Executive summary

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

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

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

Key findings

Legislation

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

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

8. Every prosecutor interviewed in the course of this study reported that they have the prosecution of wildlife crime either at the federal level or the state level. For some, the first time they ever considered offences against wildlife was in the course of being interviewed for this report. Awareness of the applicable federal laws and state laws was virtually nil. Coordination with Customs, NESREA, the police, NPS or state-level reserve officers was unheard of in the context of wildlife crime. There are also overlapping mandates between relevant agencies and so a targeted response, at least in the short term, is merited. It is recommended that the focus should be upon making the best use of the existing legal framework using a multi-agency coordinated approach – as stated above, the best laws for prosecuting cases involving large-scale seizures are to be found not in the wildlife-specific laws but customs and money laundering laws. Thus, support should be provided to key agencies with the mandate to enforce such laws, particularly the Customs prosecution department and the Economic and Financial Crimes Commission (EFCC), while bringing in state and federal prosecutors as well as NESREA alongside to build, in parallel, capacity and awareness of these crimes. This must also include appreciation of the relevant evidential laws particularly in relation to admissibility of digital evidence and the requirement of the defendant to prove innocence prior to conclusion of trial (i.e., where subject to decay). Training on plea bargaining provisions and active case management provisions under the Administration of Criminal Justice Act 2015 should also be included, as should discussion and agreement regarding court venue (the High Court may be a better venue for all such cases), the definition of wildlife crime, which has yet to filter down to the states’ high courts and magistrates courts. The culture of adjournments is rife across the country, stymieing even the best investigation and prosecution of any case.

9. The disparity in laws, coupled with a lack of awareness of the existing laws at both the state and federal level means that the use of fines is not even considered by state prosecutors. There are also overlapping mandates between relevant agencies and so a targeted response, at least in the short term, is merited. It is recommended that the focus should be upon making the best use of the existing legal framework using a multi-agency coordinated approach – as stated above, the best laws for prosecuting cases involving large-scale seizures are to be found not in the wildlife-specific laws but customs and money laundering laws. Thus, support should be provided to key agencies with the mandate to enforce such laws, particularly the Customs prosecution department and the Economic and Financial Crimes Commission (EFCC), while bringing in state and federal prosecutors as well as NESREA alongside to build, in parallel, capacity and awareness of these crimes. This must also include appreciation of the relevant evidential laws particularly in relation to admissibility of digital evidence and the requirement of the defendant to prove innocence prior to conclusion of trial (i.e., where subject to decay). Training on plea bargaining provisions and active case management provisions under the Administration of Criminal Justice Act 2015 should also be included, as should discussion and agreement regarding court venue (the High Court may be a better venue for all such cases), the definition of wildlife crime, which has yet to filter down to the states’ high courts and magistrates courts. The culture of adjournments is rife across the country, stymieing even the best investigation and prosecution of any case.

10. The Administration of Criminal Justice Act 2015 and the federal-level practice directions on active case management (aimed at speeding up criminal trial) has yet to filter down to the states’ high courts and magistrates courts. The culture of adjournments is rife across the country, stymieing even the best investigation and prosecution of any case. The lack of any central database for previous convictions is another hurdle – at the state level, prosecutors advised that unless the accused had been sentenced before in that particular court room and was recognised by someone in that court as having been convicted there, there was little prospect of identifying recidivist offenders. This is particularly crucial for certain laws where sentencing is elevated on the basis of a second conviction. Creation of even a limited database for use by the agencies involved in investigation of such crimes would be highly beneficial if that information can be properly shared and made available to the right individuals. The Nigeria CITES Management Authority formed a Joint Task Force in Combating Illegal Trade of Wildlife Resources comprising several agencies such as the police, INTERPOL, Nigeria Customs Service, Nigeria Immigration Service, NESREA, the Ministry of Justice and other agencies through which proper awareness, dissemination and exchange of information can be facilitated. This Task Force, however, is not tailored for operational inter-agency law enforcement collaboration to support investigations and prosecution of wildlife trafficking in the country. A further agreement was reached in 2020 for stakeholders to create a database of seized evidence (including any such seizures); this could and should be extended to include information about both convictions and arrests of accused persons.

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

12. There is no sentencing practice that can be identified in the context of wildlife crime due to the fact that so few cases have been prosecuted. However, Nigeria has a strong framework in relation to sentencing and, with the passage of the federal-level practice directions on sentencing in 2016, it is one of the few countries on the continent that has set out prescriptive sentencing guidelines. However, this only applies to a limited category, namely to conviction of a particular category. Such a code for internal use within Customs could be developed in parallel to prosecution training outlined above in order to build long-term capacity and ensure that all relevant parties to any investigation are aware of the relevant processes and safeguards;
Key recommendations

Legislation

1. To prioritise and review the draft Endangered Species (Control of International Trade and Traffic) Amendment Act 2015 in order to:
   - address the range of offences provided within the draft;
   - ensure a sufficient range of investigative, sentencing and ancillary powers are available;
   - ensure all relevant offences qualify for extradition and mutual legal assistance;
   - harmonise, at a minimum, the range of offences with those contained within the draft Forestry Act and draft National Park Services Act.

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

3. To seek agreement on the power of certain agencies, such as NESREA, to target the building of prosecution capacity within Customs and Customs to either the SWCO or a ‘case progression unit/prosecution unit’ within Customs which, to date, is responsible for the majority of seizures. This would be with a view to decreasing trial times and adjournments. The implementation of existing federal-level practice directions would be included.

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

5. Support to the judiciary and prosecution services in developing drafting and advocacy skills is also recommended. The development of prosecutorial guides on wildlife crime, international cooperation and the implementation of existing federal-level practice directions would be included.

6. Within Customs, there is also appetite for investigator training and the development of codes of conduct/protocols for the exercise of certain powers of investigation, such as search and seizure, arrest, detention and interview. The development and training of these tools could be done in parallel to the prosecution training in order to enhance the investigation and prosecution-led case building capacity within customs. Lessons learned from this could be extended to other agencies, such as NESREA, depending on capacity.

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

Proscriptions

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

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

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

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

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