



葛珮帆立法會議員辦事處
Legislative Council Office of the Hon. Elizabeth QUAT

7th December, 2018

Mr. LEE Ka Chiu, John, SBS, PDSM, PMSM, JP
Secretary for Security
Security Bureau, Office of the Secretary for Security
10th Floor, East Wing, Central Government Offices,
2 Tim Mei Avenue, Tamar, Hong Kong

Re: Placing Protection of Endangered Species of Animals and Plants Ordinance
(Cap. 586)
under the Organized and Serious Crimes Ordinance (OSCO) (Cap. 455)

Dear Mr Lee,

The Protection of Endangered Species of Animals and Plants Ordinance (Cap. 586) was enacted in 2006 to give effect to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). On 01 May 2018, in conformity with an international trend to elevate the seriousness of wildlife crimes, and in recognition of the growing seriousness with which Hong Kong treats wildlife crimes, the Protection of Endangered Species of Animals and Plants (Amendment) Ordinance 2018 (“the Amendment Ordinance”) came into force. The Government has indicated that these new and higher penalties are “*at a level that is severe enough to provide a strong deterrent against illicit wildlife trade and to show that the Government is very serious about deterring these crimes.*”¹ I commend the Government’s recognition of the seriousness of such crimes. In the past decade wildlife trafficking and poaching has reached unprecedented levels globally, resulting in many species being threatened with extinction. Hong Kong is a well-known illegal wildlife trafficking hub and has been cited time and again in international criminal cases² and investigative research as a place where organized crime syndicates have taken advantage of Hong Kong’s proximity to the mainland of China and other nearby markets for illegal wildlife products in North and South East Asia.³

At a recent Illegal Wildlife Trade conference in London over 50 countries adopted

¹ http://www.afcd.gov.hk/english/conservation/con_end/files/ES01_18e_FAQ.pdf

² United States Fish & Wildlife Service 'Operation Crash' 2011- ongoing

³ United States Fish & Wildlife Service 'Operation Crash' Joint Factual Statements 2011-2017



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At a recent Illegal Wildlife Trade conference in London over 50 countries adopted the London 2018 declaration⁴ committing to action to protect endangered species around the globe and recognizing the illegal wildlife trade as serious and organised crime. For your information, I am now a core member of its Ivory Alliance 2024⁵, which is a new coalition of political leaders, conservationists and celebrities dedicated to defeating the ivory trade.

The growth in wildlife trafficking is spurred by the increasing value of its products and the corresponding high profit / low risk nature of the crime. In fact, wildlife crime is considered the fourth most lucrative transnational crime in the world after drugs, weapons and human trafficking, yet no senior 'masterminds' behind the illegal wildlife trade have ever been brought to justice in Hong Kong. The criminal structures in place to facilitate this trade are highly organized and transnational. Wildlife seizures in Hong Kong are not generally the result of the work of a few individuals hiding contraband in a suitcase, but the work of criminal networks capable of moving highly lucrative contraband across continents illegally with the intent of generating enormous profits. It should be noted that the proximity of extinction for some of the most affected species make their value significantly higher, such as the case of rhino horn that is now considered to be more valuable than gold or cocaine.

The United Nations has repeatedly called on its Member States to treat wildlife trafficking as a serious form of transnational organized crime. This means – first and foremost – to recognize it as a “serious crime”, which according to the United Nations Convention on Transnational Organized Crime (the “Organized Crime Convention”) is any crime punishable with a maximum penalty of four or more years’ imprisonment, committed by a group of three or more people acting together – across countries – to obtain financial or material benefit⁶. The facts of the examples cited above show that wildlife trafficking in Hong Kong comes within the definition of “serious crime” under the Organized Crime Convention, even more so under the Amendment Ordinance which has increased the maximum penalty to 10 years imprisonment.

⁴ <https://www.gov.uk/government/publications/declaration-london-conference-on-the-illegal-wildlife-trade-2018/london-conference-on-the-illegal-wildlife-trade-october-2018-declaration#tackling-the-illegal-wildlife-trade-as-a-serious-and-organised-crime>

⁵ <https://www.gov.uk/government/news/ivory-alliance-2024-political-leaders-conservationists-and-celebrities-join-forces-to-tackle-ivory-demand>

⁶ <https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html#Fulltext>



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Therefore, with regard to aligning Hong Kong's enforcement efforts with the dominant international trend in addressing wildlife crime as a transnationally-networked wave of "serious crime", and also with an eye to unleashing the full force of our enforcement authorities to combat the transnational criminal networks involved in the illicit wildlife trade, I present to you my concerns.

Firstly, I note that unlike offences under other Hong Kong ordinances mandating penalties of similar severity (e.g., Import Export Ordinance (Cap. 60) and Dangerous Drugs Ordinance (Cap. 134)), offences under the Protection of Endangered Species of Animals and Plants Ordinance (Cap. 586) are not listed in the Schedules of the Organized and Serious Crimes Ordinance (OSCO) (Cap. 455), and thus enforcement authorities cannot fully avail themselves of the enhanced investigative powers that OSCO provides, such as financial forensics. This would seem to show inconsistent or unequal enforcement of similarly serious offences.

Notably, the transnational organized nature and seriousness of wildlife crime in terms of environmental impact, cruelty, violence, the linkages between local and global criminal syndicates, and the measures local crime syndicates go to in order to protect and control their activities, result in the need for greater investigative capacity than is currently deployed. There are no criminal offences, under Hong Kong law, which address wildlife crime as the serious and organized criminal enterprise it has become in recent years. Even with stricter penalties, current laws merely focus on import, export and seizures under Cap. 60. Such focus does not provide for adequate enforcement of the Cap. 586 because there are many aspects of the illicit trade in endangered species in addition to import and export. For instance, parts of Cap. 586 restrict introduction from the sea of restricted species and other parts restrict possession of restricted species. Furthermore, enhanced powers under OSCO could aid the enforcement authorities in cracking down on the abuse of the licensing system promulgated pursuant to Part 5 of Cap. 586. There is a critical need for enhanced enforcement OSCO powers to address wildlife trafficking in Hong Kong.

The application of the OSCO regime will ensure that the real perpetrators and the major miscreants of wildlife crime can be investigated and prosecuted rather than just the carriers of smuggled illegal wildlife products, as is the current practice. As a lucrative criminal enterprise, the profits of wildlife crime have been associated with the financing of other criminal enterprises, such as arms trafficking, drug trafficking and money laundering. Were the offences in Cap 586 formally recognized by the Hong Kong government to constitute a form of organized and serious crime as



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defined by the UN Convention on Transnational Organized Crime, OSCO would allow for the confiscation of proceeds of wildlife crime on conviction. Such confiscation orders would provide a powerful disincentive to wildlife traffickers, poachers and traders, and importantly would prevent the reinvestment of profits of a transnational criminal enterprise into further criminal activities such as terrorism.

Disgorgement of the profits of crime is a proven and necessary enforcement initiative in combatting crime of this type where the profits are high. By taking a more aggressive approach by using OSCO to attack the profitability of wildlife trafficking, Hong Kong would align itself with statements recently made by the CITES Secretary-General, namely that there should be law enforcement agencies most equipped with the “*mandate, resources and technical expertise*” deployed to successfully interdict transnational wildlife crime activities. This is a viewpoint also reflected by the United Nations Office on Drugs and Crime (UNODC)⁷ as well as in the recent resolution A/71/L.88 adopted by the United Nations General Assembly (UNGA)⁸ which recognizes

“that illicit trafficking in wildlife [...] undermines good governance and the rule of law and, in some cases, threatens national stability and requires enhanced transnational and regional cooperation and coordination in response”

and which “*calls upon Member States to make illicit trafficking in protected species of wild fauna and flora a serious crime, in accordance with their national legislation and as defined [by] the United Nations Convention against Transnational Organized Crime, in order to ensure that, where the offence is transnational in nature and involves an organized criminal group, effective international cooperation can be afforded under the Convention to prevent and combat transnational organized crime*”

and which also “*calls upon Member States to review and amend national legislation, as necessary and appropriate, so that offences connected to the illegal trade in wildlife are treated as predicate offences, as defined in the United Nations Convention against Transnational Organized Crime, for the purposes of domestic money-laundering offences and are actionable under domestic proceeds of crime legislation, and that assets linked to illegal trade in wildlife and wildlife products can be seized, confiscated and disposed*”

⁷ https://www.unodc.org/documents/data-and-analysis/wildlife/World_Wildlife_Crime_Report_2016_final.pdf

⁸ <http://undocs.org/A/71/L.88>



and encourages “Member States to make use, to the greatest extent possible, of legal instruments available at the national level to tackle illicit trafficking in wildlife, including through legislation related to money-laundering, corruption, fraud, racketeering and financial crime”.

Secondly, given the established international trend toward treating wildlife trafficking as a serious crime on par with gun trafficking, drug trafficking and financial crimes, I am concerned that the Environment Bureau is not adequately resourced, nor designed for, or trained in combatting the types of transnational criminal networks that engage in wildlife trafficking. These criminal networks are the same criminal networks that carry out drug, human, and gun trafficking on a global scale. Therefore wildlife criminal networks must be combatted with the same level of resources, professionalism, and expertise used to combat drug, gun, and human trafficking networks. In Hong Kong, this means that enforcement of Cap. 586 would be better carried out by the Security Bureau, with its resources and expertise in combatting criminal networks, than the Environment Bureau. Enforcement by customs personnel of certain provisions of Cap. 60 which overlap with Cap. 586, is also not adequate. That is a patchwork and temporary solution only. Import and export at the border is only one aspect of wildlife crime. The criminal networks which perpetrate these crimes span borders and their illegal activity will not necessarily be restricted under Cap. 60. Wildlife crimes under Cap. 586 should be subject to the full force of the Hong Kong Security Bureau using its full resources and expertise, as well as enhanced OSCO powers.

I therefore recommend the government take the following action:

- 1. Treat illicit trafficking in protected species of wild fauna and flora as a serious crime, in accordance with local and national legislation and as defined in article 2, paragraph (b) and article 3.1, paragraph (b), of the United Nations Convention against Transnational Organized Crime, in order to ensure that, where the offence is transnational in nature and involves an organized criminal group, effective international cooperation can be afforded under the Convention to prevent and combat transnational organized crime.**
- 2. Given the increase in Cap. 586 penalties and the Government’s recorded recognition of the seriousness of wildlife**



crime, the most serious Cap. 586 offences should now be incorporated into Schedule 1 of OSCO.

3. The Government should task the serious crime and financial investigation capabilities of the Joint Financial Intelligence Unit of the Hong Kong Police to interdict transnational organized wildlife crime in a joint effort with the support of Hong Kong Customs and Excise Department as it does with other offences under OSCO.

4. Given the seriousness of many forms of wildlife crime and that transnational criminal networks often engage in wildlife crimes as well as drug crimes, human trafficking crimes, and financial crimes, all of which undermine the basic security of Hong Kong, the Government should now place wildlife crime under the responsibility of the Security Bureau (instead of the Environment Bureau where it is currently located) in the same way as guns, drugs and financial crime.

5. The Hong Kong Police Force should play a leading role in the investigation of the most serious forms of wildlife crime.

6. The Hong Kong government should amend local law so that offences connected to the illegal trade in wildlife are treated as predicate offences, as defined in the United Nations Convention against Transnational Organized Crime, for the purposes of domestic money laundering offences and are actionable under domestic proceeds of crime legislation. This would make available the full force of the law enforcement authorities to seize, confiscate, and dispose of assets linked to illegal trade in wildlife and wildlife products.

7. A dedicated Wildlife Crime Bureau should be set up within the Hong Kong Customs and Excise Department. This could be created in much the same way that a C&ED Customs Drug Investigation Bureau exists to combat narcotics, the C&ED Financial Investigation Group exists to combat money laundering or the C&ED Consumer Protection Bureau exists to



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protect consumer rights. The establishment of a dedicated wildlife crime team within Hong Kong Customs would further enhance and ease interdepartmental cooperation with Hong Kong AFCD.

I look forward to hearing from you at your earliest convenience.

Yours sincerely,

Hon Elizabeth QUAT, BBS, JP
Legislative Council Member
The Ivory Alliance 2024 Member
Wildlife Justice Commission Council Member

CC:

Mr. LO Wai Chung, Stephen, PDSM, PMSM
Commissioner of Police, Hong Kong Police Force

Mr. TANG Yi Hoi, Hermes, C.M.S.M.
Commissioner of Customs & Excise, Customs and Excise Department

The Rt Hon Michael Gove MP
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Ms. Olivia Swaak-Goldman
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