline in wildlife during the last decades is the result of habitat loss and the increase of poaching and illegal wildlife trade. Indeed, the latter is a growing business that contributes to a multi-billion-dollar illegal industry involving unlawful harvesting and trade in live animals and plants or their products.

The complexity and multi-dimensional aspects of these crimes make them difficult to prosecute and entirely unsustainable within the context of the current biodiversity crisis. They contribute to driving endangered species towards extinction and depriving current and future generations of this heritage.

Illegal trade not only threatens biodiversity but also affects negatively the environment, global economy and society. For this reason, it calls for urgent attention and action at local, regional and international level.

Since 1970, the IUCN Environmental Law Centre has been at the forefront of developing the legal arrangements and providing tools to practitioners from around the world to protect and conserve biodiversity and thus helping to address poaching and illegal wildlife trade.

Born out of the “Partnership against Poaching and Illegal Wildlife Trade (in Africa and Asia)”, this is a series of reports relating to wildlife crime case analysis in countries involved in the supply, transit, and demand sides of the wildlife trafficking chain. All the cases that served to prepared the reports are available on www.wildlex.org.

We do hope these reports will help to improve resources and tools available to policy makers, and the judiciary to address the various and complex matters relating to poaching and illegal wildlife trade, as well as disseminate information, and experiences to sensitize other stakeholders to find solutions to address the wide spectrum of problems associated with illegal wildlife trade and crime.

Special thanks to the Government of the Federal Republic of Germany alongside the GIZ (Deutsche Gesellschaft für Internationale Zusammenarbeit) for the financial contribution.

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INTRODUCTION

Illegal wildlife trade poses a threat to the survival of individual species and to biodiversity protection. Evidence suggests that current off-take levels of animals are unsustainable. The impacts have wide-ranging cascading effects on animals, ecosystems, and human life. They include the loss of endangered species, the destruction of ecosystems all living things rely on, the disruption of livelihoods, and the appearance of zoonotic diseases.

China is the third most biodiverse country in the world, and is home to many endemic species – some of them endangered –, including the giant panda, the golden monkey or the Chinese river dolphin. Other non-endemic species include the Siberian tiger, the Asian elephant, or the Tibetan antelope. The IUCN Red List records 239 critically endangered species, 515 endangered species, 620 vulnerable species, and 383 near threatened species in the country. Neighbouring countries, including Viet Nam, Lao PDR, the Russian Federation, and Myanmar, are also natural habitats of many protected wildlife. Many of these wildlife species including the snow leopard, the Sunda pangolin, or the Saiga antelope, are smuggled into mainland China, alongside species originating from Africa, Latin America and Europe. According to the United Nations Office of Drugs and Crime (UNODC), China is the end-user destination for 34 per cent of the global ivory tusk seizures during the period 2015-2019; 38.5 per cent of the global rhino horn seizures during the period 2002-2019; and 70.9 per cent of the global pangolin seizures during the period 2007-2019. The demand from Chinese buyers for many endangered species’ products is therefore one of the key driving forces behind illegal wildlife trade.

The government has gradually recognised its key role in combating illegal wildlife trade. The country adopted its first Wildlife Protection Law in 1988, which was amended several times and revised most recently in 2021. In its Criminal Law, promulgated in 1997, various wildlife crimes have been defined with associated penalties. On the enforcement side, the government led Operation Cobra in 2013, in cooperation with 22 Asian and African countries. This operation resulted in 71 prosecuted cases, 85 arrested suspects, and seizures of 185 kg of ivory, 13 kg of rhinoceros horn, around 50 kg of pangolin

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6 Ibid p. 62.
7 Ibid p. 71.
scales, and 76 helmeted hornbill beaks. The government also joined the most recent global wildlife enforcement operation, Operation Thunderball, in June 2019.

In spite of the successes achieved thus far, greater efforts will be needed to curb wildlife crime both domestically and globally. Judicial enforcement is one key area to be improved, as cases of illegal wildlife trade remain difficult to discover, investigate and prosecute. Contributing factors include, but are not limited to, extensive land and sea borders, limited capacity of law enforcement, shortcomings in wildlife legislation and regulation, insufficient international cooperation with foreign counterparts, or lack of qualified forensic labs to recognise protected species.

In an effective and comprehensive legal framework, judicial arrangements hold individuals, corporations, and institutions accountable for their actions in violation of the law. Accessible information on such arrangements is essential to inform and improve the legal framework and the judicial processes. China has adopted a set of rules aimed at curbing illegal wildlife trade, and although court cases are accessible on a dedicated online platform, comprehensive data on prosecuting wildlife crime is not readily accessible, least of all in a language other than Mandarin. This report aims to bridge the knowledge gap on prosecution of wildlife crime in China by analysing 300 wildlife crime cases brought before courts. It does not provide a full picture of illegal wildlife trade in China or a full analysis of the judicial response to these crimes. Instead, it is an initial overview of the legal framework and judicial response to illegal wildlife trade in the country, identifying evident gaps and challenges, and offering leads for further research in the field. Court decisions in this assessment are accessible on WILDEX.

This report is part of a series of reports on wildlife crime court case analysis in countries involved in the supply, transit and demand sides of the wildlife trafficking chain.

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14 WILDEX is an online database of wildlife crime court cases in a wide range of countries managed by IUCN. It is accessible via: Home | WILDEX
1 METHODS

The selection, collection and analysis of wildlife crime-related court decisions started in March 2020. IUCN Environmental Law Centre (hereinafter referred to as ELC) partnered with a research team from the School of Law at Yangzhou University in Fuzhou, Fujian Province, China. Together, they developed a case selection strategy to gather a representative sample of 300 final court judgements from courts of first instance, courts of second instance and courts of retrial. The information extracted from cases was used to conduct an empirical and statistical analysis on the prosecution and adjudication of wildlife crimes to answer the following question: what is the current judicial response to wildlife crime in the country?

The primary source for the selection and collection of wildlife crime court cases was the platform “China Judgment Online” (http://wenshu.court.gov.cn). Since July 2013, and according to the Supreme People’s Court (SPC), all judicial decisions must be published online on this dedicated platform. Despite the mandatory nature of online publication, only 80 per cent of criminal cases have so far been published. Still, as of January 31, 2021, the judgments published on the website had reached 114,588 million copies, with more than 53 billion visits and users. To date, this website has become the world’s largest database of court judgments.

The research team conducted the initial case search using the five main causes of action for wildlife-related criminal prosecution in March 2020. These are found under Article 340, Article 341 and Article 151 of the Criminal Law, and include: (1) illegal hunting and skinning of endangered wild animals; (2) illegal purchasing, transporting, or selling of rare and endangered wild animals and their manufactured products; (3) illegal hunting of wild animals; (4) smuggling of rare wild animals; and (5) illegal catching of aquatic products. In addition to using the cause of action, the keyword “wild” (野生) was added to generate cases including only wild animals. Table 1 depicts the number of court judgements collected at this preliminary stage.

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<td>Illegal purchasing, transporting or selling of rare and endangered wild animals and their products</td>
<td>21</td>
<td>67</td>
<td>430</td>
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<td>928</td>
<td>754</td>
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<td>4,346</td>
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<td>Illegal hunting of wild animals</td>
<td>8</td>
<td>50</td>
<td>383</td>
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<td>1,460</td>
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Following this preliminary research, the research team together with ELC, developed a **six-step case selection strategy** to identify the final 300 cases:

**STEP 1**
Select court judgments available on China Judgement Online that are guiding cases (指导案件) or typical cases (典型案件) for wildlife crimes.

**STEP 2**
Identify wildlife criminal cases that may involve one or several, illegal behaviours, or offences, involving species listed in Appendix I or Appendix II of CITES, or species registered in the National Directory of Key Protected Wild Animals. A limited selection of cases involving wildlife not listed as rare and endangered was added for comparison purposes.

**STEP 3**
Identify preselected cases in Step 2 that would fit in either one of the following categories:
- Cases related to the entire trade chain;
- Cases involving poaching and illegal trade in ivory and rhino-horn;
- Transnational and domestic cases;
- Cases involving organised crime; and
- Cases including consumption offences.

**STEP 4**
Ensure the selected cases cover multiple geographic jurisdictions, involve different levels of courts, i.e. trial or appellate, and are spanning several years.

**STEP 5**
Look for cases involving associated crimes such as forgery, concealment, money laundering, illegal corporate crime, or cases critical to the entire supply chain of illegal wildlife trade.

**STEP 6**
Ensure the selected cases were final and executed at the time of case collection. Overall, the selected cases were representative of the entire supply chain as shown in Figure 1.
China being a key country in terms of illegal wildlife trade, as well as the most populous country on earth, there are thousands of court cases relating to the matter at issue. Due to limited resources, the research team collected and analysed only 300 cases across mainland China. Out of these 300 cases, 67 were from courts of first instance, representing 22.33 per cent of all cases, and 233 were from courts of appeal, representing 77.67 per cent of all cases (Figure 2). Courts of appeal in this study include the Intermediate People’s Courts, the High People’s Courts and the Supreme People’s Court.

Figure 2: Distribution of cases between Courts of First Instance and Courts of Appeal

To facilitate the collection of data, decision was made to only collect cases for which any other legal recourse is precluded. However, looking at first instance cases, the information as to whether an appeal was launched or a retrial ordered is hardly available. Although the database China Judgment
Online publishes up to 80 per cent of all the judgments, it is likely that published cases of first instance are not final with appellate judgements still pending. For this reason, there is a greater number of appealed cases than first instance cases in this analysis.

The research team conducted an initial analysis of each of the 300 cases using a matrix developed by ELC (see Appendix 1 below). Information on defendants, litigation history, species involved, value of the wildlife involved, charges, facts of the case, legal basis for the judicial decision, sources of law, penalties, and legal issues raised in the decision was collected. The URL link to the original judgement was also saved.

In China, courts of first instance and courts of appeal review the factual and legal basis of each pending case, thus the research team was able to perform a similar analysis of the judicial process for all 300 cases.

Mainland China is divided into 22 provinces, 5 autonomous regions and 4 municipalities directly under the central government. Cases were collected from across mainland China to have a geographical overview of wildlife crime (Figure 3).

![Figure 3: Number of collected cases by province](image-url)
Figure 4 shows the annual distribution of cases from 2012 to 2020. As indicated, the database China Judgment Online was launched in July 2013, while the case collection occurred between March 2020 and June 2020. Thus, the majority of collected cases covers the period between 2015 and 2019.

![Figure 4: Distribution of cases per year](image-url)
2  LEGAL AND JUDICIAL SYSTEM

2.1  Legal sources

The legal system, defined as a “socialist legal system”, is largely built on the model of a civil law system. The National People’s Congress, hereafter referred to as the Congress, and its Standing Committee, is the highest legislative body in China. Crimes, penalties, deprivation of political rights of citizens, coercive measures, expropriation of non-state property are regulated by national laws passed by the Congress and its Standing Committee.

Under the Legislation Law of the People’s Republic of China of March 15, 2000, the hierarchy of norms from top to bottom is the following: (1) Constitution; (2) statutory or national laws; (3) administrative regulations issued by the State Council, judicial interpretations from the Supreme People’s Court and the Supreme People’s Procuratorate, and military regulations; (4) local laws and regulations issued by local people’s congresses or their standing committees (Figure 5). Ministries and administrative bodies can also formulate rules with the same rank as local regulations. Ratified treaties, that have entered into force, have equal status to statutory laws adopted by the Congress or its Standing Committee.

![Diagram of Hierarchy of Norms]

Figure 5: Hierarchy of norms

2.2  Law enforcement and judicial system

2.2.1  Law enforcement agencies

Public Security Bureaus are responsible for the investigation, the execution of arrest warrants, and the detention of criminal suspects; essentially, they act as what is commonly referred to as the police. Alongside the People’s Courts and the Supreme People’s Procuratorate, the Public Security Bureaus are involved in criminal proceedings.

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17 The Supreme People’s Procuratorate can also be translated as the Prosecutor General’s Office.
18 Article 3, Criminal Procedure Law.
The National Forestry and Grassland Administration (NFGA), under the Ministry of Natural Resources, is responsible for the nationwide administration of terrestrial wildlife and forest management. As part of a nation-wide institutional reform, the NFGA was established in 2018, carrying out the functions and responsibilities of the former State Forestry Administration.

The General Administration of Customs (GAC), leading the Anti-Smuggling Bureau, and local customs divisions carry out seizures during cross-border entry-exit inspections, while the NFGA’s Forest Police Bureau and local public security bureaus conduct seizures of trafficked wildlife and wildlife products within national borders.\(^9\) In terms of arrest, the GAC and the Ministry of Public Security cooperate in arrests for cross-border wildlife crime. In the first reported overseas arrest for wildlife crimes, both departments sent a team to Kenya to successfully apprehend, in cooperation with local authorities, a Chinese individual in 2014.\(^{20}\)

The massive profits deriving from illegal wildlife trade raise the concern of money laundering. In such cases, the GAC can seek assistance from the Anti-Money Laundering Monitoring and Analysis Centre (CAMLMAC). CAMLMAC is an institution established with the approval of the central government and is directly affiliated with the People’s Bank of China. It is specialised in collecting and analysing information on large-scale and suspicious transactions, engaging in exchange of intelligence and providing analysis results to relevant judicial authorities. In a 2018 operation targeting the smuggling of pangolin scales from Viet Nam into China, the GAC sent an information request to CAMLMAC for transaction reports, to better understand the organisational structure of the smuggling group and the scale of its smuggling activities.\(^{21}\)

### 2.2.2 Judicial system

The People’s Procuratorates (hereafter referred to as the procuratorates) are responsible for initiating public prosecution, investigating, approving arrests and issuing indictments. The People’s Courts, hereafter referred to as the courts, are in charge of adjudication and sentencing. Both procuratorates and courts are on equal footing with the administrative branch.\(^{22}\)

China has a unified, four-level judicial system with (1) the Basic People’s Courts, (2) the Intermediate People’s Courts, (3) the High People’s Courts and (4) the Supreme People’s Court (Figure 6). More than 3,000 Basic People’s Courts are set up at a county or district level, 376 Intermediate People’s Courts are set up at prefecture and city level, and 31 High People’s Courts are established at a provincial level. Complementary to these, special courts are established and include military courts, maritime courts, railway transportation courts, and intellectual property courts.\(^{23}\)

The Supreme People’s Court is the highest court in the country with two main functions: (1) to hear appeal cases against judgements from the High People’s Courts and the special people’s courts and (2) to issue interpretations and guiding cases on the application of the law. The Court can also hear

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first instance cases for matters under its direct jurisdiction, retrial cases, and gives its approval to death penalty cases.\footnote{State Council (2018). The Supreme People’s Court (SPC). Available at: \url{http://english.www.gov.cn/archive/china_abc/2014/08/23/content_281474982987258.htm} (Accessed: 21 July 2021).}

The court trial system follows a two-tiered process. Litigants are generally limited to one appeal, and this appeal is lodged directly with the court of immediate higher level, and within the time limit prescribed by the law. During the appeal, the appellate court can re-examine both the facts and the application of the law. The appellate verdict is the final decision and is enforced accordingly. However, as a last recourse, the unsatisfied litigant may file a retrial application to the next higher court level, with this court weighing upon reopening the case or not. This process is called “adjudicative supervision procedure”\footnote{Another common translation of the term is “trial supervision procedure”.}, and is a discretionary final post-judgment review that may occur, in certain circumstances, in criminal, civil and administrative cases.\footnote{Peerenboom R. (2006). ‘Judicial independence and judicial accountability: an empirical study of individual case supervision’, 55 The China Journal 67, 72. Available at: \url{https://doi.org/10.2307/20963120} (Accessed: 23 July 2021).}
3  WILDLIFE LAW: NATIONAL AND INTERNATIONAL PROVISIONS

3.1  History of wildlife law

The Wildlife Protection Law is the key legislation on wildlife protection in China. Before its adoption, the State Council had issued a circular decree of the State Council on the strict protection of precious and rare wild animals in 1983.27

The Wildlife Protection Law was first adopted on November 8, 1988, at the fourth session of the Standing Committee during the seventh National People’s Congress. This piece of legislation took effect in March 1989 and is still applicable today. The four revision processes, and recently published amendments, highlight its significance and current relevance:

- The Standing Committee made the first revision during the tenth National People’s Congress on August 28, 2004.
- The Standing Committee adopted the second amendments during the eleventh National People’s Congress in August 2009.
- The third revision was adopted in July 2016 during the twelfth National People’s Congress.
- The latest revision was adopted in October 2018 during the thirteenth National People’s Congress.
- A new set of draft amendments was published for public comments in November 2020.28

The 2020 draft amendments introduce as one of the objectives for the Wildlife Protection Law the prevention of public health risk.29 They clarify the duties and responsibilities of government bodies and organisations to avoid confusion and conflicts.30 The consumption of nationally protected wild animals and wildlife species of strong ecological, scientific or societal value is banned, together with the hunting, trading and transportation of terrestrial wildlife that is naturally grown and bred in the wild for the sole purpose of consumption.31 These draft amendments have not yet been adopted.

The State Council also promulgates administrative regulations and normative documents to protect wildlife. These regulations include, but are not limited to:

- The Notice on the Trade of Rhino Horns and Tiger Bones in 1993; and

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27 State Council: A Circular Decree of the State Council Concerning Strict Protection of Precious and Rare Wild Animals (Decree No. 62 [1983]).
29 Article 1, 2020 draft amendments to Wildlife Protection Law.
30 Article 7 and Article 16, 2020 draft amendments to Wildlife Protection Law.
31 Article 31, 2020 draft amendments to Wildlife Protection Law.
In 1988, the State Council promulgated the National Directory of Key Protected Wild Animals (also named National List of Protected Wild Animals) to complement the Wildlife Protection Law.

Criminal law also plays a key role in combating the illegal exploitation of protected wild animals and other wildlife species. The first version of the Criminal Law was enacted in 1979, after the Cultural Revolution, and only referred to the crime of “illegal hunting”. In November 1988, the Standing Committee issued the “Supplementary Provisions on Punishing the Crime of Hunting and Killing Precious and Endangered Wild Animals under State Protection”.

During a comprehensive revision of the Criminal Law in 1997, provisions on wildlife crime, still valid today, were included, namely Article 340, Article 341 and Article 151. Since then, several amendments were introduced. The latest amendment to Article 341, adopted by the Standing Committee on December 26, 2020 and which took effect on March 1, 2021, reads as follows: 32

“Violations of regulations on the protection and management of wildlife by illegally hunting, purchasing, transporting, or selling terrestrial wildlife [...] for the purpose of eating, and where the circumstances are serious, are punishable in accordance with the provisions of the preceding paragraph.”

In 2000, the Supreme People’s Court provided guidance to lower courts on how to adjudicate cases of wildlife crimes in its Judicial Interpretation on the application of the law in criminal cases involving the destruction of wildlife resources (Annex IV). In its 2014 Judicial Interpretation on the application of the law in smuggling cases, the Court also clarified the sentencing in cases involving illegally smuggled endangered wildlife species (Annex V).

3.2 National legal and policy frameworks

The Wildlife Protection Law and relevant provisions in the Criminal Law are the main legislative documents aiming at curbing illegal wildlife trade. In case of violation, the former imposes administrative sanctions while the latter provides for criminal sanctions.

3.2.1 Constitutional provisions

Under the Constitution, all wildlife resources are owned by the State and as such, the State is responsible for the protection of wildlife. Article 9 of the Constitution notes: 33

“The State ensures the rational use of natural resources and protects rare animals and plants. Appropriation of, or damage to, natural resources by any organisation or individual by whatever means is prohibited.”

The government has introduced the idea of “an ecological civilisation”, a vision for the country’s development in harmony with nature. The concept of an ecological civilisation is enshrined in the Constitution since 2018 and, 34 is embedded in the roadmap for national development. 35 With the upcoming U.N. Biodiversity Conference in Kunming, China, in October 2021, 36 the government made

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34 Preamble of the 2018 Amendments to the Constitution of the People’s Republic of China.


36 The COP15 was originally scheduled in October 2020 and was postponed due to the Covid-19 pandemic.
the commitment of “a zero-tolerance policy toward illegal activities in nature reserves”, backed up by severe penalties for wildlife crime.³⁷

On February 24, 2020, the Standing Committee enacted a Decision to comprehensively prohibit the illegal trade of wild animals and curb wild animal consumption for health and safety reasons. The decision mandated the top legislature to introduce a permanent legislation to ban consumption of wildlife; the first paragraph reads as follows:³⁸

> “Hunting, trading, transporting wild animals or consuming the meat thereof, as prohibited in the Wildlife Protection Law and other relevant laws, shall be banned.

Acts in violation of the preceding paragraph shall be subject to stricter penalties than those prescribed in existing laws.”

³.2.2 Wildlife Protection Law

The stated objective of the Wildlife Protection Law is to “protect wild animals, to save rare and endangered species of wild animals, to maintain biodiversity and ecological balance, and to advance the building of an ecological civilisation”.³⁹

The Wildlife Protection Law provides for offences and respective administrative penalties if its provisions are violated.⁴⁰ In these cases, administrative agencies such as the forest police or customs will be enforcing the penalties. The main offences include:

- Illegal hunting of wildlife including: hunting of wildlife in nature reserves, hunting when the hunting season is closed, hunting with the use of prohibited gears, or hunting of wildlife under state protection (Articles 20-24);
- Illegal sale, purchase or utilisation of wildlife under special state protection (Articles 27-30);
- Smuggling of protected wildlife species (Articles 35-37); and
- Falsification of documents approving the sale, purchase or utilisation of wildlife under special state protection (Article 39).

Annex III provides details of the offences under the Wildlife Protection Law and their respective administrative penalties. Agents from the forest police, the market oversight and management agencies, customs and other authorities can enforce these penalties. One key element to raise here is the absence of penalty for the illicit possession of wildlife or wildlife products.

In 1988, the State Council incorporated the National Directory of Key Protected Wild Animals (hereinafter referred to as the National Directory) in the Wildlife Protection Law. Under this list, rare and endangered wild animals are classified into Class I and Class II state protected species. Different


³⁹ Article 1, Wildlife Protection Law.

liabilities and penalties are established for the illegal exploitation of rare and endangered wildlife and non-endangered wildlife.

In April 1993, some wildlife species, listed under CITES, that were not originally listed as state protected species were included. The National Directory is supposedly updated every five years based on a scientific assessment. In February 2021, the Directory was for the first time substantially amended, with 980 species added to the list.41 A lack of consistency exists between the national classification and the current international classifications, i.e. CITES Appendices or IUCN Red List. One example is the Yangtze giant softshell turtle, which is listed in Appendix I of CITES and classified as endangered in the IUCN Red List. It is not listed under the National List of protected species and is facing near extinction.42

In 2000, the State Forestry Administration released an additional classification called the List of terrestrial wildlife species of important ecological, scientific or social value.43 Species under this list are not as protected as listed species under the National Directory, but they still enjoy a greater level of protection than species that are in neither of these listings.

### 3.2.3 Criminal Law

Article 341, Article 340 and Article 151 of the Criminal Law are the main articles regarding wildlife crime.

Three specific causes of actions are specified under Article 341, that is:

- Crime of illegally hunting and killing rare and endangered wild animals (非法猎捕、杀害珍贵、濒危野生动物罪);
- Crime of illegally purchasing, transporting or selling rare and endangered wild animals, and their manufactured products (非法收购、运输、出售珍贵、濒危野生动物、珍贵、濒危野生动物制品罪); and
- Crime of illegally hunting wild animals (非法狩猎罪).44

Under Article 341, perpetrators illegally hunting and killing rare and endangered wild animals under state protection, or illegally purchasing, transporting or selling rare and endangered wild animals, and their products, can receive a sentence of not more than five years of fixed-term imprisonment or criminal detention.45 In addition, they may be sentenced with a fine. In serious cases, offenders can be sentenced to not less than five years and up to ten years of fixed-term imprisonment, in addition to paying a fine. In the most serious cases, offenders can be sentenced to more than ten years of fixed-term imprisonment, in addition to a fine or confiscation of property.46 If an individual makes use of tools and methods forbidden in a no-hunting zone or in a no-hunting period, damaging wildlife resources,

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45 Criminal detention, or “jì yī”, ranges from one month to six months in a place near one’s residence while imprisonment can range from six months to fifteen years.
and if the circumstances are serious, he or she may be sentenced to not more than five years of fixed-term imprisonment, criminal detention or control, in addition to paying a fine.

The Supreme People’s Court issued in 2000 a Judicial Interpretation on the application of the law in criminal cases involving the destruction of wildlife resources (see Annex IV). The Court defined “rare and endangered wildlife” found in Article 341 of the Criminal Law as including species listed under the National Directory of Protected Wildlife, the Appendix I and Appendix II to CITES, and specified domesticated and bred species.

The Judicial Interpretation provides a range of indicia to consider when characterising an offence as “serious” and “most serious”, including, but not limited to:

- The quantity of wildlife, and wildlife products, listed in the Appendix of the Judicial Interpretation;
- The estimated loss triggered by the criminal conduct;
- The income deriving from the illegal conduct; and
- The value of the wildlife and wildlife products.

On February 6, 2020, the Supreme People’s Court (SPC), the Supreme People’s Procuratorate (SPP), the Ministry of Public Security, and the Ministry of Justice jointly issued the Opinions on Punishing Criminal and Illegal Activities Hindering the Prevention and Control of Novel Coronavirus Pneumonia (the “2020 Joint Opinions”). This normative document emphasised that crimes destroying wildlife resources should be severely punished in accordance with Article 341 of the Criminal Law.

Article 340 of the Criminal Law provides for the crime of illegally fishing aquatic products. If an individual engages in fishing, in an area where fishing is prohibited, or during a period when fishing is prohibited, and if the circumstances are serious, he or she may be sentenced to fixed-term imprisonment or criminal detention of not more than three years, or a fine. The same penalties are applicable if tools and methods are used in violation of the regulations in place.

The crime of smuggling rare and precious animals, and their related products, whose import and export are prohibited by the State (走私珍贵动物、珍贵动物制品) is prescribed by Article 151 of the Criminal Law. Rare and precious animals include all wildlife species listed under the National Directory of Protected Wildlife, the Appendix I and Appendix II to CITES, and specified domesticated and bred species.

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47 The law itself does not elaborate on what constitutes serious circumstances; instead judicial interpretations from the highest court will provide more information on this.

48 Article 341(2), Criminal Law.

49 Interpretation by the Supreme People’s Court on Certain Issues Concerning the Specific Application of the Law in Criminal Cases Involving the Destruction of Wildlife Resources, adopted by the Committee of the Supreme People’s Court at its 1141st meeting on 17 November 2000 (referred as the 2000 Judicial Interpretation on the application of the law in criminal cases involving the destruction of wildlife resources).

50 Article 1 of the 2000 Judicial Interpretation on the application of the law in criminal cases involving the destruction of wildlife resources.

51 Some of these elements will be detailed below in Section 4 on Prosecution of wildlife crime.


Depending on the severity of the crime, illegal smuggling of rare and precious animals, or products thereof, is punishable by:

- A term in prison of not more than five years and a fine if the circumstances are minor;
- A term in prison of not less than five years but not more than ten years and a fine;
- A term in prison of not less than ten years or life imprisonment and a forfeiture of property for especially serious circumstances.

The Supreme People’s Court and the Supreme People’s Procuratorate jointly issued the 2014 Judicial Interpretation on the application of the law in smuggling cases (Annex V). Article 9 and Article 10 of the Judicial Interpretation set out the non-cumulative criteria defining what constitute minor, serious and especially serious circumstances (Table 2).  

<table>
<thead>
<tr>
<th>Table 2: Three-tier severity for the crime of illegal smuggling of rare animals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minor circumstances</td>
</tr>
<tr>
<td>----------------------</td>
</tr>
<tr>
<td>Quantity of smuggled animals under first-class or second-class state protection does not reach the quantitative criteria set out in Appendix I to this Judicial Interpretation (Table 3).</td>
</tr>
</tbody>
</table>
| Smuggled products from rare and precious animals are worth less than 200,000 yuan.  
56 | Smuggled products from rare and precious animals are worth more than 200,000 yuan but less than one million yuan.  
57 | Smuggled products from rare and precious animals are worth more than one million yuan.  
58 |
| Quantity of smuggled animals under first-class or second-class state protection does not reach the quantitative criteria set out in Appendix I to this Interpretation, but these rare and precious animals are dead or impossible to recover. | | Quantity of smuggled animals under first-class or second-class state protection reaches quantitative criteria set out in Appendix I to this Judicial Interpretation and, crime is committed by the ringleader of a criminal gang, or by using special vehicles, or has led to the death of the rare and precious animal. |

Table 3 below displays, for a selected number of rare and endangered species, the criteria set out in Appendix I to the 2014 Judicial Interpretation on the application of the law in smuggling cases.

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55 Interpretation by the Supreme People’s Court Supreme People’s Court and the Supreme People’s Procuratorate on Several Issues concerning the Application of Law in the Trial of Criminal Cases of Smuggling (hereinafter referred to as the 2014 Judicial Interpretation on the application of the law in smuggling cases) were issued on August 12, 2014.

56 Approx. USD 31,000. Figures used in this report are based on the exchange rate of July 2021: 6.476 CNY per USD.

57 Approx. between USD 31,000 and USD 156,000.

58 Approx. USD 156,000.
Table 3: Quantitative criteria from Appendix I to the 2014 Judicial Interpretation on the application of the law in smuggling cases

<table>
<thead>
<tr>
<th>Mandarin name of the species</th>
<th>Non-official English translation</th>
<th>Latin</th>
<th>Classes</th>
<th>Serious circumstances</th>
<th>Especially serious circumstances</th>
</tr>
</thead>
<tbody>
<tr>
<td>雪豹</td>
<td>Snow leopard</td>
<td><em>Panthera uncia</em></td>
<td>I</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>虎</td>
<td>Tiger</td>
<td><em>Panthera tigris</em></td>
<td>I</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>亚洲象</td>
<td>Asian elephant</td>
<td><em>Elephas maximus</em></td>
<td>I</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>白腹军舰鸟</td>
<td>White-bellied warship bird</td>
<td><em>Fregata andrewsi</em></td>
<td>I</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>白鹳</td>
<td>White stork</td>
<td><em>Ciconia ciconia</em></td>
<td>I</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>黑鹳</td>
<td>Black stork</td>
<td><em>Pseudibis papillosa</em></td>
<td>I</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>朱鹳</td>
<td>Crested ibis</td>
<td><em>Nipponia nippon</em></td>
<td>I</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>中华秋沙鸭</td>
<td>Chinese merganser</td>
<td><em>Mergus squamatus</em></td>
<td>I</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>穿山甲</td>
<td>Pangolin</td>
<td><em>Manis pentadactyla</em></td>
<td>II</td>
<td>8</td>
<td>16</td>
</tr>
<tr>
<td>豺</td>
<td>Jackal</td>
<td><em>Cuon alpinus</em></td>
<td>II</td>
<td>4</td>
<td>6</td>
</tr>
<tr>
<td>黑熊</td>
<td>Black bear</td>
<td><em>Selenarctos thibetanus</em></td>
<td>II</td>
<td>3</td>
<td>5</td>
</tr>
<tr>
<td>棕熊</td>
<td>Brown bear</td>
<td><em>Ursus arctos</em></td>
<td>II</td>
<td>3</td>
<td>5</td>
</tr>
<tr>
<td>麝（所有种）</td>
<td>Musk (all species)</td>
<td><em>Moschus spp</em></td>
<td>II</td>
<td>4</td>
<td>8</td>
</tr>
<tr>
<td>岩羊</td>
<td>Rock sheep</td>
<td><em>Pseudois nayaur</em></td>
<td>II</td>
<td>4</td>
<td>8</td>
</tr>
</tbody>
</table>

Article 280 of the Criminal Law is applicable to cases involving falsification of official documents, certicates or seals of a state organ (伪造、变造、买卖国家机关公文、证件、印章罪), with a fixed-term imprisonment of not more than three years, detention, control or deprivation of political rights, in addition to payment of a fine. If the circumstances are serious, the fixed-term imprisonment can range from three to ten years, in addition to paying a fine.59

The 2020 Joint Opinions established that authors who knew, or should have known, that their purchase was an illegally hunted wild animal, shall be convicted of, and punished for, the crime of covering up, or concealing a crime-related income (掩饰、隐瞒犯罪所得、犯罪所得收益罪).60 Article 312 of the Criminal Law defines the crime of disguising or concealing the proceeds of a crime. Under this Article,

someone who conceals, transfers, purchases, or acts as an agent to sell something he or she clearly knows was obtained through the commission of a crime can be sentenced to not more than three years of fixed-term imprisonment, criminal detention, or control. The payment of a fine may come in addition to his or her prison sentence, or may be the sole penalty. If the circumstances are serious, the author can be sentenced up to seven years in jail, on top of paying a fine. 61

The 2020 Joint Opinions also established that anyone who illegally trades in wild animals, and their related products, which are not under state protection, disrupting the market order with serious circumstances, will be prosecuted for the crime of illegal business operations in accordance with Article 225(4) of the Criminal Law. Punishable offences include the building of trading venues, online sales, or the sale of processed food. The range of sentencing goes from less than five years of fixed-term imprisonment or detention, to a fixed-term imprisonment of more than five years. A fine two to five times the amount of illegally obtained proceeds, with property seized if the fine cannot be recovered, may also be imposed. 62

The 2020 Joint Opinions highlight that the SPC, SPP and the Ministry of Justice recognise the importance of curbing economic crimes related to wildlife crime. However, these Joint Opinions, or any other relevant piece of legislation and regulation, still fail to acknowledge the close ties between wildlife crimes and other crimes such as money laundering, corruption and bribery, despite of their enabling character in transboundary wildlife trafficking.63

3.3 International agreements and cooperation

3.3.1 Convention on International Trade in Endangered Species of Wild Flora and Fauna

The Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES) is the main international convention addressing illegal wildlife trade. It was adopted in 1973, and has been ratified by 183 Parties, including China since 1981.64

CITES regulates export, re-export, import and introduction from the sea of live and dead animals as well as parts and derivatives thereof.65 The aim of the Convention is to achieve a sustainable balance between conservation of biodiversity and international trade in wildlife resources. To safeguard wildlife species from over-exploitation, the 38,700 species of fauna and flora protected by CITES are listed in three Appendices, depending on their respective degree of protection.

China has enacted laws and regulations to implement CITES as shown in Table 4 below. Any wildlife species newly listed in Appendix I or Appendix II is automatically considered as rare and endangered wildlife under the Criminal Law. As mentioned above in Section 3.2.3., this automatic inclusion is only applicable to the Criminal Law’s definition of rare and endangered wildlife. For the Wildlife Protection Law and its National List of Protected Wild Animals, a formal revision process has to take place to update the classification of protected species.

The Endangered Species Import and Export Management Office within the Wildlife Conservation Department of National Forestry and Grassland Administration is the CITES management authority. To improve the implementation of CITES and combat illegal wildlife trade, China established in 2011 the National Inter-Agency CITES Enforcement Coordination Group (NICECG). The NICECG acts as a liaison office between multiple wildlife enforcement agencies, and coordinates eleven departments in nine ministries, including the police, agriculture, customs, industry and commerce, forestry, inspection and quarantine, coast guards, post and tourism authorities. Provincial Inter-Agency CITES Enforcement Coordination Groups are also set up in all provinces in mainland China to co-ordinate agencies and strengthen law enforcement. The NICECG participates in regional and international wildlife enforcement operations alongside other countries. These include Operations Cobra I, Cobra II and Cobra III, which resulted in significant seizures and dismantling of transnational wildlife crime syndicates.

3.3.2 Convention on Biological Diversity

China was among the first countries to be a party to the Convention on Biological Diversity (CBD), and is the host of the fifteenth meeting of the Conference of the Parties (COP15) in October 2021.

As part of its obligations under the CBD, China adopted a National Biodiversity Strategy and Action Plan (NBSAP) in 2011, for the period 2011-2030. China identified ten priority areas and thirty priority actions for biodiversity conservation. One strategic goal identified in this policy framework is the need to establish a system to manage trade in biological resources. The fight against wildlife crime, through capacity building of law enforcement authorities, is also spelled out as one of the supporting measures for the implementation of NBSAP.

In its latest national report on the implementation of the CBD, from March 2014, the then Ministry of Environmental Protection acknowledges that illegal wildlife trade is still a major issue threatening biodiversity. As one of its priority actions, it calls for the strengthening of law enforcement capacities to further tackle illegal activities, notably by examining the import and export of species.

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68 Ibid.


72 Known as the Ministry of Ecology and Environment since 2018.

3.3.3 United Nations Convention against Transnational Organized Crime

The United Nations Convention against Transnational Organized Crime (UNTOC) was signed by China on 12 December 2000 and ratified on 23 September 2003.\(^{74}\) UNTOC is the main international instrument promoting cooperation to prevent and combat transnational organised crime. It was adopted in 2000 and currently has 190 Parties. Member States commit to taking a series of measures against transnational organised crime, including the creation of domestic criminal offences; the adoption of frameworks for extradition, mutual legal assistance and law enforcement cooperation; and the promotion of training and technical assistance for building capacity of national authorities.

Although wildlife trafficking is not mentioned in the body text of the Convention, or its Protocols, it is still part of the scope of the Convention as it is one of the most lucrative forms of transnational organised crime. In fact, the relevance of environmental crimes in the context of UNTOC was most recently acknowledged during COP10, in 2020, where Parties passed Resolution 10/6 on Preventing and combating crimes that affect the environment falling within the scope of the UNTOC. The Resolution recognised that the Convention is an effective tool and is part of the legal framework for preventing and combating transnational organised crimes that affect the environment, such as wildlife trafficking.\(^{75}\) It also calls upon Parties to implement legislation within the scope of UNTOC, that will enable them to address wildlife crime as a serious crime, as defined by the Convention.\(^{76}\) Finally, it requests Parties to take measures to prevent the abuse of national, regional and global financial systems for the purposes of money laundering, including through the implementation of effective risk-based anti-money laundering frameworks.

As mentioned in Section 2.2.1, the Anti-Money Laundering Monitoring and Analysis Centre (CAMLMAC) can collaborate with law enforcement agencies for cases where money laundering is closely related to wildlife crime.

3.3.4 United Nations Convention against Corruption

China signed the United Nations Convention against Corruption (UNCAC) on 10 December 2003 and ratified it on 13 January 2006.\(^{77}\) UNCAC is the only existing legally binding international anti-corruption instrument. It was adopted in 2003 and currently has 187 Parties. Although it does not provide a definition of corruption, it defines specific acts of corruption that should be considered in countries bound by the Convention, including bribery, embezzlement, money laundering, concealment and obstruction of justice. While the text does not contain specific provisions on wildlife crime, it is applicable to all forms of crimes that may be facilitated by corrupt actors.\(^{78}\) It does also recognise in its preamble that corruption is particularly linked to organised crime and economic crime, both of which occur in wildlife crime. Corruption plays a significant part in facilitating criminal acts against wildlife species. Some examples in this context are public officials directly involved in the theft and


\(^{76}\) A serious crime, as defined by UNTOC, is a conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty (Article 2(b)).


illegal sale of ivory held in government stockpiles, border officials who have offered or sought bribes for clearance of an export or import, or government officials providing individuals with blank import or export permits.  

Parties to the Convention commit to adopt coordinated policies that prevent corruption, such as designating one or several anti-corruption bodies (Article 6 UNCAC), creating a public procurement system based on transparency and competition with objective selection criteria and legal recourse in case of violation (Article 9 UNCAC), and taking measures to prevent corruption among judiciary members (Article 11 UNCAC). They also commit to take measures to ensure the criminalisation and prosecution of acts of corruption by, for example, ensuring the protection of whistle-blowers (Article 32 UNCAC) and establishing procedures to freeze, seize and confiscate the proceeds of corrupt acts (Article 31 UNCAC). At its eighth session, in 2019, the COP adopted Resolution 8/12 on Preventing and combating corruption on crimes with an impact on the environment. This resolution found UNCAC to be an effective tool for preventing and combating corruption in crimes that have an impact on the environment, bringing wildlife crime within the scope of the Convention.

The National Supervisory Commission (NSC), set up in 2018, is the highest anti-corruption agency in China, with supervisory commissions set up at lower levels. It operates independently from the judicial and governmental system, and reports directly to the Congress and the Standing Committee. The NSC has indicated its willingness to cooperate on the implementation of UNCAC when signing a memorandum of understanding with the United Nations Office on Drugs and Crime in October 2019. Under the agreement, the NSC has committed to enhance information sharing on research, best practices, and current trends in international judiciary and law enforcement cooperation related to corruption offences and stolen asset recovery. Law enforcement cooperation will also be strengthened for corruption offences and stolen asset recovery.

Table 4 below lists the implementing legislations for each treaty to which China is a party.

<table>
<thead>
<tr>
<th>Convention</th>
<th>Ratification</th>
<th>Implementing legislation</th>
</tr>
</thead>
</table>
              - Article 341 of the Criminal Law;  
              - Foreign Trade Law;  
              - Regulations on the Conservation of Wild Flora;  
              - Regulations on the Importation and Exportation of Endangered Species of Wild Fauna and Flora;  
              - 2014 Legislative Interpretation of Article 341 of the Criminal Law (Standing Committee);  
              - 2014 Judicial Interpretation on the application of the law in smuggling cases. |
| CBD        | 1993         | - Regulations on Nature Reserves;  
              - Opinions on Delineating and Strictly Observing the Ecological Conservation Red Lines;  
              - Guidance on Establishing a Protected Area System Composed Mainly of National Parks;  
              - The Overall Plan for Establishing a National Park System. |

79 Ibid.  
3.3.5 International cooperation

At times, enforcement agencies work closely with other countries and international organisations to combat transboundary crimes. Authorities share intelligence with other enforcement agencies such as INTERPOL, the World Customs Organization, the ASEAN Wildlife Enforcement Network, and CITES officials. While not a member of the Association of Southeast Asian Nations (ASEAN), China has worked in collaboration with the organisation on several investigations and operations. For instance, the China-ASEAN cooperation led to the successful seizure of a sizable illegal wildlife shipment at the border between Viet Nam and Guangxi, China, in 2013.\(^81\) In the operation, the Guangxi’s NICECG played a major role in cross-border collaboration.

The authorities also cooperate with non-governmental organisations. In early 2019, the Anti-Smuggling Bureau of China Customs carried out investigations and acted upon the intelligence provided by the Environmental Investigation Agency UK (EIA). In this joint operation, 7.46 tonnes of ivory were seized and a Chinese-led criminal syndicate involved in trafficking ivory from East Africa to Shuidong, Guangdong Province, was dismantled.\(^82\)

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4 JUDICIAL RESPONSE TO WILDLIFE CRIME: SELECTED CASES

From the 300 selected cases, collected data and respective analysis will focus on the prosecution of wildlife crimes and respective judgements brought forward by courts.

4.1 Prosecution of wildlife crime

When looking at the prosecution of cases, the following aspects are worth considering:

- What criminal conducts are being prosecuted?
- What species are being affected by illegal wildlife trade?
- Who are the defendants?
- Where is the prosecution of wildlife crimes taking place?

4.1.1 Types of offences

In the 300 wildlife-related court decisions analysed, facts of each case vary greatly and a total of 340 charges were brought forward. Yet, seven main charges brought by prosecutors can be identified:

1. illegal catching of aquatic products,
2. forging or trading official certificates,
3. covering up or concealing crime-related income,
4. smuggling of endangered wild species or their products,
5. illegal transportation of endangered wild species and/or their products,
6. illegal purchase and/or sale of endangered wild species and/or their products,
7. illegal hunting and/or killing of endangered wild species.

Overall, offenders were caught red-handed, while attempting to sell, buy or move protected and endangered species.

The majority of first instance cases – 33 cases out of 67 first instance court decisions – involve purchasing and sale of endangered wild species and/or the products thereof. This represents 49 per cent of cases. Nearly 18 per cent of cases (12 cases) involve the covering or concealing of wildlife-related income, while nearly 15 per cent of cases (10 cases) concern the illegal transportation of wildlife species and/or their related products. Nine cases (13.4 per cent) involve the crime of smuggling endangered wild species and/or their related products, while 7 cases (9.4 per cent) involve offences relating to hunting and/or killing of endangered wild species. Only two cases (almost 3 per cent) relate to forging and trading in official certificates and one case deals with illegal catching of aquatic products (1.4 per cent). These numbers are shown below in Figure 7.

The majority of appeals (more than 75 per cent) relate to two offences: illegal purchase and/or sale of endangered wild species and/or their related products, and illegal hunting and/or killing of endangered wild species. Illegal hunting and/or killing of endangered wild species is the single most common charge appealed in the cases analysed, accounting for 40.3 per cent of cases (94 cases). Illegal purchase and/or sale of endangered wild species and/or their related products account for 36 per cent of cases (84 cases). 52 appealed cases involve the smuggling of endangered species and/or their related products, representing 22.3 per cent of analysed cases.

Only 1.7 per cent of analysed cases (4 cases) involve covering up or concealing crime-related income. The remaining charges – forging or illegally trading official certificates and illegally catching aquatic products – are found in less than 1 per cent of cases (2 cases respectively). These numbers are displayed below in Figure 8.
4.1.2 Species involved in wildlife crime cases

The 300 analysed cases cover a wide range of species. These species were classified in 12 different categories for the purpose of this assessment: (1) birds, (2) bears, (3) corals, (4) deer & gazelles, (5) elephants, (6) felidae (big cats), (7) fish, (8) hippopotamus, (9) pangolins, (10) reptiles, (11) rhinoceros, and (12) small mammals.

The majority of first instance cases involve birds, with 41 cases out of a total of 67 (61 per cent of cases). Elephants are the second most encountered species, with 40.2 per cent of cases involving elephant products. Nearly 18 per cent of cases include rhinoceros (12 cases) and nearly 15 per cent involve reptiles (10 cases). A same number of cases involve small mammals, and deer and gazelles:
eight cases each, representing almost 12 per cent of cases. Five cases include fish and *felidae* respectively (7.5 per cent each). In only four cases, bears were discovered (nearly six per cent of analysed cases). Figure 9 below presents this data.

![Diagram showing the occurrence of different species in first instance cases](image)

**Figure 9:** Occurrence of different species in first instance cases

In terms of species, the appealed cases have a similar profile to the decisions from courts of first instance. 137 cases, representing nearly 60 per cent of all appealed cases, involve birds. Nearly a quarter involve elephants (56 cases) and a fifth reptiles (51 cases); 32 cases involve deer and gazelles (almost 14 per cent of cases), and 21 rhinos (9 per cent of cases); 16 cases relate to bears (nearly 7 per cent of cases), and small mammals were identified in 11 cases (nearly 5 per cent of cases). Fish and *felidae* both account for less than 2 per cent of all cases, 3 and 4 cases respectively. Three additional species emerge that were not identified in the cohort of first instance cases: pangolins in 11 cases (nearly 5 per cent of all cases), corals in 3 cases (1.2 per cent of all cases) and hippos in 2 cases (less than 1 per cent of all cases). Figure 10 below presents this data.

Out of the 137 cases involving endangered birds, the species include: the spotted dove (*spilopelia chinensis*), the brambling (*fringilla montifringilla*, sparrows *passer*), the sun parakeet (*aratinga solstitialis*), the nanday parakeet (*nandayus nenday*), the rose-fronted conure (*pyrrhura roseifrons*), the green-cheeked parakeet (*pyrrhura molinae*), the African grey parrot (*psittacus erithacus*), the alexandrine parakeet (*psittacula eupatria*), the sun parakeet (*aratinga solstitialis*), the yellow-sided conure (*pyrrhura molinae hypoxantha*), the monk parakeet (*myiopsitta monachus*) and swans (*cygnus*).
4.1.3 Profile of offenders

Wildlife-related court decisions may involve a single offender or multiple ones. In the 300 collected cases, 792 individuals and one company were prosecuted. The average number of defendants per case is 2.6.

Excluding the company, the majority of the accused were male, with only 7 per cent of defendants being female (Figure 11).
Excluding the 133 defendants where there is no information as to their age, defendants are middle-aged men, between 30 to 60 years old (Figure 12). The motives to engage in wildlife crimes vary depending on the species, and profile of the offenders. In addition to seeking profit from the sale of wildlife trophies—the key driver in illegal wildlife trade—, meat consumption, accidental killings, or the lack of knowledge as to the protected status of the species are reasons given by offenders to explain their conduct.

![Figure 12: Age distribution of defendants](image)

Eighteen cases involve seven or more defendants; in one case, 30 individuals were prosecuted. These cases can be labelled as organised crimes. The United Nations Convention on Transnational Organized Crime (UNTOC) defines an organised criminal group as a group of three or more persons, acting for a period of time and acting in concert, with the aim of committing at least one crime punishable by a deprivation of liberty of at least four years.\(^{83}\)

The Zhen Y.et al. case is the perfect example of a criminal syndicate involved in an organised crime with multiple actors working alongside the supply chain.\(^{84}\) Defendants Zhen Y., Wei S., and Jun W. decided to engage in illegal ivory trade, and trade in leopard skins, and agreed on the following division of labour:

Jun W. served as a collector, gathering poached wildlife and their related products. He purchased ivory from Japan, Ethiopia and other countries many times, preparing documents for their export to China. In fact, border control authorities have long suspected Wang Jun of smuggling precious animal products through international ports of entry.

Wei S. was the transporter and moved illegal products into, and within the country through Global Express Mail. He was hired as a mail courier for the Maanshan branch of Anhui Post Courier Logistics Co., Ltd., and had the means to mail ivory under the radar, across the country.

\(^{83}\) Article 2(a) UNTOC read in conjunction with Article 2(b).

After receiving the parcel at his workplace in Maanshan, Wei S. would inform Zhen Y., the retailer, who was in charge of conducting online sales.

Zhen Y. sold ivory to Wen Z., Jian Z., Xiang L., Yanzhong T., and Jilei C using two online accounts on the e-commerce website Taobao. He falsely labelled ivory as jade, mahogany and other commodities and received as payment 556,766 yuan.\(^{85}\)

Zhen Y. and Wei S. confessed to having smuggled ivory and leopard skins. Wen Z., Xiang L. and Yanzhong T. confessed to having illegally purchased ivory though knowing that ivory was smuggled into the country, and Jian Z. and Jilei C. confessed to having illegally purchased ivory. The court found Zhen Y., Wei S., Jian Z., Xiang L., Yanzhong T. guilty of smuggling endangered species products under Article 151 of the Criminal Law. Jian Z. and Jilei C. were found guilty of illegal purchase of endangered species products under Article 341 of the Criminal Law. The available document does not specify whether Jun W. was arrested or prosecuted.

Five cases involve foreign nationals, all for the crime of smuggling endangered species. In one case, a Nigerian defendant was charged for smuggling ivory products through Guangzhou Baiyun Airport.\(^{86}\) The ivory products (2.43 kg) seized by the police were worth 101,250 yuan.\(^{87}\) The court found he was guilty of smuggling endangered wild animal products. He pleaded guilty and the Court gave him a lighter sentence. He was sentenced to a fixed-term imprisonment of one year and six months, in addition to paying a fine of 10,000 yuan.\(^{88}\)

In another case, two Russian defendants were found guilty of smuggling musk—a first-class protected species—into China through Inner Mongolia.\(^{89}\) The customs officials seized 110 glandular sacs of musk, worth 660,000 yuan.\(^{90}\) Both defendants confessed to their crime. The main offender was sentenced to five years in prison—below the statutory sentence—, deportation, and a fine of 250,000 yuan.\(^{91}\) His accomplice was sentenced to two years in prison—below the statutory sentence—, deportation and a fine of 40,000 yuan.\(^{92}\)

4.1.4 Location of selected cases

As depicted in Figure 3, cases were collected from across mainland China. However, these cases were not evenly distributed across provinces, with some locations being overrepresented in comparison to others, namely: Yunnan (12 per cent of cases), Guangdong (8.6 per cent), Fujian (8.3 per cent) and Zhejiang (6.3 per cent). Taken together these four provinces represent 35 per cent of cases. From the 300 cases, cases related to illegal hunting and/ or killing of wildlife, or protected wildlife, were mostly located in remote and less developed regions such as Yunnan Province. Coastal provinces in the southeast represent more than 40 per cent of cases (125 cases), despite their relative smaller geographic size in comparison to much bigger western provinces.

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\(^{85}\) Approx. USD 87,000.

\(^{86}\) Case reference number: (2015) Sui Middle Court No.55 Criminal 2 first instance, the judgement can be accessed at: https://wenshu.court.gov.cn/website/wenshu/181107AENZ0BXS/index.html?docId=29833ad9c91c4d129a02a74600c00c00

\(^{87}\) Approx. USD 16,000.

\(^{88}\) Approx. USD 1,500.

\(^{89}\) Case reference number: (2014) Nei 2, No.44 final instance, the judgement can be accessed at: https://wenshu.court.gov.cn/website/wenshu/181107AENZ0BXS/index.html?docId=340bfc3c9272422d9577e2809f2eeff

\(^{90}\) Approx. USD 103,000.

\(^{91}\) Approx. USD 39,000.

\(^{92}\) Approx. USD 6,300.
4.2 Discussion of key findings on prosecution of wildlife crime

4.2.1 Types of offences

Out of the 340 charges brought by prosecutors, offences found the most frequently are the following:

- Illegal purchase and sale of endangered wild species and/or their related products (34 per cent of all cases);
- Illegal hunting or killing of wild species and/or endangered species (30 per cent of all cases);
- Smuggling of endangered wild species and/or their related products (18 per cent of all cases).

Figure 13 below shows the different types of offences, and their occurrence throughout the 300 analysed cases.

These numbers, although based on a limited number of cases for a country the size of China, reflect the focus of the judicial response on wildlife crime. In illegal wildlife trade, a chain exists from capture or harvesting of wildlife from a location, to the transport of the animals or animal products, and on to the sale of products to end-users in another location. Intermediate processing and transit locations exist alongside this chain to facilitate the whole trading system. By having a substantial amount of cases dealing with illegal sale and purchase of endangered species, the retail level of this trade chain is under scrutiny from law enforcement. This also means small traders and end-users are more likely to be tried than ringleaders, transporters or smugglers. Similarly, the greater proportion of cases dealing with illegal hunting or killing of endangered species means the judicial response may be focusing on the point of harvest, leaving aside the other stages and actors, of the supply chain. This is not to say that the smuggling of endangered wildlife species is left aside as it is in fact the third most used charge in this cohort of cases. However, with illegal wildlife trade being such a complex crime including a variety of actors – some critical to the functioning of a criminal syndicate – it is problematic that the vast majority of cases focus only on end-users or poachers. From a strategic point of view, given that China is a key country in international wildlife trade, both legal and illegal, the crime of smuggling endangered species could have received a greater focus.

The reasons for this gap may be that this stage of illegal wildlife trade is being overlooked at the investigation or at the prosecution levels. It may very well be that the small cohort of selected cases did not allow for a realistic representation of how the judiciary responds to smuggling of endangered wild species. Another reason could be that smuggling of endangered and protected species is often the result of a collective action, very close to an organised crime. For some scholars, a key shortcoming of China’s wildlife protection policy is that prosecutors, when facing an organised criminal group, fail to take into account the specificities of organised crime.93 This goes despite the fact that prosecutors do not shy away from prosecuting a large number of offenders in one case. A larger cohort of cases, and deeper analysis, will be needed to fully understand the types of offences being prosecuted in Chinese courts.

Prosecution of crime-related income in connection to wildlife crime indicates that the judiciary sees value in tackling economic crimes in connection to illegal wildlife trade. Indeed, proceeds from illegal wildlife trade, illegal business operations and forgery of official documentation, are being progressively investigated and prosecuted. Nevertheless, the number of such cases remains relatively small, accounting only for 5.9 per cent of the total cases, while current law enforcement or policies fail to fully consider money-laundering crimes.

Illegal purchase or sale of endangered wild species and/or their products (117)

Illegal hunting or killing of endangered wild species (101)

Smuggling of endangered wild species or their products (61)

Illegal transportation of endangered wild species and/or their products (38)

Covering up or concealing crime-related income (16)

Forging or trading in official certificates (4)

Illegal catching of aquatic products (3)

Figure 13: Number of charges in analysed cases (first instance and appeal cases)

It is unfortunate that authorities do not address these associated crimes as they are intricately connected. Associated crimes are enablers of wildlife crime and are enabled by wildlife crime, deserving as such special attention from law enforcement agencies. As this is an introductory study of wildlife crime in China, this particular issue also needs further in-depth research to fully understand the financial ties of wildlife crime.

Only three cases involve the charge of illegal catching of aquatic products, as defined by Article 340 of the Criminal Law, which can be surprising considering fish and shells are species found in more than just three cases. In practice, prosecutors rely on this article solely for cases relating to aquaculture products or resources. Where the illegal capture of aquatic products involves endangered wild fish, Article 341 is used and the criminal conduct is labelled as illegal hunting and killing of rare and endangered wild animals.

Out of the 300 analysed cases, if two or more people were involved, but playing different parts in the case, prosecutors made sure they would identify each of the offenders’ roles and responsibilities. For example, in the case against Aimin Z., Nan L. et al., the court found thirteen defendants guilty of illegal purchase and sale of endangered species, one defendant guilty of illegal transportation of endangered species and two defendants guilty of illegal hunting and sale of endangered species. If one person had committed two offences, he or she would also face two distinct criminal charges.


95 Case reference number: (2016) Su 0302, No.189 First instance, the judgment can be accessed at: https://wenshu.court.gov.cn/website/wenshu/181107ANFZ0BXSK4/index.html?id=28833ad99bfe432329e02a74600c00c00. This is a case published by Supreme People’s Court’s Gazette, Issue 2, 2018 (Total No. 258), pp. 38-40.
4.2.2 Species

It is worth noting that the profile of species in the analysed cases does not necessarily reflect the profile of species most affected by wildlife crime. There could be many reasons for a discrepancy between the level of trade of a particular species and the incidence of arrest, prosecution or conviction for crimes involving that species. Some species benefit from a greater level of scrutiny from legislators and law enforcement authorities due to a perceived higher value. Bird-related cases make up the majority of cases in both courts of first instance and courts of appeal. The high prevalence of birds in all 300 cases can be analysed through the lens of the greater appreciation many Chinese people have for bird species, and the level of protection they enjoy in the country.96 It may also be explained by the evidence attached to cases brought by prosecutors – an issue further discussed below in Section 4.4.3. Offences affecting other species may be under-criminalised in the legislation. For example, commercial processing and sale of ivory was only banned on December 30, 2016. From that date onward, it is noticeable that courts are increasingly dealing with ivory cases. This suggests the judiciary body is implementing policy changes and is enforcing penalties against individuals or organisations involved in illegal ivory trade. Major shifts in policy-making, such as trade bans, have therefore incidental effects on the level of prosecution of wildlife crime in the country.

One flagship species in illegal wildlife trade is noteworthy for its absence in cases from courts of first instance: pangolins. Only 11 cases from courts of appeal involve pangolins (Figure 10). Although this limited number of cases constrains the analysis, some cases raise the issue of the use of pangolin scales in traditional Chinese medicine (TCM), and how this particular use is driving the demand for pangolins.97 In one case, a medicinal herbs seller instructed the other two defendants of the case to purchase pangolin scales from Africa, collecting in total 1,635 kg of pangolin scales.98 He was sentenced to five years in prison and a fine of 100,000 yuan.99 Yet, a consumer – acting as a witness in this case – was not prosecuted despite having bought a significant share of pangolin scales, worth 948,000 yuan.100 He claimed that the purchase was for his own personal healthcare only; however in light of the amount of pangolin scales he had purchased, an assumption could be made that a commercial use may have also been intended.

The government has recently raised the protected status of pangolins to the highest level (Class I protected species),101 while removing them from ‘key ingredients’ listed in the TCM pharmacopoeia. Nonetheless, pangolin scales remain listed as approved ingredients in Chinese patented medicines.102 Licensed pharmaceutical companies can legally source pangolin scales from the national stockpile as long as they label products accordingly with a special marking. This legal market has been criticized

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98 Case reference number: (2019) Yue Criminal Final 692, the judgement can be accessed at: [https://wenshu.court.gov.cn/website/wenshu/181107ANFZ0BXSK4/index.html?docId=1b3e88de0f109945f7ab48aba10025c553](https://wenshu.court.gov.cn/website/wenshu/181107ANFZ0BXSK4/index.html?docId=1b3e88de0f109945f7ab48aba10025c553)

99 Approx. USD 15,600.

100 Approx. USD 150,000.


as poorly regulated and may serve as a cover for the black market.\textsuperscript{103} A recent investigation by the EIA concluded that several wildlife trading companies had sourced pangolin scales from Africa and later sold them to pharmaceutical companies.\textsuperscript{104} From the small cohort of cases of this study, there was no case involving TCM pharmaceutical companies that had illegally traded in pangolin scales. The topic of traditional Chinese medicine and its connection to illegal wildlife trade deserves a deeper investigation with a narrow research on this mammal in particular.

As mentioned earlier, birds are by far the most trafficked species in these cases. The hunting of endangered bird species is mostly connected to meat consumption by local farmers and is not related to traditional medicine. A large number of migratory birds travel across many areas in Hunan Province between October and April every year. Local farmers set traps or hunting nets to capture these migratory birds, irrespective of their protected status. They may not even be aware of the state protection these bird species enjoy. For example, in the case Jiping W. et al., Jiping W. and his friends hunted the Class II protected species tundra swan \textit{(Cygnus columbianus)} near the Dongding Lake and sold them to local restaurants and small farmers markets.\textsuperscript{105} Jiping W. was convicted of illegally hunting and killing rare and endangered wild animals; he was sentenced to 11 years in prison and fined 80,000 yuan.\textsuperscript{106} In most of these cases, defendants were brought to justice for killing or hunting these birds but were not prosecuted for their personal consumption. This can be explained by the fact that up until March 2021, personal consumption of wild animals was not criminalised in the country. Today, thanks to the latest amendment to the Criminal Law, consumption of wild animals is illegal under the Criminal Law when circumstances are serious. This closed loophole is a welcome change – a step in the right direction – as personal consumption of wild animals is a key driver to the overall illegal wildlife trade. In future research, it will be critical to analyse the interpretation given by the SPC and SPP on the meaning of “serious circumstances”, and the enforcement of this provision by investigators, prosecutors and judges.

Despite the small cohort of cases used in this study, some species in the analysed cases are endemic to other regions or countries of the world: the African elephant, the African grey parrot, the Black rhinoceros, the white-bellied pangolin or the hippopotamus. This supports the findings of various studies showing that China is a destination country for many of these species. In several cases, the defendants charged with smuggling threatened and endangered wildlife species were found in possession of several species originating from outside of China. For example, black rhinoceros, lions, hippopotamus, giant ground pangolins, and even helmeted hornbills, were associated on several occasions with the African elephant. This suggests criminal networks are sophisticated enough to smuggle multiple species, at the same time, into China. The same goes for domestic species. In one case, more than 20 offenders were involved in the illegal sale and transport of Chinese pangolins, Asiatic black bear, and other endangered species.\textsuperscript{107}

For cases involving wildlife and wildlife products from other countries, the information on the country of origin is many times missing. With transboundary wildlife crime a major organised crime, it is crucial to dismantle wildlife crime networks beyond national borders. If court cases in China would disclose more information on the origin of wildlife products, and the suspected illicit trade chain in range


\textsuperscript{105} Case reference number: (2018) Xiang 0624, No.23 first instance, the judgement can be accessed at: https://wenshu.court.gov.cn/website/wenshu/181107ANFZ0BXSK4/index.html?docid=562d7f456f4f46b2bec0a9890166888b

\textsuperscript{106} Approx. USD 12,500.

\textsuperscript{107} Case reference number: (2016) Zhe 06, No.162 final instance, the judgement can be accessed at: https://wenshu.court.gov.cn/website/wenshu/161107ANFZ0BXSK4/index.html?docid=c6e88ebd9e074194b48aa8f500ac2c90
countries, police and prosecutors in supply-side countries could use this information, and work with Chinese counterparts to detect, investigate and prosecute wildlife criminal networks. Given the large amount of court judgments made available on China Judgment Online, this could be a precious piece of information supporting joint enforcement efforts between supply and demand side countries.

4.2.3 Profile of offenders

The socioeconomic profile of offenders does not form part of the analysis of this study, as relevant data on offenders was not collected aside from their age group and their gender. Getting this information from future studies could contribute to a deeper analysis of the motives of offenders and inform the prevention of wildlife crime.

For all cases involving foreign nationals and illegal smuggling of endangered species, borders were crossed by land or air, but not by sea. Overall, the use of boats, shipping containers and border crossing by sea is rarely found in the 300 cases (a dozen cases), despite the fact that maritime shipping containers are considered to be the main means of transportation used by smugglers in illegal wildlife trade.108

To explain this discrepancy, an assumption can be made that deficiencies or gaps occur at the investigation level, and more precisely at the detection level. Customs and enforcement screening procedures are much more difficult to enforce at a cargo level, in comparison to any other means of transportation, making seaports the main pathway to smuggle endangered and protected species worldwide. Similarly, airports were used in 25 cases as a way to smuggle in endangered and protected species. Although this number is higher than the number of cases where transport by sea is used, an assumption can be made that in many more instances, smugglers use airports to transport endangered and protected species. Indeed, the literature on the use of air transport in illegal wildlife trade also shows that international flights are one of the preferred routes used by international traffickers.109

Another reason explaining this inconsistency is that this mode of transportation is closely related to the crime of smuggling endangered and/or protected species. As seen above, this charge is found in less than 20 per cent of cases. More complex modes and means of transportation are positively related to the level of organisation behind a crime. This means that by investigating, prosecuting, and adjudicating many more cases involving major ports of entry, the judicial response will be more tailored to illegal wildlife trade in its most harmful form.

For future research, it would be worth looking in detail into transportation modes and means used by offenders when analysing illegal wildlife trade cases.

4.2.4 Location of cases

Looking at the location of the courts, the fact that Yunnan, a rural and mountainous region, is the most represented province in this assessment could be explained by its rich and unique biodiversity. Out of the 335 protected wild species considered a priority,110 Yunnan is home to 243 species, 15 per cent of which are endemic.111 This exceptional biodiversity may partially explain why cases related to illegal hunting and/or killing of wildlife or protected wildlife were mostly located in remote and less developed


110 These were the numbers of protected species before the National Directory was updated in February 2021.

regions like Yunnan. Another reason could be that most offenders in these locations are peasants hunting animals to earn an additional income, but without knowingly violating wildlife protection laws.

Aside from Yunnan, most cases used in this assessment were located in coastal provinces. Several hypotheses may explain this geographic trend. First, these provinces are often the most populous and the most prosperous economically, and criminal activities, especially sophisticated ones, tend to occur more often in such locations than in isolated ones. Guangdong is the most populous province of China, and has the largest economy in the country thanks to its two megacities Guangzhou and Shenzhen, its economic zones and coastal location. Zhejiang is with Guangzhou one of the wealthiest provinces of the country. Moreover, in these provinces, there are international airports and major seaports facilitating the exchange of illicit goods. Shenzhen for instance is bordering Hong Kong, a leading transportation hub for illegal wildlife trade for destination countries located in Asia. In 2018 and 2019, authorities seized over 649 metric tonnes (MT) of wildlife across 1,404 seizures (including flora) in Hong Kong.112

The location is indicative of the typology of crimes committed in each province and could inform a more tailored response from law enforcement for each province. An in-depth study of each province is therefore needed before drawing any additional conclusion.

### 4.3 Judgement of wildlife crime

#### 4.3.1 Conviction rate

There are 793 defendants in the selected cases from trial and appellate courts. Out of the 163 defendants before courts of first instance, none was acquitted. A total of 630 defendants appeared before courts of appeal, out of which 628 were convicted and two were acquitted in one case.

Taken together, the conviction rate of the 300 cases analysed is 99.967 per cent. The conviction rate for wildlife crime is very high, in a similar fashion to the overall conviction rate of criminal cases in China. In 2019, the People’s Procuratorate of China indicted 1,818,808 people, among which 637 defendants were acquitted, with a conviction rate of 99.965 per cent.113

In the case where two defendants were acquitted, Jianzh L. and Silong L., respectively captain and first officer of the cargo ship “Jia Zhi”, sailed into the port of Guang Lei, China, coming from Thailand. Custom officials conducted inspections of the inbound cargo and found ivory products (approx. 5 kg), seahorse products (approx. 40 kg) and birds’ nests (approx. 17 kg). These goods were not declared by the defendants when entering the port; for this reason, they faced the charge of smuggling precious and rare species of wildlife and products thereof. The trial court found them guilty of this crime and sentenced them to imprisonment. The appellate court crushed this decision and found both appellants not responsible for the misdeclaration of goods, as the evidence failed to prove they had the intention to smuggle these products.114

Appellate courts upheld 184 out of 233 decisions from courts of first instance, representing 79 per cent of courts’ decisions. Nine cases were sent back for retrial. Forty cases were revised by appellate courts; the vast majority of revised judgements (37 cases) changed the penalties imposed by trial courts but upheld the decision to convict the defendants (Figure 14).

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114 Case reference number: (2016) Yun No. 1539 Criminal Final instance, the judgement can be accessed at: [http://wenshu.court.gov.cn/website/wenshu/181107ANFZ00DXSK4/index.html?docid=3485d457e82723f8e4a840a82a009fa43d](http://wenshu.court.gov.cn/website/wenshu/181107ANFZ00DXSK4/index.html?docid=3485d457e82723f8e4a840a82a009fa43d)
4.3.2 Legal basis

All cases used for this analysis refer to articles of the Criminal Law and the Judicial Interpretations mentioned above. CITES and the National Directory of Key Protected Wild Animals are mentioned when cases involve protected species. Courts also referred to the Congress’ Opinions on the handling of voluntary surrender and meritorious behaviours that can trigger lenient punishment when determining penalties.\(^\text{115}\)

The legal basis for appellate courts to revise the lower courts’ decisions varies. Some of the sentencing decisions were revised by appellate courts because of errors in determining the value of endangered species or wildlife products. In other cases, appellate courts believed trial courts were incorrect in determining the protection status of the affected species, and thus erred in defining the correct criminal charges under the law.

In one case, the appellant hunted and killed one swan and three muskrats. He was convicted for the crime of illegal hunting of endangered wildlife species and sentenced to imprisonment for six years and three months with a fine of 3,000 yuan. The appellate court found that the muskrat (\textit{ondatrazibethicus}), in Mandarin “麝鼠”, does not belong to any species of the family Deeridae (\textit{Noschusnoschiferuslinnaeus}), in Mandarin “麝” – musk is produced by species belonging to this family that is listed under the National Directory. Instead, the muskrat is an exotic species, belonging to the family of hamsters. The appellate court modified the sentence from six years and three months imprisonment to one year and six months.\(^\text{116}\)

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\(^\text{115}\) No. 60 [2010] of the Supreme People’s Court.

\(^\text{116}\) Case reference number: (2019) Xin 29, No.272; final instance, the judgement can be accessed at https://wenshu.court.gov.cn/website/wenshu/181107ANFZ0BXSK4/index.html?docId=1e1d3359d0c442e49b27ab2300d1c06a
4.3.3 Evidence

Criminal Procedure Law, with its latest update from 2012, is the main source of evidence rules in the judicial process. In criminal cases, the prosecutor bears the burden of proof to demonstrate the defendant’s guilt. When initiating a public prosecution, prosecutors are mandated to provide evidence that is reliable and sufficient to prove the criminal misconduct.\(^{117}\)

In wildlife crime cases, evidence collected by law enforcement is crucial and can include physical and documentary evidence, audio-visual materials, electronic data, appraisals on trophies’ value, identification of species, investigation reports, statements and testimonies from suspects or witnesses. Analysed cases included a broad range of wildlife evidence: live or dead animals, parts of animals (e.g. viscera, paws), ivory and horn, meat, skin, teeth, claws, scales, shells and bones.

Prosecutors will ensure that all evidence collected by law enforcement agencies meet the highest standards, in compliance with statutory requirements.\(^{118}\) With physical evidence, namely the seized animal or animal body parts, administrative appraisal centres are in charge of identifying the species concerned and their respective status under the National Directory. In addition, for criminal proceedings to be initiated, the offence has to be significant enough by meeting a fixed threshold known as filing standards. In 2001, the then State Forestry Administration\(^{119}\) and the Ministry of Public Security jointly issued the Filing Standards for criminal cases involving forest and terrestrial wild animals. Under these standards, law enforcement investigates and prosecutes wildlife crime only if the amount of affected wildlife meets the quantitative threshold set out in Appendix 1 of the Filing Standards (Table 5 for selected species).

The quantitative threshold illustrated in Table 5 is applicable to whole bodies of animals, and not to animal body parts or other derivatives. In addition, it only refers to listed species from the National Directory of Key Protected Wild Animals.\(^{120}\) The filing standards work as follows: four pangolins have to be traded as part of the offence for the case to be filed. If eight pangolins are involved, the case will be filed as a serious offence. If sixteen pangolins are seized, the case will be filed as an especially serious offence.

For CITES-listed species, or in cases involving body parts and other derivatives from protected species, the monetary value of products seized is used to determine whether the case is serious enough to be filed. Penalties in wildlife-related offences are also indexed to the value of wildlife parts or products involved.

In 2017, the State Forestry Administration issued a method to assess the value of wild animals and wildlife products in 2017.\(^{121}\) The so-called appraisal findings will assess wild animals and wildlife products using a benchmark value. Benchmark values for protected wild animals are pre-determined for whole animal bodies, excluding once again animal body parts (see Table 6 for selected species). For instance, the value for pangolin scales does not exist as such; instead the whole pangolin itself is valued with this method.


\(^{118}\) Ibid. Article 64.

\(^{119}\) The State Forestry Administration is now called the National Forestry and Grassland Administration.


Table 5: Filing standards for selected species

<table>
<thead>
<tr>
<th>Chinese name of the species</th>
<th>Non-official English Translation</th>
<th>Latin</th>
<th>Classes</th>
<th>Filing</th>
<th>Serious</th>
<th>Especially serious</th>
</tr>
</thead>
<tbody>
<tr>
<td>雪豹</td>
<td>Snow leopard</td>
<td>Panthera uncia</td>
<td>I</td>
<td>-</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>虎</td>
<td>Tiger</td>
<td>Panthera tigris</td>
<td>I</td>
<td>-</td>
<td>-</td>
<td>1</td>
</tr>
<tr>
<td>亚洲象</td>
<td>Asian elephant</td>
<td>Elephas maximus</td>
<td>I</td>
<td>-</td>
<td>-</td>
<td>1</td>
</tr>
<tr>
<td>白腹军舰鸟</td>
<td>White-bellied warship bird</td>
<td>Fregata andrewsi</td>
<td>I</td>
<td>1</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>白鹳</td>
<td>White Stork</td>
<td>Ciconia ciconia</td>
<td>I</td>
<td>1</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>黑鹳</td>
<td>Black stork</td>
<td>Pseudibis papillosa</td>
<td>I</td>
<td>1</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>朱鹳</td>
<td>Crested Ibis</td>
<td>Nipponia nippon</td>
<td>I</td>
<td>-</td>
<td>-</td>
<td>1</td>
</tr>
<tr>
<td>中华秋沙鸭</td>
<td>Chinese Merganser</td>
<td>Mergus squamatus</td>
<td>I</td>
<td>1</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>穿山甲</td>
<td>Pangolin</td>
<td>Manis pentadaoxtyla</td>
<td>II</td>
<td>4</td>
<td>8</td>
<td>16</td>
</tr>
<tr>
<td>麝</td>
<td>Jackal</td>
<td>Cuon alpinus</td>
<td>II</td>
<td>2</td>
<td>4</td>
<td>6</td>
</tr>
<tr>
<td>黑熊</td>
<td>Blackbear</td>
<td>Selenarctos thibetanus</td>
<td>II</td>
<td>2</td>
<td>3</td>
<td>5</td>
</tr>
<tr>
<td>棕熊</td>
<td>Brown bear</td>
<td>Ursus arctos</td>
<td>II</td>
<td>2</td>
<td>3</td>
<td>5</td>
</tr>
<tr>
<td>麝（所有种）</td>
<td>Musk (all species)</td>
<td>Moschus spp</td>
<td>II</td>
<td>2</td>
<td>4</td>
<td>8</td>
</tr>
<tr>
<td>岩羊</td>
<td>Rock Sheep</td>
<td>Pseudois nayaur</td>
<td>II</td>
<td>2</td>
<td>4</td>
<td>8</td>
</tr>
</tbody>
</table>

Cases used for this assessment show that trade in wildlife, and wildlife products, in China is moving online, particularly through the use of social media platforms, such as WeChat, Taobao and other e-commerce platforms. On these platforms, wildlife is advertised using nicknames, making it difficult for law enforcement to effectively investigate. After advertising the on-sale products, perpetrators move wild animals, and wildlife products, using private express couriers, without using their real name, to evade detection. Prosecutors and courts in China allow the use of evidence from online platforms.

Digital data for these crimes is sent to a judicial appraisal centre to be verified, as in the case Zhen Y. et al. – a case of illegal trade in ivory – where the Fujian Judicial Appraisal Centre verified information coming from the WeChat online platform.
### Table 6: Benchmark value for selected wild animals

<table>
<thead>
<tr>
<th>Category</th>
<th>Benchmark value (yuan)</th>
</tr>
</thead>
<tbody>
<tr>
<td>哺乳纲 MAMMALIA (mammals)</td>
<td></td>
</tr>
<tr>
<td>长鼻目 PROBOSCIDEA</td>
<td></td>
</tr>
<tr>
<td>象科 Elephantidae</td>
<td></td>
</tr>
<tr>
<td>亚洲象 Elephas maximus</td>
<td>200,000(^{122})</td>
</tr>
<tr>
<td>非洲象 Loxodonta africana</td>
<td>100,000(^{123})</td>
</tr>
<tr>
<td>穿山甲目 PHOLIDOTA (pangolins)</td>
<td></td>
</tr>
<tr>
<td>穿山甲科 所有种 Manidae</td>
<td>8,000(^{124})</td>
</tr>
<tr>
<td>鸟纲 AVES (birds)</td>
<td></td>
</tr>
<tr>
<td>鹭科 Threskiornithidae</td>
<td>10,000(^{125})</td>
</tr>
<tr>
<td>朱鹮 Nipponia nippon</td>
<td>100,000(^{126})</td>
</tr>
<tr>
<td>黑脸琵鹭 Platalea minor</td>
<td>15,000(^{127})</td>
</tr>
<tr>
<td>其他所有种 (other species)</td>
<td>5,000(^{128})</td>
</tr>
<tr>
<td>爬行纲 REPTILIA (reptiles)</td>
<td></td>
</tr>
<tr>
<td>陆龟科 Testudinidae</td>
<td></td>
</tr>
<tr>
<td>四爪陆龟 Testudo horsfieldii</td>
<td>8,000(^{129})</td>
</tr>
<tr>
<td>四甲陆龟 Manouria impressa</td>
<td>1,000(^{130})</td>
</tr>
</tbody>
</table>

\(^{122}\) Approx. USD 31,000.  
\(^{123}\) Approx. USD 15,500.  
\(^{124}\) Approx. USD 1,200.  
\(^{125}\) Approx. USD 15,000.  
\(^{126}\) Approx. USD 15,500.  
\(^{127}\) Approx. USD 2,300.  
\(^{128}\) Approx. USD 800.  
\(^{129}\) Approx. USD 1,200.  
\(^{130}\) Approx. USD 150.
4.3.4 Sentences/ Penalties

Procedure

When deciding on a sentence, trial courts and appellate courts consider both the seriousness of the offence and the criminal liability of the offender. The courts make sure the severity of the penalty is consistent with the crime committed and the criminal liability of the offender, to achieve both objectives of punishing and deterring crimes.

Criminal Law provisions and the Judicial Interpretations provide for a range of statutory penalties based on minor, serious and especially serious circumstances (Table 8). Penalties imposed by courts can still vary significantly from one case to another. This can be attributed to multiple factors, including the type of affected species, the value of the trophies, and the specific circumstances of each case. (Table 7)

In 2017, the Supreme People’s Court issued a Notice on the implementation of the Opinions on sentencing for common crimes to provide guidelines to lower courts on sentencing.\(^{131}\) Under this notice, judges are requested to follow three steps: (1) determine whether the criminal conduct falls into crimes covered by the statutory range of penalties provided by law; (2) determine the benchmark penalty according to facts of the case (monetary amount, single or repeated offences, other facts meeting the criteria for serious circumstances or especially serious circumstances); (3) make adjustments to the benchmark penalty and pronounce the penalty after fully taking into account facts of the case.

The analysed cases show courts followed these steps to determine the final penalty; they also show a certain level of flexibility in their judgement, like in the case against Taiping L. et al.\(^{132}\) Taiping L. and Jianjin M. illegally hunted and killed an Asian elephant in Yunnan, China. Jiaming Y purchased the gun, which belonged to Jianjin M., on account for Jianjin M. They cut off the elephant tusks and took them home for two days. They sold the tusks to the defendant Jiaming Y, who later sold them to the other defendants Wenrong P. and Xiaohui L. Taiping L. was originally charged with illegal hunting and killing of endangered species, sale of endangered wild animal parts, and illegal concealment of criminal proceeds. The court found him guilty of these charges but determined his penalty using only the statutory penalty for the charge of illegal hunting and killing of endangered wildlife, without additional penalties for crimes of illegal concealment of criminal proceeds and sale of endangered wild animal parts. He was sentenced to 10 years imprisonment and fined 100,000 yuan.\(^{133}\)

<table>
<thead>
<tr>
<th><strong>Sentencing Circumstances</strong></th>
<th><strong>Benchmark sentence Adjustment Ratio</strong></th>
<th><strong>Other relevant factors</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Attempted commission of a crime</td>
<td>Penalty may be reduced to less than 50 per cent of the benchmark penalty.</td>
<td>Seriousness of the crime, damage, and reasons for not committing the crime</td>
</tr>
<tr>
<td>Accomplice to the main offender</td>
<td>Penalty may be reduced by 20 per cent to 50 per cent of the benchmark penalty.</td>
<td>Role in the joint offence</td>
</tr>
</tbody>
</table>

\(^{131}\) Notice of the Supreme People’s Court on Implementing the Revised Guiding Opinions on Sentencing for Common Crimes (2017), No. 7 [2017] of the Supreme People’s Court.

\(^{132}\) Case reference number: (2015) La, No.171 first instance, the judgement can be accessed at: https://wenshu.court.gov.cn/website/wenshu/181107ANFZ0BXSK4/index.html?docId=32906873a4cd46f2a936aa6b0102f6db

\(^{133}\) Approx. USD 15,500.
| Where crime is minor, penalty may be reduced by more than 50 per cent of the benchmark penalty (possible exemption). |
| Voluntary surrender | Penalty may be reduced by less than 40 per cent of the benchmark penalty. Where crime is minor, penalty may be reduced by more than 40 per cent of the benchmark penalty (possible exemption). | Motives, timing of surrender, methods of surrender, severity of the crime, extent of truthful confession, and repentance of the offender |
| Confession | Penalty may be reduced by less than 20 per cent of the benchmark penalty. When offender discloses other crimes, penalty may be reduced by 10 per cent to 30 per cent of the benchmark penalty. If severity of a crime is reduced, thanks to the confession, penalty may be reduced by 30 per cent up to 50 per cent of the benchmark penalty. | Stage and degree of truthful confession to the crime, seriousness of the offence, and degree of repentance |
| Admission of guilt | Penalty may be reduced by less than 10 per cent of the benchmark penalty. | Nature of the crime, seriousness of the offence, extent of the confession, and repentance of the perpetrator |
| Meritorious services | Penalty may be reduced by less than 20 per cent of the benchmark penalty to more than 50 per cent of the benchmark penalty for major meritorious services (possible exemption). | Extent, timing, content, sources, and effect of meritorious services and the seriousness of the offence. |
| Return of illegal income or payment of compensation | Reduced by less than 30 per cent of the benchmark penalty | Nature of the crime, damage recovered, and degree of free will. |

**Sentencing outcome**

109 defendants received affirmative sentences and 51 suspended sentences in courts of first instance (Figure 15).

![Figure 15: Affirmative vs. suspended sentences (first instance cases)](image-url)
During the appeal process, 504 defendants received affirmative sentences and 120 suspended sentences (Figure 16). In seven cases, facts of the case prompted judges to exempt offenders from criminal punishment. In one case, the offender placed hunting clips near the sheepfold to prevent a snow leopard from attacking a sheep herd, but accidentally killed the snow leopard. He then contacted the forest police and pleaded guilty for illegally killing an endangered species.\textsuperscript{134} In another case, a factory worker bought ivory products worth 1,553 yuan.\textsuperscript{135} After being arrested, he pleaded guilty and gave the names of the individuals who had sold him the ivory. The court ruled the appellant was a first-time offender, had meritorious performance and the social harm caused by his behaviour was small, thus exempted him from criminal punishment.

\begin{figure}[h]
\centering
\includegraphics[width=0.5\textwidth]{affirmative_vs_suspended_sentences.png}
\caption{Affirmative vs. suspended sentences (appeal cases)}
\end{figure}

Errors leading to the revision of the sentencing by appellate courts include failures in finding circumstances that would affect the nature and severity of the penalties. In one case, the appellate court found that the defendant did not truly surrender and no other circumstances could justify a suspended sentence.\textsuperscript{136} New facts introduced during the appeal process can also modify the terms of penalty. For example, in the case Faguo D., Fatian D. and others, Faguo D. was charged with illegally purchasing, transporting and selling rare and endangered wild animals and their manufactured products (involving black bear parts).\textsuperscript{137} He was originally sentenced to five years in prison and a fine of 120,000 yuan.\textsuperscript{138} He appealed the trial court decision. During the adjudication process before the appellate court, he reported other crimes to the police. In light of this, he was given a lighter prison sentence of 4 years and 6 months by the appellate court.

\textsuperscript{134} Case reference number: (2018) Zang 25, No.4 Final Instance, the judgement can be accessed at: https://wenshu.court.gov.cn/website/wenshu/181107ANFZ0BXSK4/index.html?docid=99d2a3cda3c4d766b66a9d400e7b48b.
\textsuperscript{135} Approx. USD 289.
\textsuperscript{136} Case reference number: (2014) Erzhong, No. 150 final instance, the judgement can be accessed at: https://wenshu.court.gov.cn/website/wenshu/181107ANFZ0BXSK4/index.html?docid=db01de762114e6bb468b1a16139a5.
\textsuperscript{137} Case reference number: (2018) Yu 02, No.1 Final Instance, the judgement can be accessed at: https://wenshu.court.gov.cn/website/wenshu/181107ANFZ0BXSK4/index.html?docid=4c3d729a022d466ca176a98f012c2df8.
\textsuperscript{138} Approx. USD 18,500.
Prison sentences

In general, fixed-term imprisonment in China ranges from six months to fifteen years; when a perpetrator is found guilty of multiple crimes, the maximum is twenty years or the combined sentenced time, whichever is less. The death penalty is also carried out for specific crimes but wildlife crime is not one of them. Criminal detention, or “jū yì”, ranges from one month to six months in a place near one’s residence; it is overseen by the local police department and the convicted criminal is allowed to return home one or two days per month. Individuals may need to work while detained in exchange for some pay.

Out of the 791 convicted defendants, 759 received prison sentences when 32 did not. In cases from trial and appellate courts, the average imprisonment for offenders convicted of illegal hunting or killing of endangered wild species was 3 years and 5 months. The highest sentencing was 14 years and 3 months imprisonment. For the crime of illegal purchase, transportation, or sale, of endangered wild species and/or wildlife products, the average imprisonment imposed was 4 years and 8 months. Average imprisonment penalty imposed in illegal smuggling of endangered wild species, or their associated wildlife products, was 5 years and 5 months with the highest sentencing for 16 years.

Wildlife crime cases that reach the level of “especially serious circumstances” have the minimum sentencing standard of 10 years imprisonment. 140 defendants out of 791 convicts received a jail term above 10 years, including one suspended sentence. Out of these, 34 were charged with illegal smuggling of endangered and/or protected species, representing 24.2 per cent of the defendants with jail term above ten years. This suggests smuggling endangered and/or protected species is more likely to be considered an especially serious crime by courts, as it is overrepresented in cases where the jail term was above 10 years in comparison to the number of defendants charged with smuggling of endangered wild species and their products – 16.9 per cent of all 793 defendants.

Wildlife crime that did not involve protected species receive much lighter penalties. In these cases, average imprisonment for illegal hunting and killing of wildlife was around two years and, for illegal catching of aquatic products, five months.

Fines

There is no statutory range for fines in wildlife crime; however, they are proportionate to the illegally obtained income, the monetary value of the wildlife products involved and the damages resulting from the crimes. From the 300 cases analysed in this project, the average fines imposed in practice are set out in Table 8.

<table>
<thead>
<tr>
<th>Criminal charges</th>
<th>Statutory range of penalties</th>
<th>Range of imprisonment</th>
<th>Average imprisonment</th>
<th>Average fine (CNY)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Fine</td>
<td>Minor: 0-5 years</td>
<td>2 months to 14 years</td>
<td>11,139</td>
</tr>
<tr>
<td>Illegal hunting or killing of endangered wild species</td>
<td>Fine</td>
<td>Serious circumstances: 5-10 years</td>
<td>and 3 months</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Confiscation of property</td>
<td>Especially serious circumstances:</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

139 Approx. USD 1,700.
<table>
<thead>
<tr>
<th><strong>Illegal purchase, transportation or sale of endangered wild species and/or wildlife products</strong></th>
<th><strong>&gt; 10 years</strong></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Fine (in addition to imprisonment)</td>
<td>2 months to 18 years and 5 months</td>
<td>4 years and 8 months</td>
<td>68,879&lt;sup&gt;40&lt;/sup&gt;</td>
</tr>
<tr>
<td>Confiscation of property</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Illegal hunting of wild animals</strong></td>
<td>&lt; 5 years</td>
<td>2 months to 2 years and 8 months</td>
<td>2 years and 3 months</td>
</tr>
<tr>
<td>Fine (in addition to imprisonment)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Confiscation of property</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Smuggling of endangered wild species and/or wildlife products</strong></td>
<td>Minor: &lt; 5 years</td>
<td>0 to 16 years</td>
<td>5 years and 5 months</td>
</tr>
<tr>
<td>Fine (in addition to imprisonment)</td>
<td>Serious circumstances: 5 to 10 years</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Confiscation of property</td>
<td>Especially serious circumstances: &gt; 10 years</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Illegal catching of aquatic products</strong></td>
<td>May be sentenced to a fine</td>
<td>0 to 2 years</td>
<td>5 months</td>
</tr>
</tbody>
</table>

The percentage of wildlife crime offenders receiving fines, in addition to jail sentences, is relatively high. Among the selected cases, more than 90 per cent of convicts received one.

### 4.4 Discussion of key findings on judgement of wildlife crime

#### 4.4.1 Conviction rate

Conviction rates reflect several aspects of the legal processes of each country. In China, this rate nears 100 per cent in both trial and appellate courts, for wildlife crime and other crimes. Given the limited number of cases, and the broad scope of this assessment, the analysis is circumscribed to a few hypotheses. A high conviction rate may reflect case selection, with the most obviously guilty defendants, or the strongest evidence, being presented to judges. It may also reflect a high level of effectiveness on behalf of prosecutors. It may also mirror a lack of effective legal representation. The importance of further research and analysis of conviction rates is paramount especially in light of the concerns surrounding due process in the Chinese criminal justice system.

<sup>40</sup> Approx. USD 10,500.<br>
<sup>41</sup> Approx. USD 300.<br>
<sup>42</sup> Approx. USD 18,000.<br>
<sup>43</sup> Approx. USD 100.
4.4.2 Legal basis

The Supreme People’s Court and the Supreme People’s Procuratorate issue judicial interpretations to ensure prosecutors and judges apply the law consistently in wildlife crime cases, especially for sentencing and penalty standards. Judicial interpretations were cited in every analysed case. In the cases analysed in this report, judges applied the law and the judicial interpretations correctly and consistently. In fact, 79 per cent of the trial courts’ decisions were upheld by appellate courts.

4.4.3 Evidence

In wildlife cases, particularly in crimes involving rare and endangered species and the products thereof, identification of species, its related products, and their monetary value are crucial for the judicial process to follow through. However, as seen in the small cohort of cases, prosecutors and judges may face challenges concerning the evidence on the record.

First, they may struggle in getting good and clear evidence. Not all cases include forensics conducted by licensed entities, including for purposes of identification of species and assessment of the species’ value. Judges had to rely on factual evidence and their own knowledge of wildlife species leading to some mistakes in both conviction and sentencing.

Second, the kind of evidence collected by investigators may have an impact on the decision to file a case, which could further explain the prevalence of birds in wildlife crime cases in the country, as shown in Section 4.1.2. Contrary to many species, birds’ entire bodies are most often trafficked and traded, and not parts of them. This facilitates investigation, and prosecution, of misconducts. Indeed, as highlighted above, both filing standards and monetary valuation of the seized animal or animal body parts rely on pre-determined criteria that consider the whole animal body, and not its parts.

Third, since the level of protection granted to one species pre-determines the criminal nature of a misconduct, the use of forensic science is key to identify the species affected in each case. It also defines the seriousness of the committed crime. Consequently, defendants attempted to challenge appraisal findings based on forensic evidence, both for the identification of the species and the assessment of their value. For example, in one case on illegal sale of ivory and rhino horn products, the defence attorney challenged the legality of the confiscated samples sent by the police to the judicial appraisal centre and the value assessment conducted by the centre. Ultimately, the court denied the objections and allowed admission of the appraisal findings. This case is an example of the legal challenges to forensic evidence existing in wildlife crime cases.

Furthermore, practitioners from the Forest Police Forensic Science Institution of the State Forestry and Grassland Administration recently reported difficulties in the investigation and prosecution of cases using wildlife forensic science. Scholars identified various issues hindering the identification process: diversity of wildlife materials, scarcity of research data, flaws in the standard comparison database, and quality of the samples used in forensics (prone to decay, fragile composition). They further pointed out to issues relating to the impact value assessment system, the lack of capacity, the geographic distribution of appraisal institutes and the unclear scope of issues needed to go through

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144 Case reference number: (2018) Su 0205, No.544 first instance, the judgment can be accessed at: http://wenshu.court.gov.cn/website/wenshu/181107ANFZ08XSK4/index.html?docId=a70e5e5076344ec95e0f074eb6132ad


146 ibid. at p. 23.
appraisals.\textsuperscript{147} All these matters interfere with the criminal justice responses to wildlife trafficking and are troublesome.

The dichotomy of listed species – the National Directory and CITES Appendices – that are not fully identical is a matter of concern for the value assessment of species. Although the 2000 SPC Judicial Interpretation (Annex IV) prescribes the application of the same criteria to CITES-listed species as in the case of nationally protected wildlife species for species of the same genus,\textsuperscript{148} including for the value assessment of seized products, CITES-listed species are not identical to those listed under the National Directory. This dichotomy makes it difficult to assess their monetary value. Similarly, the absence of benchmark values for body parts renders the evaluation of some seized products particularly difficult for judges to apprehend.

China has established a legal framework preventing tortured confessions,\textsuperscript{149} and rules and procedures to exclude illegally obtained evidence. Out of the collected cases, although many involved confessions from criminal suspects, no claims were made that ill-treatment was used as a means to obtain information. These statements were, in fact, neither challenged nor excluded at a later stage. Yet additional research and data gathering on conditions surrounding confessions is recommended, considering claims made by non-profit organisations, and other human rights actors, on the alleged use of illegal and extraordinary channels to compel individuals into confessing crimes.\textsuperscript{150}

Finally, a few analysed cases involved internet and social media platforms for illegal sale of wildlife products. In 2014, the International Fund for Animal Welfare (IFAW) reported that China was the largest country for sales in its global wildlife online trade investigation, with 18,590 items offered in 2,106 online advertisements over 21 websites\textsuperscript{151} Chinese scholars have also acknowledged the need for investigation of wildlife crime to adapt to new modus operandi using the internet; they call for electronic forensics and law enforcement capabilities to be stepped up.\textsuperscript{152}

\subsection*{4.4.4 Sentences/ penalties}

On average, criminal penalties in wildlife crime cases are moderate, highlighting that wildlife crime is treated as a serious crime in China both in law and in practice. Breaking down the average jail sentence by crime, the sentencing for hunting, and/or killing, and/or purchasing and/or transporting and/or selling fits within the statutory range of penalties for minor crimes – in this case less than five years of imprisonment. Two offences – illegal catching of aquatic products and illegal hunting of wild animals – are punished less severely than other crimes. This is in line with respective statutory penalties (Table 8).

The average jail sentence applicable for smuggling endangered and/or protected species fits within the serious qualification of the crime – between 5 and 10 years of imprisonment. This signals that the crime of smuggling endangered and/or protected species is taken more seriously by the judicial system than other wildlife crimes, which is encouraging in terms of fighting illegal wildlife trade. One

\begin{itemize}
\item \textsuperscript{147} Ibid.
\item \textsuperscript{148} Article 10, Judicial Interpretation on the application of the law in criminal cases involving the destruction of wildlife resources.
\end{itemize}
example of this is the Zhen Y. et al. case\textsuperscript{53}, already mentioned in Section 4.1.3, on a criminal syndicate involved in illegal ivory trade:

- Zhen Y. received a sentence of 10 years in prison, his properties worth up to 500,000 yuan\textsuperscript{54} were confiscated, and he was fined 20,000 yuan\textsuperscript{55} for smuggling precious animal products.
- Wei S. was sentenced to 11 years in prison and his properties worth up to 500,000 yuan\textsuperscript{56} were confiscated for smuggling precious animal products.
- Yanzhong T. received a 3-year affirmative jail sentence, a 5-year suspended jail sentence, and a fine of 60,000 yuan\textsuperscript{57} for smuggling precious animal products.
- Wen Z. received a 3-year affirmative jail sentence, a 3-year suspended jail sentence and a fine of 30,000 yuan\textsuperscript{58} for smuggling precious animal products.
- Xiang L. received a 1-year affirmative jail sentence, a 1-year suspended jail sentence and a fine of 10,000 yuan\textsuperscript{59} for smuggling precious animal products.
- Jilei C. received a 3-year affirmative jail sentence, a 3-year suspended jail sentence and a fine of 30,000 yuan\textsuperscript{60} for illegal purchase of precious and endangered wildlife products.
- Jian Z. received a 10-month affirmative jail sentence, a 1-year suspended jail sentence, and a fine of 10,000 yuan\textsuperscript{61} for illegal purchase of precious and endangered wildlife products.

A more detailed analysis looking at the standards used to determine sentences is necessary to further elaborate on how judges apply the statutory range of penalties to one particular case. The recovery of fines imposed by courts was also not measured in this assessment. As it is imposed by courts in more than 90 per cent of cases, it would be interesting to gather this data as it contributes to the deterring effect of the judicial response towards wildlife crime. It would also inform on the socioeconomic situation of defendants as to whether they have the financial means to pay these fines.

One major concern in the adjudication process is that biodiversity protection laws are not regularly updated to reflect the dynamic changes in wildlife taxonomy, threat assessments, and the changing economy. \textsuperscript{62} This lack of legislative and regulatory update may lead to imbalanced and disproportionate sentencing, with some sentences that are too harsh or too light for defendants in light of the crimes committed and their circumstances.

This disparity is best illustrated when comparing cases involving species with different levels of protection nationally and internationally. In the case Hongmin S. (2020),\textsuperscript{63} a peasant in Yunnan caught four Lady Amherst’s pheasants and was charged with illegally hunting and killing endangered wildlife. Lady Amherst’s pheasant (\textit{Chrysolophus amherstiae}) is a Class II protected species under the National

\textsuperscript{53} Case reference number: (2017) Wan 01, No.27 first instance, the judgement can be accessed at: https://www.wildlex.org/court-decisions/defendant-zhen-y-charged-felony-counts-of-smuggling-threatened-and-endangered

\textsuperscript{54} Approx. USD 78,000.

\textsuperscript{55} Approx. USD 3000.

\textsuperscript{56} Approx. USD 78,000.

\textsuperscript{57} Approx. USD 9,400.

\textsuperscript{58} Approx. USD 4,700.

\textsuperscript{59} Approx. USD 1,500.

\textsuperscript{60} Approx. USD 4,700.

\textsuperscript{61} Approx. USD 1,500.


\textsuperscript{63} Case reference number: (2020) Yun 25, No.187 final instance, the judgment can be accessed at: https://wenshu.court.gov.cn/website/wenshu/181107ANFZ0BXSK4/index.html?docId=2695dd489555e4b3380edab92010dc9a4
Directory, but a species of least concern according to the IUCN Red List.\textsuperscript{164} The farmer was sentenced to five years’ imprisonment, in addition to a fine of 10,000 yuan.\textsuperscript{165} In another case, Min H. (2016), the defendant was charged with smuggling threatened and endangered wildlife products after flying into the country with several ivory products (from Asian and African elephants) and a large number of pangolin scales (from the Giant ground pangolin). These species are endangered species under the IUCN Red List (critically endangered in the case of the African Forest elephant), and Asian elephants are classified as Class 1 protected animals. The defendant was sentenced to five years in prison and a fine of 10,000 yuan. Although both cases had the same outcome, the sentencing is clearly inequitable when considering the circumstances of each case and the offence committed by each defendant. Indeed, it regards the peasant in a rural province who had hunted and killed a Class II protected species or an IUCN-listed species of least concern, and the smuggler of flagship species listed as endangered by the IUCN Red List, as having committed crimes of equal weight.

\textsuperscript{165} Approx. USD 1,500.
5 CONCLUSION

This study should be viewed as an introductory assessment of wildlife crime cases in China, between 2012 and 2020. It aims to provide a first empirical insight into the workings of Chinese courts in wildlife cases, and an overview of the Chinese legal and judicial system, the national legal framework relating to wildlife offences and the implementation of international agreements. The study reveals several gaps and challenges in the way wildlife crime cases are dealt with in Chinese courts. These findings are conditioned by the methodology applied to the study and are limited to the small cohort of cases used in the analysis.

Much has happened since the inception of this assessment in 2019, notably in light of the current COVID-19 pandemic. The pandemic served as a wake-up call for countries and decision-makers, that the unparalleled threats affecting species’ survival are having dire consequences not only for the species themselves, but also for ecosystems and human health. In that regard, China has taken several decisions and legislative amendments to better regulate the consumption and trade of wild animals within the country.

China, as a major actor in illegal wildlife trade, is at a crossroads when it comes to biodiversity protection. Over the years, it has developed a relatively strong domestic criminal law and criminal procedure law to hold wildlife offenders criminally liable in the judicial system. This is particularly the case for nationally protected species, and the recent adoption of an updated version of the National Directory of Key Protected Wild Animals holds the promise of a greater level of protection for many national endangered species. One blind spot though is that many non-native endangered and/or protected species remain exposed to illegal activities, including in cases where offenders are Chinese nationals and end-users are Chinese consumers. This is despite the ratification of CITES and China’s attempts to better integrate international listings of protected species into its judicial process. The absence of reference to CITES-listed species in most legal provisions remains a key concern. Although the 2000 Judicial Interpretation (Annex V) defines “rare and endangered wildlife” in crimes destroying wildlife resources as including listed-species under CITES, all legal provisions relating to the prosecution and adjudication of these crimes are centred on the National Directory only. This complicates the work of investigators, prosecutors and judges in bringing to justice traffickers of species not listed in the national classification.

Other shortcomings in legislation and regulations protecting wildlife are also problematic when considering the types of crimes brought to justice. For instance, only recently, efforts have targeted the illegal consumption of wildlife products. Thresholds using as benchmarks “whole bodies of animals” also render the approach to tackle illegal wildlife trade impractical as many cases deal with animal body parts like scales, horns, or skins. This leaves to the appreciation of investigators whether a case should be filed when body parts are discovered, and let judges decide for themselves the seriousness of the crime and the value of seized products, without further indication except from appraisal centres charged with analysing the discovered body parts. This is despite the fact that appraisal centres are not a silver bullet when it comes down to supporting investigation and prosecution using wildlife forensic science.

A third identified gap is what seems to be an overall lack of due consideration for some elements of a crime which are indicative of transnational illicit activities, and the possible involvement of sophisticated criminal syndicates. This is particularly true in the case of non-native species, which are likely to be smuggled through international airports and seaports, via complex modes of transportation. Although the majority of cases involving international ports of entry were rightfully labelled as smuggling endangered and/or protected species, less than forty cases out of 300 concerned airports or seaports. This number runs too low in light of the prevalence of both means of transportation in illegal wildlife trade, and considering the key role China is playing as an end-user country for many trafficked species. Plus, the failure to systematically trace the origin of affected species, and to reach
out to foreign law enforcement officials in cases with a transboundary element, means that investigations into a possible criminal ring stop at the borders of China. This gap, coupled with the lack of interest given to illegal flows of money and other crimes linked to wildlife crime, results in the failure to apprehend kingpins and ringleaders who are leading illegal wildlife trade nationally and globally.

Other discrepancies highlighted in this report raise the question of law enforcement capacities to investigate wildlife crime. The prevalence of charges of illegally purchasing and/or selling, and illegally hunting and/or killing, the high incidence of investigation and prosecution in cases involving birds, and the near absolute conviction rate tend to suggest that law enforcement agencies focus on manifest and unambiguous cases. This comes in addition to the limited capacities of forensic labs charged with analysing the collected evidence.

China has made various commitments towards biodiversity protection and conservation. Through its one-off participations in transnational investigations, authorities demonstrate their willingness to participate in transnational efforts to fight against illegal wildlife trade. Yet, overall, information exchange and cooperation with other partners, including INTERPOL and foreign law enforcement agencies, fail to occur on a regular basis, including in cases with a transnational element.

The current legal response to illegal wildlife crime in China has not yet achieved a strong deterring effect on consumers’ behaviours. In traditional Chinese culture, wild animals have been used for medicine, food consumption and jewellery. These behaviours have a great impact on the demand for protected and endangered species, ultimately fuelling illegal wildlife trade. A judicial response, which could raise awareness on habits of wildlife consumption, would have a much broader impact on illegal wildlife trade in China and worldwide.
6 RECOMMENDATIONS

Based on the findings of this assessment, it is possible to formulate the following set of recommendations and identify leads for further research into key trends.

Preliminary recommendations

1. **Legislative and regulatory reform:** national legal frameworks and policies should be assessed and updated to effectively deter all forms of wildlife crime, including organised crime, from occurring on a national and global level. This has already started with the most recent legal changes to the Wildlife Protection Law and the Criminal Law. Additional reform could better curtail consumption for products fuelling illegal wildlife trade or mitigate the impact on small-scale offenders while ensuring deterrence of high-level criminals. Enforceability of law provisions should also be enhanced to strengthen the application of the law and facilitate the work of the judiciary.

2. **Harmonisation of legal protection:** inconsistencies between the national classification and current international lists of protected species have to be reconciled. Consistency and clarity of legal protection is needed not only for law enforcement actors and the judiciary but also for the ordinary citizen who should be fully aware of the law.

3. **Science-based listing of protected and endangered species:** the most up-to-date information on the status of species should serve as the cornerstone of any policy-making regarding illegal wildlife trade.

4. **Higher rate of detection and investigation of the most serious cases of illegal wildlife trade:** by targeting the most elaborated criminal networks engaged in illegal wildlife trade, benefits and outcomes of law enforcement actions would be greatly improved. This could be done through specialised trainings provided to investigators and officers of Public Security Bureaus.

5. **Coordinated investigation and cooperation to tackle illegal wildlife trade globally:** international cooperation should be strengthened and streamlined into national efforts. Information exchange on seized animals or products, place of origin, arrests, sentences, or modus operandi should be made widely available to foreign counterparts.

6. **Capacity building:** through tailored trainings on wildlife crime, current investigators, prosecutors and judges will be able to enhance their capacities and knowledge to effectively and consistently handle wildlife-related cases. Enhanced forensic capabilities are also greatly needed across the country to further implement a science-based policy on wildlife crime.

7. **Support the establishment of academic courses on wildlife protection law across the country:** by receiving a complete training on wildlife protection law, including provisions on wildlife crime, future judges and prosecutors will have a deeper understanding of national and international law applicable in wildlife crime cases.

Leads for further research

1. Focus on one or several species at the heart of global illegal trade in species, such as pangolins, elephants and rhinos, or rosewood.
2. Focus on one or several points of entry used by smugglers to move protected and endangered species into the country.

3. Focus on one or several associated crimes, including money laundering, corruption, or drug trafficking.

4. Focus on one or several modus operandi used by traffickers in illegal wildlife trade, including the use of online platforms or maritime cargos.
BIBLIOGRAPHY OF LEGAL TEXTS

At international level

1992 Convention on Biological Diversity
2006 United Nations Convention against Corruption

At national level

Constitution of the People’s Republic of China
Wildlife Protection Law of 1988 (including its proposed amendments of 2020)
Criminal Law of 1997 (including its latest revision of 2021)
National Directory of Key Protected Wild Animals of 1988 (including its latest revision of 2021)
List of terrestrial wildlife species of important ecological, scientific, or social value of 2000
Judicial Interpretation by the Supreme People’s Court on the application of the law in criminal cases involving the destruction of wildlife resources of 2000
Judicial Interpretation by the Supreme People’s Court and the Supreme People’s Procuratorate on the application of the law in smuggling cases of 2014
Notice by the Supreme People’s Court on Implementing the Revised Guiding Opinions on Sentencing for Common Crimes of 2017
Decision by the NPC Standing Committee on a Complete Ban of Illegal Wildlife Trade and the Elimination of the Unhealthy Habit of Indiscriminate Wild Animal Meat Consumption for the Protection of Human Life and Health of 2020
NPC Opinions on the handling of voluntary surrender and meritorious behaviours of 2010
Joint Opinions by the Supreme People’s Court, the Supreme People’s Procuratorate, the Ministry of Public Security, and the Ministry of Justice on Punishing Criminal and Illegal Activities Hindering the Prevention and Control of Novel Coronavirus Pneumonia of 2020
Filing Standards by the then State Forestry Administration and the Ministry of Public Security for Criminal Cases of Forest and Terrestrial Wild Animals of 2001
Methods of Value Assessment by the then State Forestry Administration on Wild Animals and their Products of 2017
## ANNEX I  WILDLEX CASE LAW MATRIX

<table>
<thead>
<tr>
<th>GENERAL INFORMATION ABOUT THE CASE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Country/countries:</td>
</tr>
<tr>
<td>Territorial subdivision/state:</td>
</tr>
<tr>
<td>Title (English):</td>
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<tr>
<td>Title (French):</td>
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<tr>
<td>Title (Spanish):</td>
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<tr>
<td>Title (Other):</td>
</tr>
<tr>
<td>Date of Judgement/decision/opinion: (YYYYMMDD)</td>
</tr>
<tr>
<td>Court name:</td>
</tr>
<tr>
<td>Type of court:</td>
</tr>
<tr>
<td>- International court</td>
</tr>
<tr>
<td>- National - higher court</td>
</tr>
<tr>
<td>- National - lower court</td>
</tr>
<tr>
<td>- Other</td>
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<tr>
<td>Seat of court:</td>
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<td>Court jurisdiction:</td>
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<tr>
<td>- Administrative</td>
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<tr>
<td>Description</td>
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<td>--------------------------------------</td>
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<tr>
<td><strong>Constitutional</strong></td>
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<tr>
<td><strong>Environmental</strong></td>
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<td><strong>Civil</strong></td>
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<td><strong>Criminal</strong></td>
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<tr>
<td><strong>General</strong></td>
</tr>
<tr>
<td><strong>Other</strong></td>
</tr>
</tbody>
</table>

| Justice(s): (e.g. SMITH A.; MILLER F.; ...) |

| Prosecuting authority: (DGOs, state attorney, Police...) |

| Representation of accused person: (lawyer?) |

| Defendants: (age, gender...) |

| Legal history of the case: |

| Language of document: |

| Reference No. (No. of decision): |

| Filing No. (if available): |

| Number of pages: |

**DESCRIPTION**

- agricultural & rural development
- air & atmosphere
- cultivated plants
### Subject(s):

- energy
- environment gen.
- fishery
- food & nutrition
- forestry
- land & soil
- legal questions
- livestock
- mineral resources
- sea
- waste & hazardous substances
- water
- wild species & ecosystems

### Keyword(s):

(see keyword list on ECOLEX)

- e.g. endangered species, wild fauna, wild flora, hunting offences/penalties, international trade etc.

### Species:

*English name/French name/ Latin name*

### Parts / derivates / products:

Please, specify the wildlife product involved e.g. ivory, rhino horn, pangolin scales etc.

### Money value:

### Transnational:

- Please, only tick "yes" if the accused is a non-citizen or if it is a cross-border offence.

- **YES**
| **Charge sheet:**  
Please, provide charge sheet document (pdf) as an attachment! | NO |
<table>
<thead>
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<tbody>
<tr>
<td><strong>Charge:</strong></td>
<td></td>
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<tr>
<td><strong>Processed/Not processed:</strong></td>
<td>YES</td>
</tr>
<tr>
<td></td>
<td>NO</td>
</tr>
</tbody>
</table>
| **Appealed:**  
Please, indicate whether the case provided has been appealed or not. | YES |
| | NO |
| **Facts:**  
Please, provide some brief facts about the case (max 150 words) |  |
| **Abstract:**  
Please, provide a brief summary (max 250 words) |  |
| **DECISION/JUDGEMENT** |  |
| **Decision/Judgement:**  
Please, provide a brief summary of the ruling/judgment of the court (max 100 words) |  |
<p>| <strong>Basis of the decision:</strong> |  |
| <strong>Penalty:</strong> |  |</p>
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<thead>
<tr>
<th>Legal issues raised in decision:</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th><strong>REFERENCES</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Reference(s) to Court Decision (title, reference number, date):</td>
</tr>
<tr>
<td><strong>Please, provide a list of precedents mentioned in the case.</strong></td>
</tr>
</tbody>
</table>

| Reference(s) to National Legislation (title, reference number, date, hyperlink): |
| __Please, provide a list of all principal and ancillary national legislations mentioned in the case. (Copies of the legislations should also be sent separately as an attachment). Provide links to the legislations if they are available online as well.__ |

| Reference(s) to International Agreement (title, date): |
| __Please, provide a list of international agreements mentioned in the case.__ |

| Text: |
| __Please provide a copy of full text(s) of the decision (pdf) as an attachment!__ |

| Link to the full text(s) online: |
| __Please, provide hyperlink(s) if case is available online!__ |
## ANNEX II  CHINA LEGISLATION MATRIX

### Background Information

<table>
<thead>
<tr>
<th></th>
<th>Demand</th>
<th>Supply</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Is the country involved in demand or supply of wildlife crime products? If both, please specify how each operate?</strong></td>
<td>☐</td>
<td>☑</td>
</tr>
<tr>
<td><strong>Comments:</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Elephants</th>
<th>Rhinos</th>
<th>Pangolins</th>
<th>Great apes</th>
<th>Big cats</th>
<th>Others</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>What species are most threatened by wildlife crime in the country (poaching and/or trade)?</strong></td>
<td>☑</td>
<td>☑</td>
<td>☑</td>
<td>☐</td>
<td>☐</td>
<td>☑</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>China - east coast (Guangdong, Fujian, Shanghai, Zhejiang)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>In which regions are wildlife related offences committed?</strong></td>
<td></td>
</tr>
</tbody>
</table>

### International Law

<table>
<thead>
<tr>
<th></th>
<th>Year of ratification</th>
<th>Implementing legislation</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Is the State a party to any of these conventions?</strong></td>
<td>1981</td>
<td><em>Wildlife Protection Law (1989; amended in 2004, 2009, 2016 and 2018)</em></td>
</tr>
<tr>
<td></td>
<td></td>
<td><em>Criminal Law Article 341</em></td>
</tr>
<tr>
<td></td>
<td></td>
<td><em>Foreign Trade Law</em></td>
</tr>
<tr>
<td></td>
<td></td>
<td><em>Regulations on the Conservation of Wild Flora</em></td>
</tr>
<tr>
<td></td>
<td></td>
<td><em>Regulations on the Importation and Exportation of Endangered Species of Wild Fauna and Flora</em></td>
</tr>
<tr>
<td></td>
<td></td>
<td><em>The NPC Standing Committee Legislative Interpretation of Article 341 of the Criminal Law</em> (04/24/2014)</td>
</tr>
<tr>
<td></td>
<td></td>
<td><em>The Supreme People’s Court and Supreme People’s Procuratorate joint Judicial Interpretation on the sentencing criterion for smuggling cases</em> (04/12/2014)</td>
</tr>
<tr>
<td>CITES</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CMS</td>
<td>Not a party to CMS</td>
<td></td>
</tr>
<tr>
<td>CBD</td>
<td>1993</td>
<td></td>
</tr>
<tr>
<td>UNCAC</td>
<td>2006</td>
<td><em>Anti-Money Laundering Law</em> (1/1/2007)</td>
</tr>
<tr>
<td>UNTOC</td>
<td>2003</td>
<td></td>
</tr>
</tbody>
</table>

|                                    | Are there regional conventions regarding wildlife? If so, is the State a party to any of them? None |

### Constitutional Provisions

|                                    | **Is there any constitutional provision relevant to wildlife protection?** |
|                                    | Article 9 Constitution (2018): The state ensures the rational use of natural resources and protects rare animals and plants. Appropriation or damaging of natural resources by any organisation or individual by whatever means is prohibited. |
|                                    | Article 251 Civil Code: The wildlife resources owned by the state, and as provided for by the law, belong to the state. (Previously stipulated in Article 49 of Property Law.) China’s Civil Code will take effect on January 1, 2021. |
|                                    | Article 3 Wildlife Protection Law: Wild animal resources are owned by the state. |
**Policy Framework**

<table>
<thead>
<tr>
<th>Question</th>
<th>Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>What are the national policies / strategies addressing wildlife crime?</td>
<td>Integrated Reform Plan for Promoting Ecological Progress promulgated by CPC Central Committee and State Council on September 21, 2015 provides that wildlife and biodiversity conservation is a key component for Chinese government's construction of ecological civilisation. Decision of the Standing Committee of the National People's Congress to comprehensively prohibit illegal trade of wild animals, to curb excessive consumption of wild animals, and to effectively secure the life and health of people of February 24, 2020: “The hunting, trade, transport, or consumption of wild animals prohibited by the Wildlife Protection Law or any other relevant law shall be strictly prohibited. Any violation of the provisions of the preceding paragraph shall be punished under the existing laws in an aggravated manner.”</td>
</tr>
<tr>
<td>At what level are decisions made (local, regional, and national) and how does the decision-making process operate for activities related to wildlife management?</td>
<td>Article 7 Wildlife Protection Law: The SFGA Department of Wildlife Protection and the Department of Fisheries at the Ministry of Agriculture and Rural Affairs of the State Council are respectively responsible for the conservation of terrestrial and aquatic wild animals nationwide. Relevant departments of forestry and fisheries of the local people's governments at or above the county level, are respectively responsible for the conservation of terrestrial and aquatic wild animals within their respective administrative regions.</td>
</tr>
<tr>
<td>Are access to information, access to justice and public participation recognized by the law? What are the mechanisms for participation during decision-making? (E.g. opportunities for participation in drafting of legislation; adoption of regulations; decision-making on permits; etc.)</td>
<td>Chapter 5 of 2015 Environmental Protection Law grants individuals rights regarding access to information, public participation and access to justice, in governmental decision-making processes on matters concerning the environment.</td>
</tr>
</tbody>
</table>
| What are the institutions, which have authority over wildlife management?  | SFGA Department of Wildlife Protection at State Forestry is the lead central authority over wildlife management. Key responsibilities of SFGA Department of Wildlife Protection:

  1. Supervise and manage matters relating to national terrestrial wildlife protection, including drafting relevant regulations and departmental rules and formulating relevant plans, standards and implementation guidelines.
  2. Supervise and manage the hunting, breeding and utilisation of terrestrial wildlife, and guide the rescue of terrestrial wildlife.
  3. Conduct national terrestrial wildlife resource surveys and resource status assessment, propose a list of terrestrial wildlife under national protection, a list of protected terrestrial wildlife in captive breeding, and approve a list of non-native terrestrial wildlife under national protection.
  4. Supervise and manage the collection, cultivation, management and utilisation of terrestrial wild plants nationwide, and direct the rescue of terrestrial wild plants.
  5. Organise and carry out surveys and resource status assessments of terrestrial wild plants, and study and propose a list of terrestrial wild plants under national protection.
  6. Organise the monitoring, prevention and control of terrestrial wildlife epidemics and diseases.
  7. Organise the protection, breeding and scientific research of giant pandas, and manage the foreign cooperative research and display of giant pandas.
  8. Supervise and manage the import and export of wild animals, plants and their products, organise the issuance of wild animals and plants import and export certificates, coordinate import and export certificates, and organise the tax exemption applicable to the authorised import of wild animal and plant species.
  9. Undertake the implementation of CITES. |
10. Lead the interdepartmental compliance and law enforcement coordination mechanism; charged with coordinating efforts with Hong Kong and Macao on CITES.

11. Undertake other matters assigned by the State Forestry and Grassland Administration.

Responsibilities of wildlife protection authorities are to carry out field patrols, monitor wildlife populations and habitats, issue licensing/permits for wildlife hunting, cultivation and breeding, commercial utilisation, import and export, and to supervise and manage wildlife scientific research and breeding, and ornamental shows.

Sale, purchase, use, transportation, delivery, advertising, Internet trading, import and export of wild animals and their products are supervised and managed by the market supervision authority, the transportation authority, the internet supervision authority, customs and the postal authority.

Wildlife quarantine is the responsibility of the animal epidemic prevention bureau, or the import and export quarantine bureau.

If the violation of laws and regulations in wildlife protection is suspected of amounting to a criminal level, the public security bureau is responsible for investigating the case and decides whether the case will be transferred to prosecutors for criminal prosecution.

Are there mechanisms for coordination and cooperation between different institutions and entities responsible for wildlife management?

The National Inter-Agencies CITES Enforcement Coordination Group brings together the relevant authorities of forestry, agriculture, public security, customs, industry and commerce, quality supervision, inspection and quarantine, coast guards, post and tourism.

On November 15, 2016, the State Council established an inter-ministerial Joint Meeting on Combating Illegal Wildlife Trade.

### Environmental and Criminal Legal Framework

**How has wildlife law evolved since its inception?**

Wildlife Protection Law was adopted at the 4th Session of the Standing Committee of the Seventh National People’s Congress on November 8, 1988. It was amended on August 28, 2004 and on August 27, 2009. It was later revised during the 21st Session of the Standing Committee of the Twelfth National People’s Congress on July 2, 2016, and amended for the third time during the 6th Session of the Standing Committee of the 13th National People’s Congress on October 26, 2018.

### Conservation Law

**Is there an overarching law or strategy addressing wildlife crime?**

The Wildlife Protection Law provides for offences and respective administrative penalties if its provisions are violated. In these cases, administrative agencies such as the forest police or customs will be enforcing the penalties. The main offences include:

- Illegal hunting of wildlife, including: hunting of wildlife in nature reserves; hunting when the hunting season is closed; hunting with the use of prohibited gears; or hunting of wildlife under state protection (Articles 20-24);
- Illegal sale, purchase or utilisation of wildlife under special state protection (Articles 27-30);
- Smuggling of protected wildlife species (Articles 35-37); and
- Falsification of documents approving the sale, purchase or utilisation of wildlife under special state protection (Article 39).

**Is there a list of protected species? If so, are there different levels of protection? How is this list updated?**

The National Directory of Key Protected Wild Animals (1989) lists Class I and II endangered species. Any harm caused to Class I species receives harsher punishment, and their legal utilisation – from scientific study to farming for medicinal ingredients – is supposedly put under stricter regulation than Class II species.

The National Directory has been largely unchanged since 1989. Only two amendments were made: in 2003, the Class II-protected musk deer was upgraded to
strict Class I protection,\(^{167}\) and in June 2020, the pangolin was moved from Class II to Class I. In February 2021, the National Directory was substantially amended, with 980 species added to the list.

In 2000, the State Forestry Administration released an additional classification called the List of terrestrial wildlife species of important ecological, scientific or social value.

<table>
<thead>
<tr>
<th>Question</th>
<th>Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Is hunting regulated? If yes, is there legislation addressing hunting in protected areas?</td>
<td>Yes</td>
</tr>
<tr>
<td>Is there legislation against animal abuse?</td>
<td>No</td>
</tr>
</tbody>
</table>

### Criminal Law

<table>
<thead>
<tr>
<th>Question</th>
<th>Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Is wildlife crime recognised under criminal law?</td>
<td>Article 341, Article 340 and Article 151 are the key provisions in Criminal Law addressing wildlife crime.</td>
</tr>
<tr>
<td>How are wildlife-related offences classified (e.g. misdeemeanour, crime, etc...)?</td>
<td>Wildlife-related violations are classified either as administrative violations or as crimes depending on the facts of the case. If the violations are labelled as crimes under the Criminal Law, public security bureaus and prosecutors will handle these violations. Crimes are classified as crimes, crimes with serious circumstances and crimes with especially serious circumstances.</td>
</tr>
</tbody>
</table>
| What mitigating and aggravating circumstances can be considered?                           | Aggravating circumstances are defined in two Judicial Interpretations:  
• Supreme People’s Court Judicial Interpretation on the application of the law in criminal cases involving the destruction of wildlife resources (2000)  
• Supreme People’s Court and Supreme People’s Procuratorate Judicial Interpretation on the application of the law in smuggling cases (2014)  
Judicial Interpretations provide a range of indicia to consider when characterising aggravating circumstances including, but not limited to:  
• The quantity of wildlife, and wildlife products, listed in the Appendix of the Judicial Interpretation,  
• The estimated loss triggered by the criminal conduct,  
• The income deriving from the illegal conduct and  
• The value of the wildlife, and wildlife products.  
Mitigating factors may include:  
• Voluntary surrender (\(^{168}\)) under Article 67 of Criminal Law: Criminals who voluntarily surrender may be given a lesser punishment or a mitigated punishment. Those among them whose crimes are relatively minor may be exempted from punishment.  
• Exposing other people’s crimes (\(^{169}\)) under Article 68 of Criminal Law: Criminals who perform meritorious services by exposing other people’s crimes that can be veriﬁed, or who provide important clues leading to the cracking of other cases may be given a lesser punishment or a mitigated punishment.  
• Those who performed major meritorious service may be given a mitigated punishment or may be exempted from punishment. |
| Is an accomplice prosecuted the same way as the main offender?                              | Yes    |
| Is an offender charged with possession of a species presumed to have killed the species?    | No     |
| Is there prescription for wildlife-related offences? If so, what is the timeframe?         | There is no specific prescription for wildlife-related crimes. The time period for prosecution of a crime is stipulated by Article 87 of Criminal Law:  
(a) Five years for crimes with a statutory penalty of less than five years of fixed-term imprisonment.  
(b) Ten years for crimes with a statutory maximum sentence between five to ten years of fixed-term imprisonment.  
(c) Fifteen years for crimes with a statutory penalty of more than ten years of fixed-term imprisonment.  
(d) Twenty years for crimes with a statutory maximum sentence of life imprisonment or the death penalty. Above twenty years, the Supreme People’s Procuratorate must give its approval. |


66
<table>
<thead>
<tr>
<th>Is there any legislation addressing corruption?</th>
<th>Yes</th>
</tr>
</thead>
</table>

### Primary Offences

<table>
<thead>
<tr>
<th>Please provide the provisions, if any, and penalties associated to the following offences:</th>
<th>Relevant provisions</th>
<th>Associated penalties</th>
</tr>
</thead>
</table>
| Killing of species                                                                 | Article 341 of the Criminal Law  
  - Crime of illegally hunting and killing rare and endangered wild animals (非法猎捕、杀害珍贵、濒危野生动物罪)  
  - Crime of illegally hunting wild animals (非法狩猎罪)  
  Article 340 of the Criminal Law:  
  - Crime of illegally catching aquatic products | To be sentenced to not more than five years of fixed-term imprisonment or criminal detention, and may in addition be sentenced to a fine.  
In serious cases, those law offenders are to be sentenced to not less than five years and not more than 10 years of fixed-term imprisonment, and may in addition be sentenced to a fine.  
In especially serious cases, those law offenders are to be sentenced to more than 10 years of fixed-term imprisonment, and in addition be sentenced to a fine and confiscation of their properties.  
Article 340 of the Criminal Code states that those who violate laws and regulations to protect aquatic products and catch aquatic products in forbidden areas or forbidden periods, or use tools and methods in violation of regulations, are to be sentenced to not more than three years of fixed-term imprisonment or criminal detention or control, and may in addition be sentenced to a fine. | |

<table>
<thead>
<tr>
<th>Possession of species</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acquisition or possession of species trophies</td>
<td>N/A</td>
</tr>
</tbody>
</table>

*Acquisition or possession of species meat*

Regulated under the Wildlife Protection Law but not under the Criminal Law.

On February 24, 2020, the Standing Committee took a Decision to comprehensively prohibit illegal trade of wild animals, curb wild animal consumption, and protect the health and safety of the people. The decision mandated the top legislature to introduce a permanent legislation banning consumption of wildlife.

| Trade of species | Article 341 of Criminal Code  
  - Crime of illegally purchasing, transporting or selling rare and endangered wild animals and their manufactured products (非法收购、运输、出售珍贵、濒危野生动物、珍贵、濒危野生动物制品罪) | To be sentenced to not more than five years of fixed-term imprisonment or criminal detention, and may in addition be sentenced to a fine.  
In serious cases, offenders are to be sentenced to not less than five years and not more than 10 years of fixed-term imprisonment, and may in addition be sentenced to a fine.  
In especially serious cases, offenders are to be sentenced to more than 10 years of fixed-term imprisonment, and, in addition, be sentenced to a fine and confiscation of their properties. |
**Import or export of species**

<table>
<thead>
<tr>
<th>Article 15(2) of Criminal Law</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Crime of smuggling rare wild animals whose import and export are prohibited by the state, or products made thereof, shall be sentenced to imprisonment of not less than 5 years but not more than 10 years and a fine.</td>
</tr>
<tr>
<td>If circumstances are especially serious, offenders shall be sentenced to imprisonment of not less than 10 years or life imprisonment and a forfeiture of property.</td>
</tr>
<tr>
<td>If the circumstances are minor, offenders shall be sentenced to imprisonment of not more than 5 years and a fine.</td>
</tr>
</tbody>
</table>

**Related Offences**

<table>
<thead>
<tr>
<th>Please provide the provisions, if any, and penalties associated to the following offences:</th>
<th>Relevant provisions</th>
<th>Associated penalties</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Document fraud</strong></td>
<td>Article 28(1) of Criminal Law</td>
<td></td>
</tr>
<tr>
<td>• Crime of forging, altering, trading in, stealing, forcibly seizing or destroying any official document, certificate or seal of a state authority (伪造、变造、买卖国家机关公文、证件、印章罪)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Offenders shall be sentenced to imprisonment of not more than three years, criminal detention, surveillance or deprivation of political rights, in addition to a fine.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>If the circumstances are serious, offenders shall be sentenced to imprisonment of not less than three years but not more than ten years, in addition to a fine.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Money-laundering</strong></td>
<td>Article 191 of Criminal Law</td>
<td></td>
</tr>
<tr>
<td>• Crime of money laundering: When anyone knows income was illegally obtained (including through the crime of illegal smuggling), as well as the proceeds generated therefrom, yet commits any of the following acts for the purpose of disguising or concealing the origin or nature thereof, this illegally obtained income and the proceeds generated therefrom shall be confiscated:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(1) Providing any capital account;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(2) Assisting in the transfer of property into other forms of assets such as cash, financial instruments, or negotiable securities;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(3) Assisting in the transfer of capital by means of transfer accounts or any other means of settlement;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(4) Assisting in the remit of funds overseas;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(5) Disguising or concealing the origin or nature of any crime-related income or the proceeds generated therefrom by any other means.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The offender shall be sentenced to fixed-term imprisonment of not more than five years or detention, in addition to paying a fine amounting to 5 per cent up to 20 per cent of the amount of laundered money.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>If the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than five years but not more than ten years, in addition to paying a fine amounting to 5 per cent up to 20 per cent of the amount of laundered money.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Where an entity commits money laundering, the entity shall be fined, and any of the persons who are directly in charge and the other persons who are directly responsible for the crime shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention. If the circumstances are serious, any of them shall be sentenced to fixed-term imprisonment of not less than five years but not more than ten years.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Bribery and corruption</strong></td>
<td>Article 382 of Criminal Law:</td>
<td></td>
</tr>
<tr>
<td>• State personnel who take advantage of their office to</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Article 383 of Criminal Law:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Whoever commits the crime of corruption shall be punished in</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
misappropriate, steal, swindle or use other illegal means to acquire state properties engage in the crime of corruption. (贪污罪)

Article 389 of Criminal Law:
- An act of giving state officials articles of property in order to seek illegitimate gain shall be considered a crime of bribery.

light of the severity of the crime according to the following provisions:

(1) If the amount involved in the corruption is relatively large, or if there are any other relatively serious circumstances, the convict shall be sentenced to imprisonment of not more than 3 years or criminal detention, in addition to a fine.

(2) If the amount involved in the corruption scheme is substantial or if there are any other serious circumstances, the convict shall be sentenced to imprisonment of not less than 3 years but not more than 10 years in addition to a fine or forfeiture of property.

(3) If the amount involved in the corruption scheme is substantial or if there are any other serious circumstances, the convict shall be sentenced to imprisonment of not less than 3 years but not more than 10 years, in addition to a fine or forfeiture of property.

Article 389 of Criminal Law:
- If the amount involved in the corruption scheme is substantial, or if there are any other serious circumstances, the convict shall be sentenced to imprisonment of not less than 3 years but not more than 10 years, in addition to a fine or forfeiture of property.
- If the amount involved in the corruption scheme is substantial, or if there are any other serious circumstances, the convict shall be sentenced to imprisonment of not less than 3 years but not more than 10 years in addition to a fine or forfeiture of property.

Article 390 of Criminal Law:
- Whoever commits the crime of offering bribes shall be sentenced to imprisonment of not more than 5 years or criminal detention and a fine. Whoever seeks any illicit benefit by offering bribes or causing any serious loss to the national interest, shall be sentenced to imprisonment of not less than 5 years, but not more than 10 years, in addition to a fine; if the circumstances are especially
### Criminal association

Article 294 of Criminal Law:
- Whoever organizes or leads an organization of a gangland nature shall be sentenced to imprisonment of not less than 7 years and a forfeiture of property;
- Whoever actively participates in an organization of a gangland nature shall be sentenced to imprisonment of not less than 3 years but not more than 7 years and may be sentenced to a fine or forfeiture of property in addition;
- Whoever gets involved in an organization of a gangland nature shall be sentenced to imprisonment of not more than 3 years, criminal detention, control or deprivation of political rights and may be fined in addition.

### Illegal hunting

Article 341 of Criminal Law
- Crime of illegally hunting wild animals (非法狩猎罪)

To be sentenced to not more than 5 years of fixed-term imprisonment or criminal detention, and may in addition be sentenced to a fine. In serious cases, those law offenders are to be sentenced to not less than 5 years and not more than 10 years of fixed-term imprisonment, and may in addition be sentenced to a fine. In especially serious cases, those law offenders are to be sentenced to more than 10 years of fixed-term imprisonment, and in addition to a fine and confiscation of their properties.

### Possession of arms and ammunition

Article 125 of Criminal Law:
- Whoever illegally manufactures, trades, transports, mails, or stocks up guns, ammunition, or explosives (非法制造、买卖、运输、邮寄、储存枪支、弹药、爆炸物罪)

To be sentenced to not less than 3 years but not more than 10 years of fixed-term imprisonment; or not less than 10 years of imprisonment, life imprisonment, or to death if the consequences are serious.

To be sentenced to not more than 3 years of fixed-term imprisonment, criminal detention, or control; when the circumstances are serious, to not less than 3 years and not more than 7 years of fixed-term imprisonment.
<table>
<thead>
<tr>
<th>Possession of war arms</th>
<th>None</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal Enforce</td>
<td></td>
</tr>
<tr>
<td>What law enforcement agencies are in charge of wildlife legislation?</td>
<td>Article 140 of China’s Constitution on the Criminal Prosecution: The people’s courts, the people’s procuratorates and the public security organs shall, in handling criminal cases, divide their functions, each taking responsibility for its own work, and they shall coordinate their efforts and check each other to ensure the correct and effective enforcement of the law.</td>
</tr>
<tr>
<td>At what level are they operating (e.g. national, provincial, local)?</td>
<td>The State Council established the Inter-Ministerial Joint Meeting to Combat Illegal Trade in Wild Fauna and Flora on November 15, 2016. Initially, it was composed of 22 – now 27 – ministerial members, including the most recent members from the Supreme People’s Court (SPC) and the Supreme People’s Procuratorate (SPP). There have been three meetings so far: a first meeting on April 13, 2017; a second meeting on March 29, 2019, and a third meeting on July 30, 2020. The Joint Inter-Ministerial Meeting System aims to enhance interdepartmental coordination, to form synergies and to improve effectiveness of law enforcement. Currently, the State Forestry and Grassland Administration leads the system. Other members include: Central Propaganda Department, Ministry of Foreign Affairs, National Development and Reform Commission, Ministry of Industry and Information Technology, Ministry of Public Security, Ministry of Finance, Ministry of Ecology and Environment, Ministry of Transport, Ministry of Agriculture and Rural Affairs, Ministry of Culture and Tourism, Health Commission, General Administration of Customs, General Administration of Market Regulation, General Administration of Radio, Film and Television, International Development Cooperation Agency, Central Network Information Office, Chinese Academy of Sciences, Railway Administration, Civil Aviation Administration, Post Office, Bureau of Antiquities, Bureau of Chinese Medicine, Coast Guard, Railway General Corporation, SPP and SPC.</td>
</tr>
<tr>
<td>Within law enforcement agencies, are there any departments dedicated to wildlife legislation?</td>
<td>At the central level, the SFGA Department of Wildlife Protection is responsible for enforcing wildlife legislation. Similar authorities at the local and regional level are dedicated to wildlife legislation enforcement, alongside other authorities.</td>
</tr>
<tr>
<td>Are there community-based initiatives to enforce wildlife legislation? If so, is it regulated by law or ad hoc agreements?</td>
<td>Community patrols and community members may help and assist with monitoring activities.</td>
</tr>
<tr>
<td>Are there other actors involved in wildlife legislation enforcement? If so, please specify who is involved and how.</td>
<td>Administrative authorities:</td>
</tr>
<tr>
<td></td>
<td>• Wild animal conservation authority;</td>
</tr>
<tr>
<td></td>
<td>• Oceanic law enforcement authority;</td>
</tr>
<tr>
<td></td>
<td>• Administrative authority for the nature reserves or protected areas;</td>
</tr>
<tr>
<td></td>
<td>• Market regulatory bureaus;</td>
</tr>
<tr>
<td></td>
<td>• Custom offices.</td>
</tr>
<tr>
<td></td>
<td>These administrative authorities will transfer criminal cases to:</td>
</tr>
<tr>
<td></td>
<td>• Public security bureaus;</td>
</tr>
<tr>
<td></td>
<td>• Procuratorates.</td>
</tr>
<tr>
<td>In case of a transboundary offence, how are investigations coordinated between law enforcement agencies?</td>
<td>In 2012, the Chinese government took the lead in organising “Operation Cobra” in early 2013 with the participation of 22 countries. Subsequently, in 2013 and 2015, the Chinese government initiated and led two successive operations, code-named Cobra II and Cobra III. According to CITES, Operation Cobra II included the first ever joint China-Africa undercover sting operation that identified and arrested members of a major ivory trafficking syndicate. The initiative expanded significantly in 2015, lasting more than two months and featuring the participation of 62 countries’ law enforcement agencies and operations in Europe as well as Africa and Asia.168 The Chinese government also joined the most recent global wildlife enforcement operation, code-named Operation Thunderball in June 2019.</td>
</tr>
</tbody>
</table>

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<table>
<thead>
<tr>
<th>Criminal Procedures</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>What is the law system in the country (e.g. civil law, common law, etc. ...)?</td>
<td>Civil law system</td>
</tr>
</tbody>
</table>
| Which administration/institution is in charge of prosecuting against wildlife offences? What is the process? | (1) Identification/filing case within administrative system  
“Where, in the process of investigating wildlife law violations, and on the basis of the amount of money involved in, the circumstances and consequences of the offences, the wildlife protection authority or any other relevant administrative agency enforcing the laws suspects that a crime is constituted and the criminal liabilities are to be investigated, the administrative agencies shall transfer the case to the public security organ.” (Article 3 of Provisions on the Transfer of Susceptible Criminal Cases by Administrative Organs to Law Enforcement (2020 Revision)).  
(2) Transfer suspected criminal case to public security bureau  
The public security bureau shall examine the transferred case within three days after receiving it. When the public security organ finds criminal facts and liabilities worth being investigated into, it files the case in accordance with the law and notifies in writing the administrative authority that transferred the case.  
When the public security organ finds no criminal facts or the facts are obviously minor, and decides not to file the case, it will state its reasoning, notify in writing the administrative agency for law enforcement, and return the file and documents to the administrative agency. (Article 8 of Provisions on the Transfer of Susceptible Criminal Cases by Administrative Organs to Law Enforcement (2020 Revision)).  
(3) Public security bureau decides whether to investigate the case.  
The public security bureau shall examine the transferred case within three days after receiving it. When the public security organ finds criminal facts and liabilities worth being investigated into, it files the case in accordance with the law and notifies in writing the administrative authority that transferred the case.  
When the public security organ finds no criminal facts or the facts are obviously minor, and decides not to file the case, it will state its reasoning, notify in writing the administrative agency for law enforcement, and return the file and documents to the administrative agency. (Article 8 of Provisions on the Transfer of Susceptible Criminal Cases by Administrative Organs to Law Enforcement (2020 Revision)).  
(4) Initial public prosecution.  
A people’s procuratorate shall within one month, take a decision on a case transferred by a supervisory authority or public security authority for prosecution. For a significant or complicated case, the period may be extended by 15 days.  
If the criminal suspect admits his/her guilt and accepts punishment, and the conditions for the application of the fast-track sentencing procedure are met, the decision shall be made within 10 days. The period can be extended to 15 days if the criminal suspect is sentenced to fixed-term imprisonment of more than one year. (Article 172 of Criminal Procedure Law).  
(5) Case filing by prosecutors with the court.  
When the prosecutor believes the facts of a case are clear enough, the evidence is sufficient, and that the criminal suspect can be held liable on criminal grounds, he/she shall initiate a public prosecution in a people’s court, and transfer the case file and evidence to the people’s court. (Article 176 of Criminal Procedure Law). |
| How is the judicial system organised (e.g. courts of first instance, appellate courts, higher courts, etc...)? | Courts in China are organised into four levels:  
• The Supreme People’s Court (the SPC) sits on top as the highest court in the country.  
• Provincial high people’s courts are the highest courts in each of the provinces,  
• Intermediate people’s courts, and  
• Basic/Primary people’s courts.  
Courts at the last two levels are collectively referred to as local courts. Basic level people’s courts can hear most criminal cases of first instance, except for crimes that carry a maximum penalty of death or life imprisonment, or if they involve national security and terrorism concerns. |
| Which types of Court are competent to prosecute wildlife-related offences? | All levels of people’s courts are competent to prosecute wildlife-related offences in China. |
| Is legal representation provided to the defendant? | There is no public defender system in China. Defendants that are eligible for legal aid can apply for free legal representation from the justice bureaus. |

169 The Organic Law of the People’s Courts (人民法院组织法, “the Law”) provides for China’s court system and the internal structure of Chinese courts. The Law was enacted in 1979 and has been amended four times respectively in 1983, 1996, 2006, and 2018.
<table>
<thead>
<tr>
<th>Question</th>
<th>Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Can the criminal judge award damages?</td>
<td>Yes</td>
</tr>
<tr>
<td>How are damages determined? Is the trophy value considered in determining the damages?</td>
<td>Following the Notice of the Supreme People’s Court, the Supreme People’s Procuratorate and the State Forestry Administration on the Verification of the Value of Terrestrial Wildlife Products Listed in Appendix I and Appendix II of CITES Involved in Criminal Cases of Destruction of Wildlife Resources (2012)</td>
</tr>
</tbody>
</table>
# ANNEX III  KEY PROVISIONS UNDER THE WILDLIFE PROTECTION LAW

<table>
<thead>
<tr>
<th>Offences</th>
<th>Provisions</th>
<th>Penalties</th>
</tr>
</thead>
</table>
| Illegal hunting of wildlife                        | Articles 20-24: In nature reserves, in areas closed to hunting (and fishing), hunting and catching of wildlife and other activities, which are harmful to the living and breeding of wildlife, shall be prohibited.  
Hunting, catching, or killing of wildlife under state protection shall be prohibited.  
For wildlife not under state protection, hunting licences must be obtained from relevant government agencies.  
Hunting wildlife with illegal hunting tools and methods shall be prohibited. | Article 45: Anyone who hunts wildlife under special state protection in a nature reserve or during a season closed to hunting (or fishing) shall face the following penalties:  
- Confiscation of catch, hunting equipment and unlawful income;  
- Withdrawal of hunting permits;  
- Fines between two to ten times the value of the catch;  
- In the absence of a catch, fines between 10,000 and 50,000 yuan.\(^{170}\)  
Where this constitutes a crime, criminal liability will be pursued in accordance with criminal law provisions. |
| Illegal sale, purchase or utilisation of wildlife under special state protection | Article 27: Sale, purchase and utilisation of wildlife, or wildlife products, under special state protection, shall be prohibited.  
Article 30: Production and food trade made from national protected wildlife is illegal. Purchase of wildlife under national protection, and for food consumption purposes, is also prohibited. | Articles 46-49: Anyone who sells, purchases, uses, transports, carries or delivers wildlife under national protection without permission, without a special marking or in violation of the prescriptions of the special marking, or without holding or presenting a captive breeding permit or permission document or a special marking, shall face the following penalties:  
- Confiscation of wildlife, or wildlife products, and income deriving from the sale and purchase;  
- Fines of two to ten times the value of wildlife and wildlife products;  
- Withdrawal of the captive breeding permit if circumstances are serious.\(^{172}\)  
Where this constitutes a crime, criminal liability will be pursued in accordance with criminal law provisions.  
In cases of sale, purchase, use, transport, or carriage of wildlife, or wildlife products, not under state protection, but without documents proving its legal origins, the wildlife, or wildlife products and the income deriving from its sale |

\(^{170}\) Approx. between USD 1,500 and USD 8,000.  
\(^{171}\) Approx. between USD 300 and USD 1,500.  
\(^{172}\) Administrative agencies are in charge of determining whether the circumstances are serious enough.
| Smuggling of protected wildlife species | Articles 35-37: The import and export of wildlife, and wildlife products listed under CITES and the national classification, shall be approved by wildlife supervision agencies of the State Council. Quarantine inspections and customs clearance procedures must also be followed. The government shall organise international cooperation on wildlife protection, and establish cross-departmental coordination mechanisms to combat and prevent illegal wildlife trade. The wildlife protection department under the State Council shall approve the introduction of wildlife species from outside of China. |
| Falsification of documents | Article 39: Forgery, modification, sale, purchase, transfer, borrowing or lending of special hunting and catching licences, hunting licences, captive breeding permits, special labels, documents allowing the sale, purchase or utilisation of wildlife, or wildlife products, under special state protection, import and export permits, is prohibited. |
| | Article 52: Customs, public security bureaus, and department of maritime law enforcement have jurisdiction to prevent any illegal import or illegal export. Where this constitutes a crime, criminal liability will be pursued in accordance with criminal law. |
| | Article 53: Any introduction of wildlife from outside of mainland China shall be punishable by: • Confiscation of wildlife and wildlife products; • Fines between 50,000-250,000 yuan; and • Fines in accordance with the relevant legislation on animal quarantine in cases where the relevant quarantine inspections are not carried out. |
| | Article 55: Breach of Article 39 results in the seizure of the forged documents, and of any income permitted by the use of such document. The perpetrator will also be fined between 50,000 and 200,000 yuan. Where this constitutes a crime, criminal liability will be determined in accordance with the law. |
ANNEX IV
SUPREME PEOPLE’S COURT JUDICIAL INTERPRETATION ON THE APPLICATION OF THE LAW IN CRIMINAL CASES INVOLVING THE DESTRUCTION OF WILDLIFE RESOURCES [ENGLISH TRANSLATION]

Supreme People’s Court Judicial Interpretation on the application of the law in criminal cases involving the destruction of wildlife resources, adopted by the Committee of the Supreme People’s Court at its 1141st meeting on 17 November 2000, is hereby promulgated and shall take effect from 11 December 2000.

In order to punish criminal activities destroying wildlife resources in accordance with the law, based on relevant provisions of the Criminal Law, a number of issues concerning the specific application of the law in the examination of such cases are explained as follows:

Article 1: The term “precious and endangered wildlife”, found in Article 341(1) of the Criminal Law includes Class I and Class II protected wildlife of the National Directory of Key Protected Wild Animals, wildlife species listed in Appendix I and Appendix II to the Convention on International Trade in Endangered Species of Wild Fauna and Flora, and specified domesticated and bred species.

第一条 刑法第三百四十一条第一款规定的“珍贵、濒危野生动物”，包括列入国家重点保护野生动物名录的国家一、二级保护野生动物、列入《濒危野生动植物种国际贸易公约》附录一、附录二的野生动物以及驯养繁殖的上述物种。

Article 2: The term “acquisition” found in Article 341(1) of the Criminal Law includes acts of purchase for profit, self-use, etc.; the term “transportation” includes transportation by means of carrying, mailing, using others, using transportation vehicles, etc.; and the term “sale” includes sale and processing for profit-making purposes.

第二条 刑法第三百四十一条第一款规定的“收购”，包括以营利、自用等为目的的购买行为；“运输”，包括采用携带、邮寄、利用他人、使用交通工具等方法进行运送的行为；“出售”，包括出卖和以营利为目的的加工利用行为。

Article 3(1): Illegal hunting, killing, acquisition, transportation or sale of precious or endangered wildlife shall be considered a “serious offence” if:

(1) the crime reaches the respective quantitative standards applicable to the species, as set out in the Appendix of this document; or

(2) in cases where the crime involves several precious or endangered species, for at least two or more species the crime reaches more than half of the applicable quantitative standards for “serious circumstances”, as listed in the Appendix of this document.

Article 3(2): Illegal hunting, killing, acquisition, transportation or sale of precious or endangered wildlife shall be considered an “especially serious offence” if:  

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非法猎捕、杀害、收购、运输、出售珍贵、濒危野生动物具有下列情形之一的，属于“情节特别严重”：

（一）达到本解释附表所列相应数量标准的；
（二）非法猎捕、杀害、收购、运输、出售不同种类的珍贵、濒危野生动物，其中两种以上分别达到附表所列“情节特别严重”数量标准一半以上的。

Article 4: Illegal hunting, killing, acquisition, transportation or sale of precious or endangered wild animals shall be considered a “serious offence” under one of the following circumstances:

(1) the crime involves a criminal group;
(2) the crime seriously affects the smooth conduct of scientific research and breeding of wild animals;
(3) the crime was committed using arms;
(4) the crime was committed using special vehicles, military vehicles, or other vehicles;
(5) the crime caused other significant losses.

Illegal hunting, killing, acquiring, transporting or selling precious or endangered wild animals may be regarded as a “particularly serious offence” if the crime meets the criteria listed in Article 3(1) of this document, in addition to meeting one of the criteria listed herein above in Article 4.

非法猎捕、杀害、收购、运输、出售珍贵、濒危野生动物构成犯罪，具有下列情形之一的，可以认定为“情节严重”；非法猎捕、杀害、收购、运输、出售珍贵、濒危野生动物符合本解释第三条第一款的规定，并具有下列情形之一的，可以认定为“情节特别严重”：

（一）犯罪集团的首要分子；
（二）严重影响对野生动物的科研、养殖等工作顺利进行的；
（三）以武装掩护方法实施犯罪的；
（四）使用特种车、军用车等交通工具实施犯罪的；
（五）造成其他重大损失的。

Article 5(1): Illegal acquisition, transportation or sale of precious or endangered wildlife products under one of the following circumstances shall be considered a “serious offence”:

(1) if the value of the products is equal to, or superior to, 100,000 yuan;
(2) if illegally obtained profits are equal to, or greater than, 50,000 yuan;
(3) if any other serious circumstances are present.

第五条 非法收购、运输、出售珍贵、濒危野生动物制品具有下列情形之一的，属于“情节严重”：

（一）价值在十万元以上的；
（二）非法获利五万元以上的；
（三）具有其他严重情节的。

Article 5(2): Illegal acquisition, transportation or sale of precious or endangered wildlife products under one of the following circumstances shall be considered an “especially serious offence”: 
(1) if the value of the products is equal to, or superior to, 200,000 yuan;

(2) if illegally obtained profits are equal to, or greater than, 100,000 yuan;

(3) if any other serious circumstances are present.

非法收购、运输、出售珍贵、濒危野生动物制品具有下列情形之一的，属于“情节特别严重”：

（一）价值在二十万元以上的；

（二）非法获利十万元以上的；

（三）具有其他特别严重情节的。

Article 6: Any person who, in violation of hunting regulations, hunts in a prohibited area, during a prohibited period or with prohibited tools or methods, and who presents any of the following circumstances, is considered to be engaged in illegal hunting “with aggravating circumstances”:

(1) Illegally hunts more than twenty wild animals;

(2) Uses prohibited tools or methods in hunting areas or during hunting periods in violation of hunting regulations;

(3) Presents any other serious circumstances.

第六条 违反狩猎法规，在禁猎区、禁猎期或者使用禁用的工具、方法狩猎，具有下列情形之一的，属于非法狩猎“情节严重”：

（一）非法狩猎野生动物二十只以上的；

（二）违反狩猎法规，在禁猎区或者禁猎期使用禁用的工具、方法狩猎的；

（三）具有其他严重情节的。

Article 7: Whoever uses dangerous methods such as explosives, poison or power grids when illegally hunting or killing precious or endangered wildlife, shall be convicted and punished in accordance with the heaviest penalty under the Criminal Law.

第七条 使用爆炸、投毒、设置电网等危险方法破坏野生动物资源，构成非法猎捕、杀害珍贵、濒危野生动物罪或者非法狩猎罪，同时构成刑法第一百一十四条或者第一百一十五条规定的，依照处罚较重的规定定罪处罚。

Article 8: Any person committing an offence provided for in Article 341 of the Criminal Law who resists investigation by means of violence or threats, amounting to a criminal level, shall be punished in accordance with the provisions on combined punishment for several crimes.

第八条 实施刑法第三百四十一条规定的犯罪，又以暴力、威胁方法抗拒查处，构成其他犯罪的，依照数罪并罚的规定处罚。

Article 9: Whoever forges, alters, buys or sells documents issued by state organs for the import and export of wild animals – such as import and export certificates, hunting certificates, breeding licenses – shall be convicted and punished for forgery, alteration or sale of official documents and certificates issued by state organs, in accordance with Article 280(1) of the Criminal Law.

Whoever commits the above-mentioned acts also engages in the crime of illegal operation, defined in Article 225(2) of the Criminal Law. He shall be convicted and punished with heavier penalties.

第九条 伪造、变造、买卖国家机关颁发的野生动物允许进出口证明书、特许猎捕证、狩猎证、驯养繁殖许可证等公文、证件构成犯罪的，依照刑法第二百八十条第一款的规定以伪造、变造、买卖国家机关公文、证件罪定罪处罚。
实施上述行为构成犯罪，同时构成刑法第二百二十五条第二项规定的非法经营罪的，依照处罚较重的规定定罪处罚。

Article 10: Criteria determining what constitutes “serious circumstances” and “particularly serious circumstances” in cases involving non-native wildlife species listed in CITES are, for species of the same genus, the criteria applied to nationally protected wildlife species, as stated in Article 3 and Article 4 of this document. This also applies to species that are not from the same genus but from the same family.

第十条 非法捕、杀害、收购、运输、出售《濒危野生动植物种国际贸易公约》附录一、附录二所列的非原产于我国的野生动物“情节严重”、“情节特别严重”的认定标准，参照本解释第三条、第四条以及附表所列与其同属的国家一、二级保护野生动物的认定标准执行；没有与其同属的国家一、二级保护野生动物的，参照与其同科的国家一、二级保护野生动物的认定标准执行。

Article 11: The value of precious or endangered wildlife products shall be decided in accordance with the provisions of the competent department in charge of wildlife protection. If the approved value is lower than the transaction price, the transaction price is applicable.

第十一  珍贵、濒危野生动物制品的价值，依照国家野生动物保护主管部门的规定核定；核定价值低于实际交易价格的，以实际交易价格认定。

Article 12: If a unit commits a crime defined in Article 341 of the Criminal Law, the standard of conviction and sentencing shall be implemented in accordance with the relevant provisions.

第十二条 单位犯刑法第三百四十一罪之罪，定罪量刑标准依照本解释的有关规定执行。
Article 9(1): Smuggling animals under first-class or second-class state protection below the quantitative criteria set out in Appendix (1) of this document, or smuggling products of rare and precious animals valued less than 200,000 yuan, may be deemed a “minor offence” in accordance with Article 151(2) of the Criminal Law.

第九条 走私国家一、二级保护动物未达到本解释附表中（一）规定的数量标准，或者走私珍贵动物制品数额不满二十万元的，可以认定为刑法第一百五十一条第二款规定的“情节较轻”。

Article 9(2): A person shall be sentenced to imprisonment for a term of not less than five years and not more than ten years in accordance with Article 151(2) of the Criminal Law, in addition to paying a fine, if:

(1) The quantity of smuggled animals under first-class or second-class state protection reaches the quantitative criteria set out in Appendix (1) to this document; or

(2) The value of products from rare and precious animals is worth more than 200,000 yuan but less than one million yuan; or

(3) The quantity of smuggled animals under first-class or second-class state protection does not reach the quantitative criteria set out in Appendix (1) to this document, but these rare and precious animals are dead or unable to recover.

具有下列情形之一的，依照刑法第一百五十一 条第二款的规定处五年以上十年以下有期徒刑，并处罚金：
（一）走私国家一、二级保护动物达到本解释附表中（一）规定的数量标准的；
（二）走私珍贵动物制品数额在二十万元以上不满一百万元的；
（三）走私国家一、二级保护动物未达到本解释附表中（一）规定的数量标准，但具有造成该珍贵动物死亡或者无法追回等情节的。

Article 9(3): Any of the following circumstances shall be deemed an “especially serious circumstance” as mentioned in Article 151(2) of the Criminal Law:

(1) The quantity of smuggled animals under first-class or second-class state protection reaches the quantitative criteria set out in Appendix (2) to this document;

(2) The value of products from rare and precious animals is worth more than one million yuan;

(3) The quantity of smuggled animals under first-class or second-class state protection reaches the quantitative criteria set out in Appendix (1) to this document, and the crime is committed by the ringleader of a criminal gang, or by using special vehicles, or has led to the death of rare and precious animals.

具有下列情形之一的，应当认定为刑法第一百五十一条第二款规定的“情节特别严重”：
（一）走私国家一、二级保护动物达到本解释附表中（二）规定的数量标准的；
（二）走私珍贵动物制品数额在一百万元以上的；
（三）走私国家一、二级保护动物达到本解释附表中（一）规定的数量标准，且属于犯罪集团的首要分子，使用特种车辆从事走私活动，或者造成该珍贵动物死亡、无法追回等情形的。

Article 9(4): Anyone smuggling rare and precious animals into China, for a value less than 100,000 yuan, and for personal use, may be exempted from criminal punishment. If the circumstances are clearly negligible, it is not considered a crime.

不以牟利为目的，为留作纪念而走私珍贵动物制品进境，数额不满十万元的，可以免除刑事处罚；情节显著轻微的，不作为犯罪处理。

Article 10(1): The term “rare and precious animals” as mentioned in Article 151(2) of the Criminal Law includes wild animals listed in the National Directory of Key Protected Wild Animals, wild animals listed in Appendices I and II of CITES, and aforementioned domesticated and bred animals.

第十条 刑法第一百五十一条第二款规定的“珍贵动物”，包括列入《国家重点保护野生动物名录》中的国家一、二级保护野生动物，《濒危野生动植物种国际贸易公约》附录Ⅰ、附录Ⅱ中的野生动物，以及驯养繁殖的上述动物。

Article 10(2): The smuggling of rare and precious animals not mentioned in the Appendix to this document shall be prosecuted by reference to the quantitative criteria set out in the Appendix for animals of the same genus or family.

走私本解释附表中未规定的珍贵动物的，参照附表中规定的同属或者同科动物的数量标准执行。

Article 10(3): The smuggling of products from rare and precious animals is not mentioned in the Appendix to this document and shall be evaluated in accordance with the Notice on the appraisal of products from CITES-listed wildlife found in criminal cases, and issued by the Supreme People’s Court, the Supreme People’s Procuratorate, the State Forestry Administration, the Ministry of Public Security, and the General Administration of Customs (No. 239 [2012]).

走私本解释附表中未规定珍贵动物的制品的，按照《最高人民法院、最高人民检察院、国家林业局、公安部、海关总署关于破坏野生动物资源刑事案件中涉及的 CITES 附录 I 和附录 II 所列陆生野生动物制品价值核定问题的通知》（林濒发〔2012〕239 号）的有关规定核定价值。