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Training module under project “Co-operation with national judges in the field of environmental law under the European Commission Framework Contract ENV.A.I/FRA/2012/0018” on

HOW TO ENFORCE EU LEGISLATION ON BIODIVERSITY AND WILDLIFE TRAFFICKING

20-22 April 2016, Madrid (Spain)

Wildlife Crime Case Study

You are a prosecutor. An anonymous letter (see Document A) arrives at your office.

You contact the International Consortium on Combating Crime and it provides you with a briefing about wildlife crime related to rhinoceroses (see Document B).

You must now decide:

1. Which agency or agencies to instruct to conduct an investigation;
2. What instructions and guidance you should give them;
3. Which legislation may be relevant for the investigation and any subsequent prosecution; and
4. What actions you might take now to assist an investigation.

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Document A

Someone should do something about George Brown. He is in South Africa at the moment hunting rinos. This is the forth time he has been there in two years.

It is very suspisous because when he gets home he sels the horns to his wife's brother. His name is James White and he owns a antique shop in Antwerp.

George must be making lots of money because he has just got a brand new Mercedes and he went on holiday to the Maldives at Christmas. A trip like that must have been very expensive.

He used to give me money to smuggle drugs for him from Thieland. But he will not tell me how selling rino horns brings so much cash and he refuses to cut me in. That is why he deserves to be reported.

He lives in a house opposite the Golden Goose bar in Insbruck.

I hope you catch him and put him in jail. That will teach him to turn his back on me.

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Document B

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Wildlife trafficking – an overview related to rhinoceros

Introduction

Trade in wildlife involves live animal and plant specimens, parts of animals and plants, and products made from animals and plants. On many occasions, aside from accompanying documentation (which can be counterfeited, forged, altered or corruptly obtained), it can be difficult to distinguish legally-acquired items from those obtained through poaching or illegal harvesting. Consequently, wildlife is a commodity that holds attractions for criminal networks that may be discouraged from dealing in more obviously illegitimate products such as narcotics or pornography.

Wildlife crime is also widely regarded as low-risk but high-profit. Relatively few nations currently have laws that penalize trafficking in fauna and flora in a manner equivalent to the sentences imposed upon, for example, drug or arms dealers. Legislative weaknesses also tend to restrict the investigatory techniques that can be brought to bear. Illicit trade in animals and plants is seldom a priority for law enforcement agencies and it may receive limited attention from prosecution authorities too. At the same time, however, some forms of wildlife generate financial returns which equal or exceed those emanating from illegal dealing in heroin, gold or diamonds.

Although the profits to be made from illicit trade in fauna and flora are potentially substantial in and of themselves, such activities also provide opportunities for organized crime groups to launder their proceeds from other law-breaking. Funds ‘washed’ in this way can produce commodities that will appear legal and which can be traded either openly or, should there be grounds for suspicion on the part of the authorities, entered into clandestine markets.

The apparently legitimate acquisition of rhinoceros horn is an excellent illustration of this.

Background

The horn of the rhino has long been regarded as an important ingredient of traditional Asian medicines and is used to treat a number of medical conditions, particularly fevers and even cerebrovascular

disease. Carved and polished, horns have also been used for decorative purposes; for instance being converted into drinking vessels that were prized by emperors of China many centuries ago.

Unsustainable hunting and poaching dramatically reduced the various species of rhinoceros to a point where they became seriously endangered in their natural habitats throughout Africa and Asia. Domestic trade in rhino horn, aside from antique objects, was outlawed across the globe in the 1990s.

South Africa, however, proved to be an exception and conservation management by its government and owners of private reserves maintained relatively large populations of these animals. So much so, that the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), which regulates trade in wildlife, permitted the government of South Africa to authorize the export of horns acquired as 'trophies' during legal hunting. Until the early 2000s, such hunting appeared to be conducted in a *bona fide* and legitimate manner. It was around that time, though, that a marked increase was noted in rhino hunting with, initially, no immediately obvious explanation.

Rhino hunting

Rhinoceros hunting in South Africa is, historically, an activity normally conducted by foreign visitors – like the 'big game hunter' of literature and movie fame. The majority of genuine hunters are wealthy individuals from North America and Europe. The average tourist cannot spontaneously participate in this style of hunting, as it requires considerable planning and preparation. Hunting licences must be applied for, professional guides hired, a hunting company selected to arrange trackers, in-country transport, accommodation, subsequent taxidermy, etc.

In 2005, the average fee charged by a company for a rhino hunt was the equivalent of USD 19,500. This had risen to 80,000 by 2008 and some companies were charging 100,000 in 2011. Alongside the dramatic increase in prices, it was also noted that hunters from Viet Nam, a country with no tradition or history in stalking big game, began to grossly outnumber those arriving from anywhere else in the world. Many Vietnamese hunters appeared to have no hunting expertise or experience. Additionally, the hunters wished to take the rhino horns back to Viet Nam with them as soon as the hunt was completed, as opposed to the traditional practice of them being sent on later following taxidermy and trophy mounting processes.

Why rhino horn?

Although these changes in hunting patterns, practices and trends began to attract suspicion among the authorities, what was driving them remained unclear. The principle historical requirements for horn had apparently been radically reduced during the 1990s and early 2000s and, consequently, there was no apparent explanation for the upsurge in demand. However, it was finally learned that a belief had emerged in Viet Nam, and was spreading rapidly, that crushed rhino horn was an effective treatment for cancer. This appeared to be the main driving force behind what, by then, could clearly be seen as fraudulent trophy hunting, as it became apparent that the horns taken back to Viet Nam were passing into illicit trade. Border control agencies were hampered in responding, since the horns leaving South Africa and entering Viet Nam were being transported by persons in possession of valid CITES export permits.

However, it appears that some traditional demands, such as treatment for stroke victims, were also re-emerging, alongside a very significant growth in interest and trade in antique rhino horn *objets*

d'art. It would subsequently be discovered that some horns were being acquired with the intention of them being treated to resemble antique items. Given that one, apparently genuine, rhino horn antique sold at auction in 2010 for USD 900,000, the attraction of potential profitable fraud to organized crime groups was obvious.

Making the numbers add up

In the early stages of illicit trade in Viet Nam, a rhinoceros horn could reportedly be sold on the black market for anywhere between USD 10,000 to 60,000. By 2014, a kilogramme of horn could allegedly attract USD 70,000 in a number of countries.

When news of the demand in Viet Nam first broke, together with indications of the amounts then being paid for horns, this made no sense when compared against the very substantial fees being paid by those engaged in pseudo-hunting. It did not appear to be financially viable to engage in such activities, which also necessitated the additional costs associated with travel and other ancillary expenses.

It did, however, make sense when one realized that this enabled illegally-acquired monies to be laundered in order to obtain something, in this case a rhino horn, which would ostensibly be legitimate, certified as such by an accompanying CITES document, and the possession of which could not be challenged by the authorities in Viet Nam or other country of import. Although the horn's subsequent use might be illegitimate, that first-stage legality would suffice.

At this point it became understandable why individuals were being recruited and funded to travel to South Africa to criminally exploit the legal hunting opportunities. As time passed, some networks did not bother to dispatch individuals from Viet Nam but, instead, recruited expats based in South Africa to pose as hunters. And, as suspicion fell more and more upon Vietnamese citizens, other nationals were used, with the situation becoming so ludicrous that Thai women, employed as lap dancers in Johannesburg nightclubs, were paid to pose as big game hunters. When the involvement of nationals of Thailand attracted suspicion, pseudo-hunters from the Czech Republic started to arrive.

Those laundering money through these processes did not only obtain a legitimate item in the form of a rhino horn, it also allowed them to acquire a CITES export permit. That document, which ought to be surrendered to Customs at the point of import (whether in Viet Nam, Thailand or the Czech Republic), often was not. Instead, the pseudo hunter would simply enter his home country without declaring possession of the horn. If challenged, he could claim ignorance of the requirement. Once in possession of a genuine CITES permit, the organized crime group could then use it to 'cover' the movement of horns, obtained through poaching, and which were smuggled from South Africa by couriers. If such a courier was intercepted or questioned by border control officials, they would present the permit to justify and explain their possession.

Although some commercial hunting operators communicated their suspicions to the authorities, since it was obvious that an ever-increasing number of clients were bogus, many did not. Instead, they increased their fees and looked upon rhino horn trophies as golden eggs laid by the proverbial goose. Since hunting was, at that time, regulated at a provincial level, with export permits also being issued by provincial CITES offices, it took several years before central government in South Africa appreciated

how officials were being duped and hunting regulation loopholes being exploited. It seems likely, too, that officials were being bribed to issue hunting licences and CITES documents.

Financial transactions and the implications

It is understood that many of the hunting companies and professional hunters received their fees in cash, either in US dollars or South African Rand. It is presumed these sums were deposited in company or individual private bank accounts. It is also presumed that some of the sums involved would have exceeded national levels established to flag potentially suspicious deposits or transfers. It is not known whether any criminal activities came to light through such flags. Indeed, the deposit of large sums by hunting companies may have been disregarded, and not considered suspicious, since big game hunting has historically mainly been regarded as a *bona fide* and expensive activity, conducted by persons of good character.

The size of funds moved across borders in cash must presumably have regularly exceeded national currency controls in each of the countries involved and perhaps also in countries of transit. This aspect does not appear to have been investigated by the authorities in any of the relevant countries. The transfer of funds to pseudo-hunters must have involved tax evasion in a manner that would be open to investigation. The import of rhino horns into countries of destination must, on many occasions, have been conducted without the mandatory declarations being made. Consequently, such incidents are open to investigation by Customs or other border control or revenue agencies. Such imports will, on many occasions, have been conducted without the relevant import taxes, VAT fees or other Customs duties being paid; again, grounds for investigation.

It is not known whether financial crime units or the Police in any relevant countries have attempted to investigate the financial circumstances or activities of any of the persons engaged in pseudo-hunting. It is clear that many of them had personal situations where the income from their regular employment was insufficient to enable them to purchase a plane ticket to South Africa, let alone subsequently engage in big game hunting. (One pseudo-hunter from Viet Nam, for example, was a self-employed photographer who worked at a tourist spot in Hanoi.) Since each person will have had to apply for hunting licences and CITES documents, their full personal details will be on file in government offices.

The authorities in countries of destination may well have been utterly unaware that their citizens were engaged in such activities, or ignorant of which individuals. It does not seem that there has been a regular exchange of information from South Africa to relevant nations abroad about persons arriving to engage in hunting.

There appear to be ample opportunities and justification for investigations into a range of finance-related matters with regard to trafficking of rhino horn which, to date, have not been fully or even adequately exploited.

Other related criminal activity

Alongside pseudo-hunting, poaching of rhinoceroses has markedly increased in Africa and Asia in the past few years. The manner in which persons have been recruited and equipped to conduct illegal hunting illustrates an organized crime involvement; particularly through the use of sophisticated weapons, tranquilizing chemicals usually restricted to the veterinary surgeon community and even

helicopters to track and kill animals. The smuggling of rhino horns acquired through poaching has also become increasingly refined and has included the abuse of diplomatic immunity.

In 2007 in South Africa, which remains the country with the most animals of the species in the world, 13 rhinos were killed by poachers. By 2014, that number had increased to 1,215. This illustrates how serious the problem has become. The majority of poaching in South Africa appears to be conducted from neighbouring Mozambique and is often conducted by citizens of that country, recruited by organized crime networks. However, South African professional hunters, police officials and park staff also engaged in poaching or helped facilitate poaching. Although many poachers have been arrested and a significant number killed or badly injured during encounters with anti-poaching personnel, the poaching appears to go on unabated. Very lengthy prison sentences, imposed by the courts of South Africa, do not seem to have acted as a deterrent either.

At the same time, illicit acquisition and trafficking in rhino horn has spread to many parts of Europe and North America, with museums being broken into and horns removed from stuffed display animals. Taxidermy premises and the homes of persons in possession of old trophies have been burgled. A national park store in Africa was robbed at gunpoint. Members of an Irish organized crime group toured Europe, Canada and the United States identifying old trophies and either stealing them or negotiating for their illicit purchase. The horns were then moved transnationally in violation of CITES.

Chinese nationals have also engaged in acquisitions in the United States, with the specific intention of the horns being subsequently smuggled to China for conversion into fake antiques.