

# PROSECUTION REVIEW: WILDLIFE CRIME IN VIETNAM 2015-2020





## **OVERVIEW**

ietnam's revised Penal Code came into effect in January 2018. The revised law is much tougher on wildlife crime and, in general, is sufficiently effective in deterring crime if applied universally. By some accounts, the revised Criminal Code is the "ideal law" as it closes loopholes, increases punishment for serious offenses, and incorporates a foundation on which the criminal justice system can effectively deter wildlife crime.

According to the new Penal Code, activities including hunting, catching, killing, rearing, caging, transporting, and/or trading of endangered, precious, and rare species or their parts and derivatives shall be deemed criminal offenses, depending on the number of animals involved.

The revised Penal Code has also added "possession" as a criminal offense, closing a critical loophole that previously allowed criminals to escape with mere fines for keeping frozen tigers, rhino horn, and other endangered species and their products.

Species fully protected under the new Penal Code include endangered species listed under Decree 160 [2013] and its subsequently updated list of protected species under Decree 64 [2019], species listed under Group I of Decree 06, and species listed under Appendix I of CITES.

The Penal Code also affords greater protection to species that are not listed on the aforementioned Decree 64, Decree 06, or Appendix I of CITES, permitting authorities to criminally charge offenders if they are engaged in illegal activities involving large quantities of animals. This new aspect of the Penal Code strengthens the hand of law enforcement dealing with criminal networks that smuggle large quantities of animals such as snakes or freshwater turtles that may not be specifically protected under endangered species laws.



The new Penal Code allows the courts to apply fines of up to VND 2 billion (~ USD 86,000) and prison sentences of up to 15 years for major offenses. This is a substantial increase from the previous version of the Penal Code, which only set a monetary punishment of up to VND 500 million (~ USD 21,500) and a maximum prison term of seven years.

Initially, ENV was cautious when the revised Penal Code was first introduced. Though it appeared to be an excellent law on paper, its true value could only be measured by its application within the criminal justice system.

Now, two years after the Penal Code has been in effect, ENV can report very positive trends occurring. Law enforcement agencies are taking a more serious stance on addressing wildlife crime, and most courts are taking a much stricter approach toward deterring wildlife crime by issuing longer prison sentences to subjects convicted of serious wildlife crimes.

The following report reflects the performance of the criminal justice system in Vietnam in regards to wildlife trafficking cases. These figures have been collected from ENV's Wildlife Crime Incident Tracking Database for all known trafficking cases that occurred during the given years. In each case, ENV follows up with police, prosecutors, and the courts to determine and confirm outcomes.



#### **TERMINOLOGY**

**Criminal case:** A case involving trafficking of wildlife or parts and products of wildlife that is considered a criminal offense under Vietnam's wildlife protection laws. Trafficking cases include transportation, storage, and trade of wildlife, and exclude direct sales to consumers. Generally, but not always, trafficking cases involve quantities of wildlife seized after the animals have been poached and before they are sold or made available directly to consumers.

**Incident date:** The date of a seizure of goods that resulted in arrest and prosecution.

Criminal justice system (CJS): Includes procuracies, courts, and other law enforcement agencies.

#### CRIMINAL TRAFFICKING CASES AND ARRESTS

The following analysis in Graph 1 is based on the reported "incident dates" for criminal trafficking cases between 2015 and 2020. The incident date is beneficial for evaluating the number of cases, arrests, prosecutions, and convictions.



Results in Graph 1 indicate that Vietnam has made substantial progress in enforcing wildlife protection laws over the past few years. The number of wildlife trafficking seizures increased 44% over a two-year period between the start of 2018, when the revised Penal Code came into effect, and the end of 2019.



# 97% of trafficking cases result in arrests

The percentage of seizures which resulted in arrests were quite consistent between 2015 and the end of 2019, with an average of 86.7% of all criminal trafficking cases resulting in the arrest of one or more subject(s). However, during the first six months of 2020, the number of arrests jumped to 97.2% with 36 out of 37 criminal cases resulting in arrests.



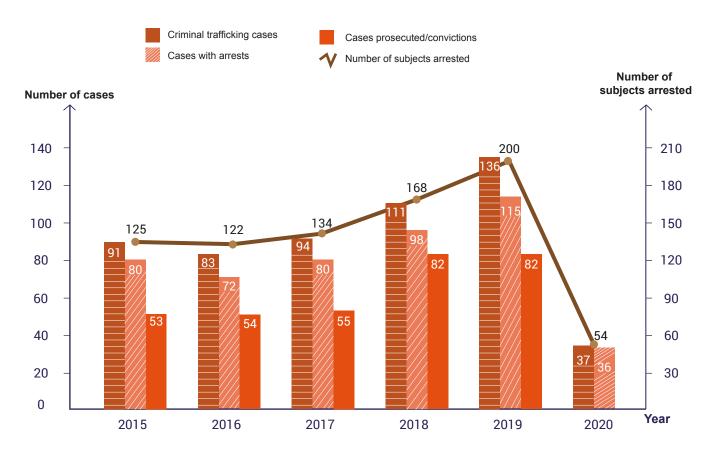
# 84% of cases with arrests result in prosecution

From 2015-2019, the rate of criminal trafficking cases where arrests resulted in the prosecution of one or more subject(s) remained more or less consistent at about 73%.

Notably, 2018 was the best performing year thus far, with 82 of 98 (83.6%) arrest cases resulting in a prosecution.

However, 2019 may surpass 2018 in performance, as 19 prosecutions from 2019 are pending conclusion. Following these verdicts, it is likely the 2019 percentage of prosecution after arrest will exceed 88%.

Graph 1: Arrests and prosecutions of reported trafficking cases



<sup>\*</sup> Prosecution data for 2020 includes 34 cases that are currently pending prosecution, or for which the outcome is unknown. As a result, 2020 data should not be interpreted to reflect current prosecution and conviction rates.

\*\* 2019 prosecution/conviction data does not reflect the results of 19 cases that are currently pending prosecution.



#### **PROSECUTION OUTCOMES**

Graph 2 and Table 1 include prosecution data collected by verdict date. By examining prosecutions by trial date rather than the date of the incident, the performance of the courts can better be evaluated during any given period.

Data by verdict date will differ from the figures shown in Graph 1, as Graph 2 and Table 1 ONLY reflect cases trialed during a given year, where trialed cases may involve seizures and arrests from previous years.

It is noteworthy to recognize that prosecutions from criminal arrests that occurred in 2018 averaged 5.29 years, suggesting the revised Penal Code had an immediate and substantial impact on sentencing in the courts, though the below graph does not reflect this data for the above mentioned reason.

68% of all convictions result in prison sentences

As illustrated in Table 1, in 2018 and 2019, roughly 48% of all wildlife trafficking cases resulted in one or more subject(s) going to prison. The remaining 52% received other forms of punishment such as suspended sentences or probation.

However, during the first six months of 2020, the number of cases resulting in prison sentences for one or more subject(s) jumped from 48% to nearly 68%. This suggests the courts are taking a much more assertive stance to wipe out wildlife crime in 2020 than in previous years.

2020 average prison sentence for wildlife traffickers is 4.5 years

Another important and notable development following implementation of the revised Penal Code has been a substantial increase in the length of prison sentences handed down by the courts since 2018.

Prior to enactment of the revised Penal Code, the average prison sentence given to a wildlife trafficker was 1.25 years. However, starting in 2018, the average prison sentence more than doubled to 3.04 years. In 2019, prison sentences increased again to average 4.66 years, and during the first six months of 2020, the average prison term remained stable at 4.49 years (Graph 2).

**Note:** 2018 court performance reflects many cases that occurred during 2017 or earlier, and thus, punishment was dictated under the previous Penal Code.



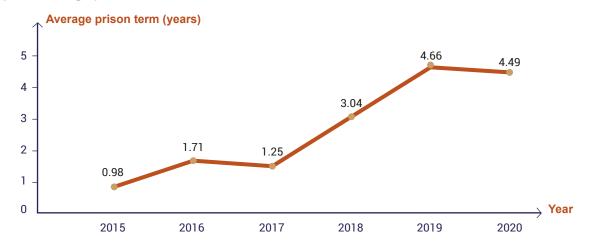


Table 1: Court performance summary [by verdict date]

Year	Prosecutions	Cases resulting in prison sentences	% Cases resulting in prison sentences	No. of subjects sentenced to prison				
2015	24	11	45.8%	15				
2016	53	23	43.3%	23				
2017	64	19	29.6%	29				
Revised Penal Code in effect								
2018	58	28	48.3%	36				
2019	87	42	48.3%	72				
2020	53	36	67.9%	68				

#### **SUMMARY RESULTS: A POSITIVE TREND SHOWING PROGRESS**

In summary, key performance indicators for the six-year period suggest substantial progress in performance within the criminal justice system as a whole. Progress is evidenced by continuously increasing rates of law enforcement action, such as the 44% increase in law enforcement seizures and over 97% of cases resulting in arrest, as well as stronger court punishment, indicated by a jump to 68% of convictions resulting in a prison sentence.

In 2019, 84.5% of all seizures resulted in arrests and 71.3% of all cases with arrests resulted in prosecution. Currently, subjects convicted in wildlife trafficking cases face a 68% chance of being sent to prison, and if sentenced to prison, the average sentence length is 4.5 years - a 260% increase from 2017 when the average prison sentence was only 1.25 years.

Although the revised Penal Code has almost certainly been the driving force behind an increase in the length of prison sentences for wildlife trafficking cases, the data shows a corresponding and steady improvement in seizures, arrests, and prosecutions.

This improvement in response to wildlife crime demonstrates that Vietnam's criminal justice system is determined to aggressively stamp out wildlife trafficking, both on the front lines of enforcement and in the courts.

#### **OBSTACLES AHEAD**

As the country continues to progress toward a more effective and impactful approach in dealing with wildlife crime, major obstacles still lie ahead, threatening to impede progress and undermine the efforts and achievements of law enforcement, prosecutors, and the courts.

ENV identifies these obstacles as follows:



## **CORRUPTION**

Corruption undermines the rule of law, permitting criminals to operate their illegal businesses freely and in cases where they are caught, avoid arrest, prosecution, or imprisonment.

A zero-tolerance approach to corruption by government offices, combined with greater transparency that can expose corruption between criminals and authorities, are essential actions to eradicate corruption within the ranks of the criminal justice system.

However, it should be noted that recent arrests, prosecutions, and imprisonment of senior wildlife traffickers are clear examples of progress, where potential efforts to avoid prosecution or solicit support from influential friends failed to keep them out of prison.



# STRATEGIC INVESTIGATIONS TARGETING TRAFFICKING LEADERSHIP

In the absence of arrests and prosecutions of senior traffickers and their leadership, a seizure of ivory, pangolins, or a tiger is little more than a "tax" on the trade. The impact of such seizures may be financially costly to the trafficking network, but rarely do they have an impact on the networks' operations unless arrests are made and prosecutions result from the seizure.

The challenge is to do more than "taxing" the trade by identifying trafficking networks and their leadership behind the trade, then launching strategic investigations that result in the disruption, disabling, and elimination of these criminal enterprises, addressing the core of the problem – not only the symptoms.

**Note:** This transition appears to already be underway in some sectors of the law enforcement community, though it is too soon to determine if this focus on undermining criminal networks will yield the type of results needed to truly impact wildlife trafficking.



## PORTS AND ENTRANCE POINTS

One of the most pressing challenges facing Vietnam is the necessity to secure arrests and prosecutions from major shipments arriving at ports and airports. While there have been some successful confiscations at airports in recent years, a review of 138 major seizures at Vietnamese ports and airports since 2010 shows that only 18 of those cases (13%) resulted in arrests and prosecutions.

The incredibly low arrest rate associated with some of Vietnam's largest seizures of ivory, pangolin scales, and rhino horn could be owed to a variety of factors, including the difficult nature of identifying ownership of consigned shipments into Vietnam. Moreover, lack of accountability and pressure on Customs to work quickly and effectively with the Ministry of Public Security by sharing information and actively contributing to investigations have also been cited as contributing factors to low arrest rates in some cases.

Likewise, traffickers claim to "own" routes, whereby corrupt officials at ports and borders help to facilitate movement of goods through borders.

All of these factors contribute to a low success rate and must be addressed in order to strengthen our borders and pursue the major wildlife trafficking networks that are smuggling the largest volumes of illegal goods into Vietnam.

Note: Investigations need to focus on movement of money to consignees, communications, and other accessible leads associated with these major shipments to identify ownership.

Furthermore, consideration must be given to permitting "controlled deliveries", where illegal goods are distributed to receiving parties, to facilitate arrests in association with port and airport seizures.



#### APPLICATION OF OTHER RELATED LAWS

Use of other types of laws, such as money laundering laws, tax evasion laws, and laws prohibiting operation of organized criminal enterprises, need to be evaluated, strengthened, and applied in pursuit of wildlife trafficking networks and their leadership.

Overall, Vietnam can take pride in the level of accomplishment that has been achieved over the last two years to tackle wildlife trafficking. While there are some substantial hurdles to overcome before victory can be claimed, the trend is upward and positive. With continued support from the highest levels of government, combined with strategically focused and aggressive front-line efforts by law enforcement, prosecutors, and the courts, victory is within reach.



### **APPENDIX: CRIMINAL PENALTIES 2018-2019**

Listed below are some examples of offenders and their respective prison sentences for wildlife crimes, as imposed by local People's Courts in cases prosecuted under the new Penal Code between 2018 and 2019.

Court	Verdict date	Offender	Penalty	Violation(s)
	Nov. 20, 2019	Pham Ba Kim	13 years	Illegally possessing 145 pangolins, 7 kg pangolin scales, and 71.4 kg elephant skin
Quang Ninh Provincial Court	Sept. 14, 2018	Hoang Dinh Quan	10 years	Illegally transporting five frozen tiger cubs, 42 kg tiger parts and products, 50 kg pangolin scales, three pig-tailed macaques, and a large number of other wildlife products
Mong Cai City Court (in Quang Ninh province)	Nov. 28, 2019	Nguyen Cao Tung	12 years	Illegally keeping three gibbons, nine otters, and three storks
Hai Ba Trung	Jan. 17, 2020	Tran Thi Tu Anh	12 years	Illegally transporting and possessing 207.3 kg ivory
District Court		Pham Quyet	12 years	
(in Hanoi city)		Hoang Thi Huong	10 years	
Nam Dinh City Court	Jan. 31, 2019	Tran Tuan Anh	11 years and six months	Illegally transporting 10 Asian small-clawed otters
Ha Nam Provincial Court	Jan. 21, 2019	Tran Van Nghi	11 years	Illegally transporting 32 king cobras





# "Accept money from criminals, and you become one yourself"

Court	Verdict date	Offender	Penalty	Violation(s)
Nam Tu Liem District Court (in Hanoi city)	Nov. 26, 2018	Do Van Thanh	10 years and nine months	Illegally trafficking and transporting eight Sunda pangolins and four sun bear paws
	Oct. 22, 2019	Melvin Van Zyl	10 years	Illegally transporting 14.6 kg rhino horn via Noi Bai Airport
Hanoi City	Nov. 1, 2019	Nguyen Xuan The	10 years	Illegally possessing and trafficking 181 kg ivory
Hanoi City Court	Jun. 7, 2019	Le Chi Thuan	10 years	Illegally possessing and trafficking 119.9 kg ivory products
	Mar. 7, 2019	Leu Xuan Lam	10 years	Illegally possessing and trafficking 114 ivory pieces weighing 688.5 kg and 282.5 kg ivory products
Long Bien District Court (in Hanoi city)	Jul. 24, 2019	Nguyen Van Cuong	10 years	Illegally transporting and trafficking 14 marine turtle trophies
Dien Bien District Court (in Dien Bien province)	Sept. 19, 2018	Cao Xuan Lai	10 years	Illegally trafficking 27 big-headed turtles and four moon bear paws from Laos to Vietnam





# **EDUCATION FOR NATURE - VIETNAM**

#### **ENV Strategic Programs**

Education for Nature – Vietnam (ENV) was established in 2000 as Vietnam's first non-governmental organization focused on the conservation of nature and the protection of the environment. ENV combats the illegal wildlife trade and aims to foster greater understanding amongst the Vietnamese public about the need to protect nature and wildlife. ENV employs creative and innovative strategies to influence public attitudes and reduce demand for wildlife trade products. ENV works closely with government partners to strengthen policy and legislation, and directly supports enforcement efforts in the protection of endangered species of regional, national, and global significance.

Since 2007, ENV has focused its activities on three major program areas that comprise ENV's integrated strategic approach for addressing illegal wildlife trade in Vietnam. These include:

- Reducing consumer demand for wildlife products through investment in a long-term and sustained effort to influence public attitudes and behavior.
- Strengthening enforcement through direct support and assistance to law enforcement agencies, and mobilizing active public participation in helping combat wildlife crime.
- Working with policy-makers to strengthen legislation, close loopholes in the law, and promote sound policy and decision-making relevant to wildlife protection.

ENV would like to thank our individual supporters from all over the world, who have contributed to our efforts by providing financial support, giving critical technical assistance, or volunteering their time.

Finally, ENV would also like to thank the authorities for providing the information and images used in this Prosecution Review.





#### **ACTION AGAINST EXTINCTION**

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