

CHEETAHS

Bridget Martin highlights the plight of cheetahs and the work that's being done to save them

INVASIVE SPECIES

Our winning entry from our 2022 A-LAW Student Essay Competition, by Emily Treneman

UPDATES

All of the latest cases, updates and materials including an overview of the recent developments in Scotland by Libby Anderson



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EDITOR'S NOTE

Last year was incredibly busy in terms of events and proposed legislative changes and events some of which are updated in this edition.

It is also a pleasure to publish the winning student essays of 2021 by Emily Treneman which discusses the UK's approach to "invasive" species, and 2020 by Violet Smart which considers whether increased sentencing will improve the effectiveness of offence of causing "unnecessary" suffering.

At the time of writing Ukraine is experiencing not just a humanitarian crisis but an animal welfare emergency as well. Animals are the overlooked victims of human wars. The author of "The British Cat and Dog Massacre," Hilda Kean, estimates that 750,000 dogs and cats, were euthanised at the outbreak of WW2. Animals have been forced into combat. Around 8 million horses used by the British military are thought to have perished during WW1 from injury and exhaustion.

These figures represent a drop in the ocean compared with the final tally of animal deaths, abandonment and displacement resulting from warfare.

In the Ukrainian crisis, animals have become more visible as victims of war with people seen in shelters with their dogs and crossing over borders with cat baskets.

People are mobilising to help bring supplies to rescue centres often at great personal risk, sadly there are places that they are not able to reach. Some animals at Park XII, a zoo, north of Kiev are reported to be dying from starvation. It's still possible to buy tickets for Kiev/Kyiv Zoo and Nikolaev Zoo to help them provide food for the animals.

Please remember the animals during this emergency.

Jill Williams

Editor

Cheetahs in peril: Cheetahs on the brink

By Bridget Martin, Emeritus Senior Lecturer in Law, School of Justice, University of Central Lancashire, UK

Another mass extinction is under way. Sadly, cheetahs, so beloved of many, are one of the animals on the brink.

A beautiful animal, cheetahs seem to have an affinity with humans, a sort of love affair that has existed from ancient to modern times. Wall paintings in Ancient Egypt, showing hunting scenes with 'tame' cheetahs, and in 2019, a 'tame' cheetah sitting in the passenger seat of an opulent car, attached to the driver's wrist by a collar and lead (a photograph in *The Times* newspaper) show their special status, so what has gone wrong?¹

This is the story of cheetahs, how close they are to extinction, and how people are striving very hard to prevent this happening.

The cheetah (*Acinonyx jubatus*) is the smallest of the big cats, the world's fastest cat and the world's fastest land animal. Once ranging widely throughout Africa and Asia, like so many other animals, cheetah numbers have crashed from about 100,000 in the early 1900s to recent estimates of 7,100 cats. However, this is only an estimate because some areas such as Somalia and eastern Ethiopia have not been surveyed, so there could be more. Now cheetahs only occur in 9% of their original range, and their current range is extremely fragmented.²

Most cheetahs are found in southeast Africa, mainly in Botswana, Namibia and South Afri-

ca, with some in Kenya, Tanzania and Uganda, and small populations of the highly threatened subspecies (*Acinonyx jubatus soemmeringii*) in Somalia, Ethiopia and South Sudan.³ The Asiatic cheetah (*Acinonyx jubatus venaticus*) is only found in Iran and the most positive estimates of its numbers range from 50 to 20 animals, which really does leave them teetering on the brink.

With such small populations, and with cheetahs facing so many threats, from human-wildlife conflict, habitat loss, and reduction in prey numbers to illegal trade in the live animals, particularly their cubs, as well as in parts and derivatives, it becomes urgent to establish numbers as accurately as possible.⁴ Even in southern Africa where the animals are most numerous this is a difficult task, because cheetahs move large distances. In fact, obtaining accurate density estimates of any carnivore can be challenging as carnivores naturally exist at relatively low densities and are often elusive and wide-ranging, so they are 'best guesses'.⁵ For obvious reasons, camera traps are most effective, especially where animals use well-defined tracks, as in forests and dense woodland, but as cheetahs range more widely, population estimates based on such data will be just that, estimates, which can be either over- or under-. However, when the animals are as rare as they are in Iran and the terrain is so wild and remote, camera traps are probably the only way to locate them. Unfortunately, on one occasion, setting camera traps proved disastrous to the researchers themselves.

3 See Marker et al on *Cheetahs: Biology and Conservation*.

4 The loss of prey is due to bush meat hunting. Conflict with owners of livestock is another threat. See Durant et al. in prep. in SC65 Doc. 39 (Rev.2) Kristin Nowell, CAT and IUCN SSC Cat Specialist Group *An Assessment of Conservation Impacts of Legal and Illegal Trade in Cheetahs *Acinonyx Jubatus**, Report to the 65th meeting of the CITES Standing Committee.

5 See Thompson W. in Broekhuis F, Gopalaswamy AM (2016) *Counting Cats: Spatially Explicit Population Estimates of Cheetah (*Acinonyx jubatus*) Using Unstructured Sampling Data*, PLOS ONE 11(5): e0153875. <https://doi.org/10.1371/journal.pone.0153875> Accessed 29/11/2019.

1 The Times *Big cat selfies push cheetahs to the brink*, 20 May 2019.

2 Durant SM, et al *Disappearing spots: the global decline of cheetah and what it means for conservation*, Research article published in PNAS (Proceedings of the National Academy of Sciences of the United States of America), 27 December 2016, p.2. See www.pnas.org/cgi/doi/10.1073/pnas.1611122114 Accessed 29/11/2019.



A major survey undertaken in 2015-16, produced valuable data and important findings, as well as exposing some problems. For example, most monitoring of populations takes place within Protected Areas (PAs), whereas most cheetahs occur outside these Areas, and there is a real possibility of getting an inaccurate result where the number of cheetahs monitored both within and without a particular Protected Area are combined.

Most cheetahs are found in southern Africa, in a single transboundary population that stretches across six countries. Only one other population had more than 1,000 individuals, while 91% of the populations contained about 200 cheetahs, and in 6 populations, there were fewer than 10 cheetahs. Although '*ongoing population trends were largely unknown*', in the 18 populations where this could be estimated, 14 were declining, 3 were stable and 1 was stable possibly increasing.⁶

6 See n.2.

Population estimates were as follows:

- In southern Africa (most are in Angola, Botswana, Mozambique, Namibia, South Africa and Zambia, with a few in Zimbabwe): 4,297;
- In eastern Africa (Ethiopia, Kenya, South Sudan, Uganda, and Tanzania): 2,290; although 1,362 of them are found in Serengeti/Mara/Tsavo/Laikipia/Samburu;
- In western, central and northern Africa: 457; and 238 of these are found in Central African Republic and Chad;
- In Africa therefore: the total was 7,044 adult and juvenile cheetahs.
- In Iran: there were estimated to be 43 adult and juvenile Asian cheetahs in 3 populations of 20, 22 and 1.
- Making a global total of 7,087.⁷

There are probably only about 500 adult cheetahs remaining in sections of the Horn of Africa (Eastern Ethiopia, northern Kenya and Somalia/Somaliland), where so many cubs are illegally poached for trading, but no surveys have been carried out in Somalia, Somaliland and parts of

7 Ibid, p.3.

Ethiopia, the Ogaden region.⁸

Research carried out at about the same time in Kenya's Maasai Mara and its environs, employed a new technique, SERC, spatially explicit capture-recapture methods. Specially developed by the researchers, it should eventually '*help determine the magnitude of the threats they face and assess potential conservation interventions*'.⁹ The results, covering a three-month period from August to October, showed the existence of cheetah 'hotspots' and the difference between the ranges of males and females.

Cheetahs face so many threats, not all of them recognized as likely to be severe. This happened in Zimbabwe. There, cheetah distribution was '*relatively well known*', but between 1999 – 2015, the population declined by an estimated minimum of 85%, that is, an annual decline of 13%. By any standards this is catastrophic, but it could be explained. Between 2007 – 2015 there was a 63% range contraction, equivalent to an 11% distributional loss per year '*largely because of the disappearance of cheetah outside PAs (Protected Areas) associated with major changes in land tenure*'.¹⁰ Unfortunately, other threats such as the smuggling of cheetah cubs to the Gulf States, to feed their seemingly insatiable demand to own a cheetah as a pet, are only too well known and show little sign of abating.

With the high level of illegal trafficking in cheetah cubs in east Africa, it is not surprising to find cheetahs included on the Agenda at recent meetings of CITES (Convention on International Trade in Endangered Species of Wild Fauna and Flora) Conferences of the Parties (CoPs), although the cheetah has been listed in CITES Appendix I since 1975. In other words, these endangered animals have been subjected to illegal trading for many years, and as a result, have enjoyed a high level of legal protection for many years under both international and national legislation. Currently eight international treaties, including CITES, are directly involved.

As early as 1900, the London Convention protect-

⁸ Cheetah Conservation Fund UK (CCF UK) *A disappointing result for cheetahs at CoP18*, 11 September 2019 and information from CCF UK.

⁹ See n.5 for a full account of the research.

¹⁰ See n.2, p.4.

ed them from hunting and destruction, although limited numbers of the animals were permitted to be taken.¹¹ The African Convention,¹² which entered into force in 1969, provided further protection, but there were important gaps so it was extensively revised, new provisions were added requiring sustainable management of harvesting of fauna and flora with populations monitored by scientists,¹³ and governments were required to identify and eliminate the factors causing the depletion of threatened species.¹⁴ Parties were also required '*to regulate trade, possession, and transport of these species to ensure that they are taken or obtained in accordance with both domestic legislation and international law, and enact appropriate penal sanctions and confiscation practices*',¹⁵ and were called upon to establish bilateral and sub-regional agreements to control the illegal wildlife trade.¹⁶ Article XII encouraged them to establish protected areas for threatened species. The Convention suggests that '*threatened species*' be defined according to the IUCN Red List criteria, which would of course, include the cheetah. Although the African Union adopted the revised version in 2003, it took a long time before enough countries had ratified it for it to take effect, and it only entered into force in 2017, by which time there were fifteen signatory countries. By 2018, six cheetah range states, including South Africa, were Parties.

Cheetahs also benefit from two of the Aitchi Targets, 11 and 12, biodiversity targets deriving from the Convention on Biological Diversity. However, although Target 11 relates to habitat protection, this is not necessarily helpful to cheetahs. Being small cats, they find it difficult to hunt and keep their kill and keep their cubs safe from other larger predators that also live in these areas. So they tend to have very large home ranges, much of which is often outside the Protected Areas (PAs), and is often transboundary. Target

¹¹ Schedule 4, Convention for the Preservation of Wild Animals, Birds and Fish in Africa.

¹² African Convention on the Conservation of Nature and Natural Resources (revised, 2003).

¹³ Article IX.

¹⁴ Article X.

¹⁵ Article X1. See Kristin Nowell and Tatjana Rosen *Global Cheetah Conservation Policy: A Review of International Law and Enforcement*, in *Cheetahs: Biology and Conservation*, Elsevier, 2018, Chapter 21, p.296.

¹⁶ Ibid.

12 is concerned with improving the conservation status of *'threatened species'*.¹⁷

It follows therefore, that cheetahs fall within the definition of *'migratory species'* in the Convention on the Conservation of Migratory Species of Animals (CMS),¹⁸ as this includes *'any species whose range extends across more than one country'* as well as those that regularly undertake long-distance movements.¹⁹ Parties not only agree to conserve and restore the habitat of species listed on Appendix 1, but also to prohibit their taking except under strict circumstances. Cheetahs were listed on Appendix 1 in 2009. However, as there are no enforcement provisions in the treaty and the populations of Botswana, Namibia and Zimbabwe are not listed, the protection offered is limited. In fact, not all the range States, including Botswana and Namibia, are even Parties to the Convention.

But cheetahs will benefit from two CMS subsidiary agreements, the Sahelo-Sahelian Megafauna Action Plan and the Central Eurasian Aridland Mammals Concerted Action, the former focusing on gazelles, cheetah prey, in fourteen north African countries, and the latter inspiring the Central Asian Mammals Initiative CAMI, which includes Iran and its cheetahs. It has also been recommended for its own CMS Agreement which would allow the treaty to play a more active role in transboundary cheetah conservation.²⁰

At CMS CoPg in 2008, the Conference adopted a Recommendation on Tigers and other Asian Big Cats, but because Iran's cheetah population is not transboundary, the cats will only benefit from the call for increased financial support from donor countries and organizations. And an Asiatic cheetah focal point was appointed under CAMI. It will be *'responsible for advising CMS on activities related to the conservation of the species'*.²¹

The other international treaty playing a key role

in protecting cheetahs is CITES,²² which regulates international trade in endangered species, listing species of animals and plants in Appendices according to how vulnerable they are to extinction. Appendix I includes those most endangered so its regulations are the strictest, and it is only in exceptional circumstances that trade is allowed, while Appendix II lists those species that are not quite so rare but may become so if trade in them remains unregulated.

Although it is not compulsory, almost every country has now ratified CITES, which means that they can have input into the Conference of the Parties, CoPs, meetings held every third year, attended by delegates from all the Parties, many Non-Governmental Organizations (NGOs) and others, to discuss the current situation and amend the Appendices where necessary.

CITES is a pragmatic treaty, as is evidenced by the provision to make reservation/s (Article XXIII). Any country can take out a reservation on one or more species at the time of its accession, which means that, for the purposes of that species, that country will continue to be treated as if it were a non-Party (one not signed up) to the Convention. When Namibia became a Party in 1990 it took out a reservation on cheetahs, so, recognizing that some trade would be inevitable, an annotation was added in 1992:

'Annual export quotas for live specimens and hunting trophies are granted as follows: Botswana: 5; Namibia: 150; Zimbabwe: 50. The trade in such specimens is subject to the provisions of Article iii of the Convention'.

In other words, giving cheetahs a commercial value had enabled Namibia to fully sign up to CITES.

It was the Coalition Against Wildlife Trafficking,²³ one of whose members is the NGO the Cheetah Conservation Fund (CCF), that drew international attention to the problem of wildlife trafficking in cheetahs, so in 2013, CITES CoP16 adopted, *inter alia*, a number of Decisions regarding the illegal trade in the animals. Directed to the Secre-

17 Like the African Convention, it is suggested that *'threatened species'* be defined according to IUCN Red List criteria.

18 See n.15.

19 Trouwhorst (2015), in *ibid*, p297.

20 *Ibid*, p.298.

21 *Ibid*.

22 Signed in Washington in March 1973, it entered into force in July 1975.

23 A public-private partnership of 6 countries and 15 NGOs.

tariat (16.71), the Animals Committee (16.72), the Standing Committee (16.73) and to Parties and donors (16.74 and 16.75), these were concerned with obtaining data on the legal and illegal trade in wild, live cheetahs and assessing its impact on the conservation of wild cheetahs, essential evidence on which to provide a basis for further action.

Independent consultants, contracted by the Secretariat, would aim to determine where the illegally traded cheetahs were coming from and the transit routes used to smuggle them to their destination. They would also look at how any confiscated cheetahs were dealt with. All range States, being stakeholders, had to be fully consulted and all relevant Parties were '*urged to assist*' in any way possible.

The researchers found it difficult to build up a holistic picture of the problem. Inevitably, there were gaps in information, as so frequently happens when attempts are made to determine what is happening when endangered species are illegally traded. An important example of the sort of problems they encountered is provided by their inability to determine how many of the pet cheetahs in the Gulf region where private ownership of cheetahs is popular, were legitimately acquired. Despite the '*dozens of news articles, hundreds of social media posts, and the observations of NGOs that have researched the issue*' (see later), there were no national monitoring systems in place, apart from licensed facilities. On the evidence they had, it appeared that many of the pets were illegal.

Their report, *An Assessment of Conservation Impacts of Legal and Illegal Trade in Cheetahs *Acinonyx Jubatus**,²⁴ started by explaining the methodology,²⁵ then came the trade overview. This provided worrying information because it indicated a level of illegal trade that '*could be affecting and threatening most wild populations*'. The two principal markets for the illegally traded cats were identified as the Middle East ('*largely*

supplied from East Africa') and the destination of most live trafficked cheetahs, and southern Africa ('*largely supplied within the region*').

Because of differences between the different regions, governments, working with cheetah specialists, developed four regional conservation strategies and programmes, and these required different means of enforcement. For example, in the Horn of Africa there was the Wildlife Enforcement Network HAWEN, while the Lusaka Task Force linked Eastern and Southern Africa.²⁶ By 2011, it was apparent that the Horn of Africa was beginning to emerge as a major region for wildlife crime (especially in relation to the illegal trade in cheetah cubs), so a joint statement was signed by the countries in the region: Djibouti, Ethiopia, Kenya, Somalia, South Sudan, Sudan and Uganda, '*to fight wildlife trafficking collaboratively under the framework of a regional "Wildlife Enforcement Network"*', HAWEN. At a Work Shop held in Addis Ababa, Ethiopia in October 2012, they both set up a steering committee to pave the way to establish the Network and developed its (the committee's) terms of reference. The committee's first meeting, held in February 2013, was followed by a second in June, with the Network being launched in October. CITES CoP16 then '*provided an opportunity for HA-WEN to attend the side event on the illegal trade on live cheetahs and the Horn of Africa Illegal Wildlife Enforcement Network*'.²⁷

In the early 2000s, the first Global Cheetah Action Plan was formulated and the Global Cheetah Forum was established, closely followed in 2002 by a second Forum, some of whose participants were working on the imperilled Asiatic cheetah. Gradually participants were drawn from an ever-widening range of people who were determined to save the cheetah until, in 2007 it morphed into the Range Wide Conservation Programme for Cheetah and African Wild Dogs. Once again, in a gradual process, starting at the regional level, national workshops formulated regional plans and finally National Cheetah

24 Kristin Nowell, CAT and IUCN SSC Cat Specialist Group *An Assessment of Conservation Impacts of Legal and Illegal Trade in Cheetahs *Acinonyx Jubatus**, Report to the 65th meeting of the CITES Standing Committee, SC65 Doc. 39 (Rev.2) Annex 1. It also considered trade in cheetah parts (specimens of cheetahs).

25 Always very important, because if there is to be a meaningful follow-up data to see whether/how the situation has changed after a period of time, the new research must replicate the original research as far as possible.

26 IUCN 2007a; b; IUCN 2012; ICS 2013 in Kristin Nowell, CAT and IUCN SSC Specialist Group p.17. See also HAWEN Network Information Sheet, cites.org/sites/default/files/eng/prog/iccwc/WENs/HAWEN-info_sheet_Sept16.pdf Accessed 29/05/2021.

27 Horn of Africa-Wildlife Law Enforcement Network, (HA-WEN), Djibouti, May 6-8 2013, p.8. See <http://www.hoarec.org/docs/day4>HoAREC...> PDF Accessed 29/05/2021.

Action Plans for most of the African range States. One important benefit has been the growing awareness by governments of just how much effort by a very wide variety of people, including the local communities, will be required if cheetahs are to be saved.²⁸

Nowell, in her assessment, concluded that most illegal trade was, and still is, in cubs, which continue to sell for very high prices. Opportunistic rather than deliberate capture, the young animals are taken from '*ethnic Somali regions, including parts of Ethiopia and Kenya, and perhaps beyond*',²⁹ thus hitting the already small populations there and reducing them even further.

Records of NGOs working in the region showed a grim picture. Between 2011 - 2013, government officials, mostly in Somaliland, had confiscated over 40 young cheetahs, and there were '*many more observations and second-hand reports of illegal trade in cubs*'.³⁰ Even more shocking was the high mortality rate of the survivors. Of 30 cubs confiscated in Somaliland and Ethiopia 70% died, and of 27 cubs confiscated in Jordan, Kuwait and the UAE 48% died.³¹ Survivors must go to wildlife rehabilitation facilities and to zoos as soon as possible if they are to have any chance of long-term survival. But resources are scarce.

The largest population of cheetahs is found in southern Africa. South Africa is '*the world's largest exporter of live cheetahs*' and most of this trade is legal, the animals mainly going to zoos and for other non-commercial purposes, but there must always be some temptation to live-trap wild animals and trade them instead, especially if breeding facilities fail to produce cubs.³² Microchips are normally used to identify captive-bred animals, but '*a chip could easily be implanted into any wild-caught cheetah*'.³³

Furthermore, breeders, using permits, do add

cheetahs taken from fenced reserves to their breeding stock, (over 40 between 2009-2012, according to the report), with about a quarter of them going to Hoedspruit, one of the CITES-registered commercial breeding facilities.³⁴ South Africa's Management Authority were investigating to check that the permits were not being abused, or whether these cheetahs '*are likely exported as captive individuals*'.³⁵

In southern Africa, most cheetahs are found on private lands from which predators such as lions have been removed. There they get live-trapped by farmers who perceive them to be a threat to livestock and game. They are the 'lucky' ones though. They tend to be adults and are taken in by the many NGOs based there, who work with the governments on rehabilitation and release the animals into '*safe*' areas. The researchers found an '*essentially stable*' population, and although the impact of illegal trade was '*unclear*', they concluded that it might '*absorb some animals that would have been otherwise removed or destroyed*'.³⁶

There was overwhelming evidence to show that most of the east African cheetahs were destined for the Gulf States, where undoubtedly the animal is treasured. The owners post pictures on social media proudly proclaiming this fact. The United Arab Emirates even has captive-breeding facilities, which, the authors of the report found, had '*possibility contributed to a relative decline in illegal wild imports*' there.

Treasured or not, cheetahs are still wild animals. Even when they are captive-bred they do not make good pets and unless they are provided with the correct conditions, they are unlikely to survive. If they escape, they can cause '*havoc and injury*'.³⁷

Because the Arabian Peninsula countries are Parties to CITES, they prohibit the import of wild cheetahs except for non-commercial purposes and some were passing legislation that would make it more difficult to possess non-domesticated animals, in some cases making such pos-

28 Laurie Marker, Jack Grisham and Bruce Brewer *A Brief History of Cheetah Conservation*, Cheetahs: Biology and Conservation 2018 3-16, Elsevier Public Health Emergency Collection, PMC7150087, published online 2018 Jan 12.

29 See n.24

30 Ibid

31 Ibid.

32 Ibid, p.3.

33 Ibid, p.5.

34 See (van der Merwe 2014, EWT *in litt.* 2014) in *ibid*, p.42.

35 See (*in litt.* 2014) in *ibid*.

36 Ibid, p.44.

37 Ibid, p.4.



session illegal.

As is usual with reports of this kind, the researchers made a number of recommendations including strengthening legislation and enforcement, as well as building better international co-operation with bodies such as the Lusaka Task Force, Wildlife Enforcement Networks (WENs) and the Southern African Development Community (SADC).³⁸ Demand reduction was essential, but the researchers thought this could be successful, because *'it is apparent that people who buy cheetah cubs do so out of a love of the animal, and for predator conservation, that is half the battle'*. They were simply unaware of the problems.³⁹

The report was presented to the 27th meeting of the Animals Committee, which considered its findings then made recommendations to the 65th meeting of the CITES Standing Committee, which, when it met in July 2014, set up an intersessional Working Group on illegal trade in

³⁸ Ibid, p.45, looking at the sort of co-operation used in combatting the illegal tiger trade.

³⁹ Ibid.

cheetahs, whose members were selected from a wide group of expertise. Chaired by Kuwait, they included: Bahrain, Botswana, Kenya, Kuwait, Oman, Qatar, Saudi Arabia, South Africa, Uganda, United Arab Emirates, Zimbabwe, Chair of the Animals Committee, Born Free Foundation, Elephant Action League, International Fund for Animal Welfare (IFAW), IUCN, Panthera, Species Survival Network, Wildlife Conservation Society, World Wildlife Fund (WWF) and Zoological Society of London (ZSL), with Cheetah Conservation Fund (CCF), which had made a significant contribution to the report, and the Endangered Wildlife Trust as additional members.⁴⁰

After a *Workshop on illegal trade in cheetahs* was held in Kuwait in November 2015, which reviewed recent information on the conservation status of cheetahs, the recommendations of both the report and the Animals Committee, and the results of a questionnaire, the Group considered various challenges focussing on:

- the supply of and demand for illegal chee-

⁴⁰ *Illegal Trade in Cheetahs (Acinonyx Jubatus)* Report of the Working Group, SC66 Doc. 32.5.

- tahs;
- the disposal of confiscated live cheetahs; and
- enforcement.

They then invited the Standing Committee to adopt a number of draft Recommendations and Decisions including:

Demand reduction: '*Cheetah range States and Parties implicated in the illegal trade in cheetahs are encouraged to urgently develop and launch national public awareness campaigns to reduce illegal offer of, and demand for illegally traded cheetahs ...*' an essential component of any solution, involving both public awareness and education, and including of course, social media, the internet and e-commerce platforms, particularly difficult areas to police and to control.

Standing Committee 66 adopted five recommendations:

- a) Regarding public awareness and education;
- b) Regarding enforcement;
- c) Regarding cooperation and information exchange;
- d) and e) Regarding disposal of confiscated live cheetahs.

The final two focussed on the key issue of confiscated live cheetahs: '*Range, transit and destination countries involved in the illegal trade in live cheetahs are encouraged to collaborate on the humane disposal of confiscated live cheetahs through the use of existing and, where required and as appropriate, the establishment of national or regional rescue centres, paying particular attention to maximizing the contribution of specimens to conservation of the species in the wild*'. The countries were also requested to inform the Secretariat of available facilities.

The Decisions were directed to both the Secretariat and the Standing Committee and, *inter alia*, concerned the development of a CITES Cheetah Trade Resource Kit, the former charged with commissioning its development (provided funding was available), and the latter with reviewing the draft kit, which would collect key data in a number of areas, including monitoring and controlling the trade. Protocols would be laid down where there were seizures, including handling the animals, collecting DNA samples and other data, for example, for use in studbooks. There would be detailed provisions relating to

care, both short and long term for confiscated animals. And other relevant materials.⁴¹ In other words, at least there was now a long-term plan of action in place.

Further progress was made at CoP17⁴² where seven more Decisions, the first five directed to the Secretariat, the next to the Standing Committee and the final one to the Parties and Others, were passed unanimously. More ammunition in the fight against the illegal trade. Decisions 17.124 - 5 again concerned the development of the Cheetah Trade Resource Kit, while Decision 17.126 invited the Secretariat to assess the feasibility of creating a Cheetah Forum on the CITES website for Parties, experts, NGOs and other stakeholders to exchange and share information on cheetahs. The Secretariat also had to keep the Standing Committee informed of their progress in these matters, while the Standing Committee had to review the draft Kit, sending back comments and recommendations '*for its finalization and dissemination*'.⁴³ All this was dependent on funding, so in Decision 17.130, the Parties and Others (potential donors) '*are encouraged to provide funding support to the Secretariat for the implementation of the Decisions regarding illegal trade in cheetahs (Decisions 17.124 - 130), where needed*'.

Two months later, in December 2016, the Horn of Africa Project was established at a workshop held in Ethiopia, and attended by governments from the region, including Somaliland, and interested NGOs. Its aim was to end the illegal trafficking of cheetahs in that region and in 2017, the first national strategic meeting was held in Somaliland.

A year earlier, Somaliland had passed the Somaliland Forestry and Wildlife Conservation Law (No. 69/2015), replacing its 1969 legislation, and this was further strengthened in 2018 when the Environment Management Law (No. 79/2018), which mentions animals as a natural resource, was passed. Two pieces of legislation that offered important legal protection to the small but vital cheetah population in that country.

East Africa is home to two cheetah subspecies,

⁴¹ Ibid.

⁴² Held in Johannesburg in 2016.

⁴³ Decisions 17.127 - 8, and Decision 17.129.

the *Acinonyx jubatus jubatus* largely found in Kenya, Tanzania and Uganda, and *Acinonyx jubatus soemmeringii*, endemic to some areas of the Horn of Africa and Sudan,^{44 45} In the Horn of Africa, where there is so much instability and poverty, cheetah cubs, many taken prematurely from their mothers, are poached in eastern Ethiopia, Kenya (northern), Somalia and Somaliland, where wild cheetah populations are estimated to be about 500 animals, then trafficked across the Gulf of Aden to the Arabian Peninsula, to be sold online to wealthy Arabs because '*owning cheetahs and other exotic pets in this region is thought to convey social and economic status*', just like '*individuals in positions of power or leadership*'.⁴⁶

Most of them die (over 75%) and the survivors are often in such a poor state that they too die prematurely, killed by stress and malnutrition, their average lifespan being only about five years. In fact, some sickly-looking cubs are deliberately bought to rescue them from dealers. And although their owners think of them as pets, they are not. They are animals that have illegally been taken from the wild, then trafficked. For some people however, the fact that they would otherwise be living in the wild provides yet another reason for buying them. Protecting them '*from the threats they face in their natural environment*'.⁴⁷ It also keeps up demand.

Somaliland is one of the unrecognized States, States that are determined to be separate and independent, but which are not recognized by the rest of the world.⁴⁸ Its geographical location is important, be-

44 Kitchener A.C.; Breitenmoser-Wursten, C.; Eizirik, E.; Gentry, A.; Werdelin, L.; Wilting, A.; Yamaguchi, N.; Abramson, A. V.; Christiansen, P.; Driscoll, C.; Duckworth, J.W.; Johnson, W.; Luo, S.-J.; Meijaard, E.; O'Donoghue, P.; Sanderson, J.; Seymour, K.; Bruford, M.; Groves, C.; Hoffmann, M.; Nowell, K.; Timmons, Z.; Tobe, S. (2017) *A revised taxonomy of the Felidae: The final report of the Cat Classification Task Force of the IUCN Cat Specialist Group* (PDF), *Cat News* (Special Issue): 30-31.

45 Patricia Tricorache commented that not all eastern African cheetahs are of this subspecies.

46 Mohamed, 2016 in *Pets and Pelts: Understanding and Combating Poaching and Trafficking in Cheetahs*, Patricia Tricorache, Kristin Nowell, Gunther Wirth, Nicholas Mitchell, Lorraine K. Boast, Laurie Marker in *Cheetahs: Biology and Conservation*, Elsevier 2018, Chapter 14, p.196.

47 Ibid p.196.

48 *Update on the Illegal Wildlife Cheetah Trade One Year On from CITES Conference of the Parties 17*, see <https://cheetah.org.uk/update-on-the-illegal-wildlife-cheetah-trade-one-year-on-from-cites-conference-of-the-parties-17> Somaliland is an autonomous region, see Simon Reeve *Step By Step: The Life In*

cause it borders the Gulf of Aden, with Ethiopia to its south and west and Djibouti to its north-west, a position that provides a temptingly easy crossing point to the Arabian Peninsula.⁴⁹ Somaliland has been actively protecting its cheetah population since 2011, working with both Patricia Tricorache, who from 2005 led the Cheetah Conservation Fund's efforts to combat the illegal wildlife trade, and Guenther Wirth, an expat working for a German organization. They started by setting up a task force to seize and rescue trafficked cubs wherever/whenever possible, thus laying the foundation for the work now carried out in Somaliland. Their work helped identify the key role the country was playing in the illegal trade in cheetah cubs, likely to be of the rare *soemmeringii* subspecies.

Before 2017, there was no wildlife sanctuary in Somaliland. The cubs were kept at Wirth's compound until they could be sent to sanctuaries in Ethiopia and Djibouti. However, in mid-2016 the government dictated that cheetahs seized in Somaliland must remain there. This prompted Tricorache to meet with the Minister of Environment and Rural Development to devise a national strategy to combat wildlife trafficking and determine the fate of seized animals, which at the time also included caracals, gazelles and birds of prey.

It was during the April 2017 meetings that the Ministry designated a 1-km² track of land in a remote location for a wildlife sanctuary. A stakeholders' workshop followed in September 2017, funded by the Murulle Foundation (USA) and GIZ (Germany), to discuss the development of the sanctuary. Financing was always a problem, but Guenther Wirth was prepared to contribute in addition to his time, a substantial amount of his own money. He set up the Heritage Foundation to protect Somaliland's national treasures, both cultural and natural, which would enable him to apply for grants. He immediately began construction of fencing, and the first animals to be transferred were 20 gazelles that had been kept at various locations in Hargeisa, the capital. However, it would be a long time before all the infrastructure required to house carnivores could be completed. At the time, Wirth's compound was housing five cheetahs, five caracals and several birds. He was supported by Nujuum Jimi, who volunteered her free time both caring for the animals and helping with the investigations.

In August 2018, eight cubs were confiscated, including two 2-week old cubs in poor health. Dr Laurie Marker travelled to Somaliland to care for the two smallest cubs and was soon relieved by Patricia Tri-

My Journeys, Hodder and Stoughton, 2018, p.227 for more details on the status of Somaliland.

49 Ibid Simon Reeve, p.250. See pp. 243-250 for an illuminating insight into this fascinating country.

corache, who during her stay entered a collaboration with Veterinaries without Borders (Czech Republic) in a volunteer programme to assist with cheetah care, as well as veterinary training, and the first cheetah safe house was rented.

It was then that Marker became actively involved and efforts were made to obtain land for a sanctuary closer to the capital. A new safe house was rented and inaugurated in May 2019. Under Dr Laurie Marker's lead, experts began arriving, including a South African veterinarian team as well as a visiting/core veterinary consultant, an expert in cheetahs from Nashville Zoo, USA, which also provides equipment. An early result was the development of preventative medicine protocols. Progress on the sanctuary has been slow however, although the site has been chosen and work begun.

Early in 2019, CCF, together with partners International Fund for Animal Welfare (IFAW) and Legal Atlas were awarded a grant from the Illegal Wildlife Trade (IWT) Challenge Fund. Established by the UK government in 2013, the IWT Challenge Fund '*provides money for practical projects around the world, projects that in some way help to combat the illegal wildlife trade*'.⁵⁰ The grant has been put into LICIT, Legal Intelligence for Cheetah Illicit Trade, a project '*to increase awareness of wildlife laws along trade routes in Ethiopia, Somaliland, Somalia and Yemen and close enforcement and legal loopholes exploited by poachers*', which will be used to combat cheetah trafficking in the Horn of Africa and the Middle East. Put more simply, it is engaging with local communities to put an end to the trafficking of cheetahs.⁵¹

This will be a challenging task. Many of the people are farmers and pastoralists. Their incomes are low, in Ethiopia the average per capita income is USD790, in Somaliland USD347, and they are already under pressure from other factors like climate change and conflict, so loss of animals to cheetahs can be something of a disaster. Combine this with the fact that there is '*evidence indicating that traffickers are generally willing to pay about USD200-300 per cub*', and it becomes a very unequal contest for the cheetahs. There is evidence to show that affected farmers and herders were '*more willing to take*

and sell cheetah cubs'⁵². The aim of the Project therefore is '*to demonstrate that the long-term value of cheetahs in the wild is greater than any short-term benefits from selling cheetah cubs to traffickers*', that '*wildlife is an important element of a community landscape, along with water, forests, pasture land, and other natural resources. Like other resources, when it is sustainably managed, wildlife contributes to ecosystem functioning and economic wellbeing*',⁵³ for if cheetahs are to survive, they must be able to survive both outside and inside protected areas, and this '*requires a holistic approach to conservation that engages rather than alienates local communities*'.⁵⁴

Fortunately, CCF already has an impressive track record in Namibia, where Dr Marker has lived and worked alongside communities for many years. Before she arrived, an estimated 10,000 cheetahs, about half the country's total population, had been killed by game and livestock farmers, so CCF set up the Future Farmers of Africa, a mitigation programme to resolve human/cheetah conflict. This was key both to the animals' survival and for them to thrive, because in Namibia 90% of them still live outside the protected areas. The programme works in two ways, theoretically by teaching the communities about cheetah behaviour, which is essential for them to understand if co-existence is to succeed, and practically, by placing guard dogs, over 650 of them to date, with farmers to protect their animals. The dogs, mainly Anatolian Shepherds, are so successful at scaring away not just cheetahs but other predators as well, that livestock loss has been reduced by over 80%, sometimes even 100%. And almost 10,000 farmers have already benefitted.⁵⁵

To return now to CoP17. It also adopted a number of Decisions aimed at protecting the African Lion (*Panthera leo*), one of them focussing on the development of a joint CMS-CITES Initiative, the African Carnivore Initiative, whose primary objective is '*promoting coexistence, sustainable*

⁵⁰ Bridget Martin *Survival or Extinction? How to Save Elephants and Rhinos* Springer, 2019, p.554.

⁵¹ CCF-UK Blog, a report taken from the Darwin Initiative's illegal wildlife trade newsletter, posted 7 April 2020.

⁵² Ibid.

⁵³ Ibid.

⁵⁴ See n.2.

⁵⁵ Known as Livestock Guarding Dogs, they have extended from Namibia to South Africa, Botswana and Tanzania. Rochelle Beighton and Rachel Wood *A lab in a remote Namibian city is saving the cheetah from extinction* CNN, 19 March 2020. See <https://edition.cnn.com/2020/03/19/world/namibia-saving-cheetahs-extinction> Accessed 30/03/2020.

land management and maintaining connectivity for all carnivores.⁵⁶ The Initiative includes not just lions, but also cheetahs, leopards and African wild dogs, four endangered species, all of them facing similar threats and conservation needs, namely: habitat loss and fragmentation; conflict with humans; depletion of the prey base and unsustainable or illegal trade practices.⁵⁷

'The Initiative is not intended to duplicate existing work, but to better pool and utilize existing resources' like the IUCN strategic planning for species conservation. Two such important treaties working together brings added benefits, both in strengthening the legal basis and ensuring regular monitoring, and although the main partners of the Initiative are the IUCN and its specialist groups, there will be other partners including Range States, intergovernmental organisations (IGOs) and NGOs, as well as the scientific and conservation community, donors and other stakeholders, all of them essential if the aims of the Initiative are to be achieved. If funding is obtained, they will be working within a three-year budget of USD53,000,000.⁵⁸

By the end of 2017, the Secretariat had submitted a report on Decisions 17.124 to 17.30 to Standing Committee 69. Although they had not received external funding for the Resource Kit, they had been *'exploring potential opportunities for developing such a toolkit'* with the CCF, the IUCN Cat Specialist Group and the Zoological Society of London.⁵⁹ However, there was better news on the Forum. The Secretariat had begun to develop a web page on cheetahs on the CITES website, on which Parties, experts, IGOs, NGOs, and other stakeholders could share information,⁶⁰ and they were also working on a web page for enforcement and related issues.⁶¹ Because Decision 17.127 required the Secretariat to report to the Standing Committee on a number

of matters including progress in halting illegal trade in cheetahs, Standing Committee 69 also established an intersessional working group on cheetahs, which together with the Secretariat, developed a questionnaire to help Parties compile information which would help with this process.⁶²

Progress on Decisions 17.124 to 17.130 was discussed at the seventieth meeting of the Standing Committee (SC70), held in early October 2018. The USA had provided funding for the development of the CITES Cheetah Trade Resource Kit, so the Secretariat had tasked the Zoological Society of London with its production. It would be ready in draft form by mid-November for the intersessional working group to review and make comments and recommendations for Standing Committee 71.⁶³

There had also been progress on the forum for exchanging and sharing information on the cats. A webpage on cheetahs on the CITES website was almost complete, which once up and running, could be used by *'Parties, experts, intergovernmental and non-governmental organizations and other stakeholders that would like to share relevant information on cheetahs'*.⁶⁴

After consultation, the results from the questionnaires were shared with the Chair of the working group.⁶⁵ Initially this presented difficulties because in addition to the Parties, one non-Party, South Sudan, responded, so did two NGOs who submitted information about three of the Parties. Approval to share this additional information was sought and received from two of these Parties, who also agreed it could be shared with the Chair.⁶⁶ There could be nothing from Somaliland (the non-State), of course. The results were analysed to see what progress had been made in

56 CITES, 2017.

57 As set out in the IUCN Red List Assessments; see Joint CMS-CITES African Carnivores Initiative, AC29 Doc. 29 Annex pp.7-9.

58 Ibid.

59 CITES SC69 Doc.45, p.2, (Cheetahs (*Acinonyx jubatus*): Report of the Secretariat).

60 <https://www.cites.org/eng/prog/terrestrial/fauna/cheetahs> Accessed 30/03/2020.

61 <https://cites.org/eng/prog/imp/enf/introduction> Accessed 30/3/2020.

62 See SC69 Sum.6 (Rev.1) for details of the mandate. The questionnaire was made available to Parties in June 2018, as an Annex to Notification to the Parties No. 2018/058.

63 So the Secretariat suggested their mandate be extended.

64 *Illegal Trade In Cheetahs (Acinonyx jubatus)*: Report of the Secretariat, SC70 Doc.43, p.2.

65 Ibid.

66 Ibid. The countries were Angola, Benin, the Democratic Republic of Congo, Namibia, Nigeria, Somalia, South Africa and Zimbabwe; and Iraq, Jordan, Kuwait, Saudi Arabia, Thailand, United Arab Emirates and Yemen. For full details of the questionnaire and its results see n.64 Annex 2.

implementing the recommendations on cheetahs and in halting the illegal trade.

These, briefly, were the findings:

Re recommendation a) Regarding public awareness and education, adopted at SC66:

- 83% of the respondents had done something to raise public awareness, although most of it was non-specific to cheetahs, with 80% taking advantage of occasions like World Wildlife Day 2018 and the scheme of *Big Cats: Predators under threat*, to promote cheetah conservation and its associated illegal trade.
- Although both range and non-range States were concerned to explain the conservation impacts of illegal trade in wildlife, the former also concentrated on publicizing law enforcement outcomes and establishing partnerships with NGOs to promote awareness-raising, while the latter were more concerned with mobilizing social media. Various learning materials were being developed for use by groups as disparate as travellers, students and law enforcers. Nor was human-wildlife conflict ignored, it being key to ensuring a positive attitude be taken by the local communities living with the animals.
- Apart from new legislation banning private possession of '*predatory, dangerous and semi-dangerous animals*' thus including cheetahs, which was passed by the United Arab Emirates in 2017, it appeared little was being done to reduce demand. So '*Parties affected by illegal trade in cheetahs, in particular destination countries, are encouraged to consider illegal trade in cheetahs in their implementation of Resolution Conf.17.4 on Demand reduction strategies to combat illegal trade in CITES-listed species*'.⁶⁷

Re recommendation b): Regarding enforcement, adopted at SC66:

- More than 50% had acted to strengthen both national and regional enforcement of illegal trade in cheetahs. Methods ranged from improving enforcement of existing laws, passing new legislation, improving monitoring, capacity building, inter-agency or cross-border collaboration, to developing national action plans and working programmes. Some Parties had worked on developing exchange of information, some were establishing community informer networks, some were training enforcers and the UAE had included the

possession of dangerous animals, including cheetahs, when developing new work programmes and law enforcement operations. The Standing Committee encouraged those Parties affected by illegal trade in live cheetahs to quickly develop a plan of action for immediate use as soon as live cheetahs were seized.⁶⁸

- Illegal trade on the internet and social media presented its usual problems, and Parties were encouraged, if necessary, to refer to Resolution Conf. 11.3 (Rev. CoP17) on *Compliance and enforcement*.
- The Secretariat indicated it was working with its partners in the International Consortium on Combating Wildlife Crime (ICWC) to see whether it would be feasible to organize a regional workshop on the illegal trade in cheetahs; and with INTERPOL, the possibility of convening '*a regional meeting on illegal trade in wildlife for Eastern Africa and the Middle East, with the focus on illegal trade in cheetahs*' and other wildlife.

Re recommendation c): regarding cooperation and information exchange:

- The Secretariat together with the World Customs Organization (WCO) established a closed user group on the WCO CENComm platform. A secure communications system for information exchange for law enforcement purposes on the illegal trade in cheetahs, it also allowed access to a digital library of relevant material and documents, including alerts;
- In May 2018, by Notification, the Secretariat invited Parties to join the group;⁶⁹ but
- It was hardly used, so the Secretariat were encouraging Parties affected by the illegal trade to use it.⁷⁰

Re recommendations d) and e): regarding disposal of confiscated live cheetahs:

- Although more than half the Parties had reported that they had facilities for holding confiscated cheetahs, with seven regarding their facilities as '*sufficient*', the reality was rather different, so the Secretariat encouraged Parties affected by the illegal trade in cheetahs to develop a plan of action '*that can be executed without delay*' when live cheetahs were seized, in accordance with Annex 3 to Resolution Conf. 17.8 on *Disposal of illegally trad-*

⁶⁸ In accordance with Annex 3 to Resolution Conf. 17.8 on *Disposal of illegally traded and confiscated specimens of CITES-listed species*.

⁶⁹ Notification to the Parties No.2018/046.

⁷⁰ See n.64, p.4.

⁶⁷ Ibid, p.3.

ed and confiscated specimens of CITES-listed species.⁷¹

- Information from those Parties with facilities for confiscated live cheetahs and experts to help with their humane handling and placement, was sent to the Zoological Society of London (ZSL) for possible use in the development the draft CITES cheetah trade resource kit.
- Responses from other Parties indicated they needed help as their law enforcement officers did not know how to handle seized and confiscated live animals. Again, the Secretariat passed this information on to ZSL requesting it be taken into consideration in the development of the draft resource kit, which, when finalized, 'could support national agencies responsible for wildlife law enforcement'.⁷²

The United Nations Office on Drugs and Crime (UNODC), as well as the Parties who had responded to the questionnaire, provided data on the illegal trade in specimens of cheetahs. In addition to live animals, this included items such as skins and skulls.⁷³

Unfortunately, the report that Standing Committee 70 produced was only based on CITES official seizure reports from nine countries. It concluded '*illegal cheetah trade was limited*' as it showed that between 2015 and mid-2018 only 32 cheetah specimens (13 live animals and 19 parts/products) had been seized. This was despite the fact that in a joint statement submitted to the Standing Committee, Ethiopia, Kenya and Yemen pointed out that these numbers underestimated '*the full extent of the trade, since they only include confiscated animals appearing in official records and omit data from many countries, including key primary source countries for trafficked cheetah*', that their (own) information, which included the 32 CITES seizures, showed 393 cheetah (274 live animals and 119 parts) seizures during the same period, adding that '*Given the perilous state of [East African] cheetah populations that are the source of illegal trade, any ongoing trade in wild cheetah is alarming*', that, '*far from being "limited", illegal international trade continues to be a significant and urgent threat to wild populations*'.⁷⁴

⁷¹ Ibid, see p.4, 19 for details.

⁷² Ibid, p.5.

⁷³ Ibid, see for full details.

⁷⁴ Ethiopia, Kenya and Yemen *Supplemental Information on Illegal Trade in Cheetah (Acinonyx Jubatus)*, SC70 Inf. 44, pp.

The joint statement appeared to be ignored however, so too did the precautionary principle, and based on their own conclusion that the trade was '*limited*', the Secretariat made the following five recommendations to the Standing Committee. They included:

- Extending the intersessional working group's mandate (regarding the Cheetah Trade Resource Kit) until the next meeting of the Standing Committee (SC71).
- Encouraging Parties to inform their relevant national authorities about the cheetah closed user group, as well as encouraging them to use it.
- Encouraging those Parties affected by illegal trading of cheetahs on the internet, to take appropriate action, implementing this in full.⁷⁵
- Encouraging Parties affected by illegal trade in live animals to develop an action plan for immediate use when live cheetahs were seized;⁷⁶ and
- Encouraging demand reduction strategies in Parties affected by the illegal trade, especially destination Parties.⁷⁷

The third recommendation was: '*Encouraging those Parties affected by illegal trading of cheetahs on the internet, to take appropriate action, implementing this in full*'. In fact, CCF's Patricia Tricorache, fully aware of the dangerous effect of online trading, had been monitoring the situation for several years.

It is hard to overestimate the damage done to wildlife by illegal online trading, which is why NGOs such as TRAFFIC and IFAW (International Fund for Animal Welfare) have spent many years working with countries such as China and Viet Nam on prevention strategies, of which both demand reduction and data collection are key

2-3; and also Patricia Tricorache *Somiland: East Africa's largest conduit for cheetah trafficking to the Gulf*, Global Initiative against Transnational Organized Crime, Civil Society Observatory of Illicit Economics in Eastern and Southern Africa, Risk Bulletin, Issue 12, September-October 2020, p.17. See <https://globalinitiative.net/analysis/esaobs-risk-bulletin-12/> Accessed 13/10/2020.

⁷⁵ That is: have regard to their implementation of paragraphs 11 and 12 under *Regarding e-commerce of specimens of CITES-listed species*, in Resolution Conf. 11.3 (Rev. CoP17) on *Compliance and enforcement*.

⁷⁶ In accordance with the provisions of Annex 3 to Resolution Conf. 17.8 on *Disposal of illegally traded and confiscated specimens of CITES-listed species*.

⁷⁷ In their implementation of Resolution Conf. 17.4 on *Demand reduction strategies to combat illegal trade in CITES-listed species*.

components. Illegal online trading in the tiny population of Horn of Africa cheetahs (soemmeringii) is threatening the very existence of this subspecies.

In Middle Eastern countries such as Saudi Arabia and the United Arab Emirates, posts and videos of proud owners and their pet cheetahs can be found on social media platforms such as Snapchat and Instagram, the same platforms that are used by illegal traders. WhatsApp and Facebook have closed groups.⁷⁸ Despite this, by September 2018, Tricorache had collected and analysed sufficient data to release CCF's conclusion that, *inter alia*, 'trade of cheetahs via social media platforms remains prominent'. They found:

- The most used platforms: were Instagram, 4Sale (a mobile app) and YouTube.
- The placement of most of the advertisements: the Gulf Cooperation Council placed over 90%, more than 60% of which were placed by Saudi Arabia.
- The top three sellers: were based in Saudi Arabia and posted 20% of all the advertisements.

And concluded that:

*'The illegal trade in live cheetahs impacts the smaller, fragmented populations in East Africa most ... Already vulnerable cheetah populations, particularly those in Ethiopia and Somalia are at risk of local extinction because of poaching for the illegal pet trade.'*⁷⁹

The data was released in the form of a press release before Standing Committee 70 met with so much evidence available to show widespread illegal trading taking place within some of the Gulf States, it is hard to understand why the CITES Secretariat should have based its decision to delete the protective Decisions on seizure numbers from only nine countries. Should

⁷⁸ Sarah Emerson *Instagram Cheetahs Are Now the Target of International Wildlife Officials*, Motherboard/ Vice, 5 October 2016. See https://motherboard.vice.com/en_us/article/8q8kj4/instagram-cheetahs-are-now-the-target-of-international-wildlife-officials-cites Accessed 11/04/2019.

⁷⁹ Cheetah Conservation Fund *Cheetah Conservation Fund Data Analysis Confirms Social Media Role in Advertising Illegal Wildlife Trade, Including Trafficking of Cheetahs for Illegal Pet Trade*, 27 September 2018. See <https://cheetah.org/press-release/cheetah-conservation-fund-data-analysis-confirms-social-media-role-in-advertising-illegal-wildlife-trade-including...> Accessed 11/04/2019.

they not have been alerted to the fact that these numbers were very low, especially when Ethiopia, Kenya and Yemen produced completely contradictory figures obtained from extensive research and fieldwork? And why did they ignore this data and conclusions? Whatever happened to the precautionary principle? It is small wonder then, that an expert with long experience of working in the field, described these Recommendations as '*Completely toothless. Much weaker than previous ones. There was no longer any "encouragement" to report to CITES or for CITES to follow up*'.

The inevitable result was that CITES CoP18 was to prove a disaster for cheetahs. As often happens, agenda items are moved around or delayed. As a result, the cheetah discussion took place while trade in ivory was being discussed in a different room. As was to be expected, many of the African cheetah-range States were attending the ivory discussion, unaware that the cheetah discussion, already delayed, would begin just twenty minutes before the end of the day. This left little time for any debate, and the Gulf States, all in attendance, dominated. They spent the time strenuously denying there was any illegal trade, and when the United States offered to read out previous CITES Decisions which would have shown the denials to be spurious, the offer was refused '*without a clear explanation*'. The meeting was adjourned at 17.08 hours.⁸⁰

The situation further deteriorated '*when the debate was shut down abruptly*' at the end of the session, '*without consensus and any opportunity to postpone discussion to the following day*' and despite the fact that many countries had not been allowed to contribute. Although '*there was a clear disagreement between source and consumer countries*' as to how to proceed, and whether or not additional Decisions were needed, when Ethiopia, concerned that the debate had been shut down prematurely, tried to raise the issue again in plenary, it failed. And because of CITES' rules of procedure, Ethiopia was unable to raise the issue again, so '*their last remaining opportunity at CoP18 (and therefore the next three years) to have their Decisions re-evaluated*'

⁸⁰ Details provided by Patricia Tricorache. See also CoP18 Com. II Rec. 11 (Rev. 1), Species specific matters cont. 60. Illegal trade in cheetahs (*Acinonyx jubatus*), pp.5-6.

had passed.⁸¹

This is what happened at CoP18. Based on Standing Committee 70's five recommendations, the Secretariat proposed that Decisions 17.124 - 130 should/could be deleted, with only one Decision, 18.AA, relevant to finalizing the Cheetah Trade Resource Kit being accepted.⁸² This was agreed by vote, as was the more general CITES proposal on demand-reduction strategies to combat illegal trade in CITES-listed species.⁸³ They also agreed to set up a CITES Big Cat Task Force under the Joint CITES-CMS African Carnivores Initiative, to be run by both CITES and CMS, and which would, *inter alia*, look into matters relating to the illegal trade in cheetahs. This, the Secretariat believed, would '*avoid duplication and achieve greater impact*' and would be '*more appropriate to address matters related to illegal trade in cheetahs*'. The Big Cat Task Force is in process of being implemented.⁸⁴ Some progress was made on the Cheetah Trade Resource Kit.

Kenya and Ethiopia, while agreeing with draft Decision 18. AA and the proposal to delete Decisions 17.124-126 and 129, attempted to increase efforts in combatting cheetah trafficking by putting forward a number of recommendations based on their own data:

- 13. Directed to the Parties:

18. BB: Consumer countries should ensure all domestic markets in live cheetahs were closed by CoP19.

18. CC: Applied to all source, transit and consumer countries, and was concerned with strengthening protection and law enforcement, making it more effective.

18. DD: Was concerned with illegal trade on social media platforms.

18. EE: Required the involved Parties to report their progress on implementing Decisions 18. BB, 18. CC and 18. DD to each regular meeting of

⁸¹ See Sarah Durant *Cheetahs, CITES, and illegal trade: Are consumer countries doing enough?* (commentary), Mongabay, 30 September 2019 for an excellent account of these proceedings, as well as a haunting description of the cruelty involved in the illegal trade in these, often tiny, cheetah cubs.

⁸² See CoP18 Doc.60, p.4.

⁸³ CITES CoP18 Com. II. 22 p.1. See [https://cites.org/sites/default/files/eng/cop/18/Com II/E-COP18-Com-II-22.pdf](https://cites.org/sites/default/files/eng/cop/18/Com%20II/E-COP18-Com-II-22.pdf) Accessed 11/06/2021.

⁸⁴ See n.82, p.4.

the Standing Committee and to CoP19.

- 14. They also recommended that CoP18 renew Decisions 17.127, 17.128 and 17.130, incorporating this into:

18. FF (re Decision 17.127): Directed to the Secretariat, this required regular reporting of progress on a number of matters including all confiscations, prosecutions and convictions to both the Standing Committee and eventually CoP19.

18. GG (re Decision 17.128): Required the Standing Committee, acting on the above information and any other relevant information, to make recommendations.

18. HH (re Decision 17.130): Addressed to Parties, Others, Donor Parties and other potential donors, this was a request for funding, to enable the above to happen.⁸⁵

These recommendations were based on cheetah trade data collected between January 2015 and June 2018, which provided supplemental information not included in the CITES reported confiscations.⁸⁶

Fortunately, CMS CoP13, held in Gandhinagar, India in February 2020, produced positive results for the animals. With its slogan '*Migratory species connect the planet and together we welcome them home*', not only did it recognise the importance of maintaining ecological connectivity in a rapidly changing world, it also strengthened conservation efforts for African carnivores, endorsing the joint programme with CITES for the conservation of cheetah, leopard, lion and wild dog. The Gandhinagar Declaration on CMS and the post-2020 Global Biodiversity network called for '*migratory species and the concept of "ecological connectivity" to be integrated and prioritized*' in what will be the new Post 2020 Global Biodiversity Framework to be determined at the Convention on Biological Diversity CoP15, to be held in October 2021.

However, the threats to African cheetahs even those in east Africa, are as nothing when compared with the fate of the Asian cheetahs. Before the twentieth century had ended most of them were already extinct, the remnants being a fragmentary population hanging on in the Is-

⁸⁵ See CoP18 Inf. 73, pp.1-3 (*Illegal Trade in Cheetahs: Supplemental Information and Recommendations*).

⁸⁶ This information was provided for the author by Patricia Tricorache.

lamic Republic of Iran, and because these critically endangered cheetahs are Asiatic not African cheetahs, they are protected by different legislation.

Standing Committee 69 took special notice of their plight, of the fact that such a tiny population, an estimated 60-100 animals in 2007, was now reduced to less than 50, and was '*highly vulnerable to any illegal hunting pressure*' despite the best efforts of a team of dedicated conservationists. By 2017, the IUCN/SSC Cat Specialist Group suggested that, partly because of dwindling resources and support, the Asiatic cheetah was '*now facing extinction*'. So they suggested that '*to prevent this unique population going extinct*', the IUCN should '*conduct a campaign, including an international conference, aimed at Iranian and international conservation bodies, and at generating funding to implement an emergency recovery programme in collaboration with, among others, the Department of Environment of the Islamic Republic of Iran*'.⁸⁷ And Standing Committee 70 Doc. 51 contains as an Annex, the review on the implementation of Resolution Conf. 12.5 (Rev. CoP17) which refers to reports of illegal trade in cheetahs, although it is mainly relevant to the Asiatic animals.

Once again it was people who precipitated these cats into their seemingly inexorable rush towards extinction. There was a chain of events. It started in 1979 with the Islamic Revolution, which led to the widespread hunting of gazelles, their prey, by men in jeeps or on motorbikes. Then followed the war with Iraq which lasted eight long years. The cheetahs were forced up into the mountains where fortunately there were alternative sources of food, wild sheep and Persian ibex, even though they had to adapt their hunting techniques to the new habitat.⁸⁸ There, other dangers awaited them. Roads criss-crossed their territories, and there were herders with dogs.

Counting cheetahs has always been difficult wherever they are found, even in a country like Namibia, because their numbers are low and

87 IUCN/SSC Cat Specialist Group *Asiatic cheetah now facing extinction*, 2017. SC69 Doc.45, p.3. See <https://cites.org/sites/default/files/eng/com/sc/69/E-SC69-45.pdf>. Accessed 3/03/2020.

88 James Fair *Caught in the Crossfire* BBC Wildlife, February 2020.

many live outside protected areas. It is orders of magnitude worse in Iran and was so, even before the cheetahs moved up into the mountains in the north-east of the country, where, fortunately, there are two protected areas, Touran National Park and Miandasht Wildlife Refuge. Even though their earlier habitat consisted of arid lowland plains with sufficient food to support them, they still required very large home ranges. In the mountains, because food was scarcer, these were larger than ever. But research scientists, conservationists from the Persian Wildlife Heritage Foundation (PWHF), a Tehran-based conservation organisation, and the Iranian Department of Environment were working hard to establish numbers.⁸⁹

Then something shocking happened. In January 2018, a team of nine conservationists from the PWHF were arrested and have been held in prison ever since. Although they had been setting camera traps to count cheetahs, the mountainous areas hold sensitive military installations, and their actions were misinterpreted. It was alleged that the cameras were being used for spying. They were all charged with espionage, and the outcome has been devastating for the conservationists and possibly for the animals as well. The nine was rapidly reduced to eight when one of them, Professor Seyed-Emani, a Canadian Iranian and PWHF's volunteer managing director, allegedly committed suicide. No investigation has ever been permitted.

In November 2019, a court in Tehran found the others guilty of collaborating with enemy States, namely, the United States and Israel. Not surprisingly, the sentences were harsh. Two of them (PWHF's founder and its programme manager) were sentenced to ten years in prison; two others (a cheetah researcher and a biologist) received eight-year custodial sentences; three others (the co-ordinator, a big cat conservationist and a former PWHF staffer) were given six-year prison sentences; and the last one (a conservationist and wildlife photographer) received four years for collusion. Perhaps the only consolation was that four of them had originally been charged with offences that carried the death penalty, but these charges were dropped in October.⁹⁰ And

89 Ibid.

90 Kayleigh Long *Iran sentences eight conservationists convicted of spying* Mongabay, 26 November 2019.



there were reports of additional punishment, of a two-year ban from working in the conservation sector once their custodial sentences had been completed. Their appeals, heard in February 2020, were unsuccessful.⁹¹

The IUCN, the Wildlife Conservation Society, UNEP (United Nations Environment Programme) and Human Rights Watch were among the many organizations to voice concern. The Center for Human Rights in Iran⁹² reported that they were given verbal not written sentences, which, they described, was '*a common practice in politically motivated cases in Iran*'.⁹³ Furthermore, they are being held in Evin Prison (Tehran), a prison for political offenders, where, apart from being allowed family visits, their conditions are similar to those of political prisoners.⁹⁴

⁹¹ Kayleigh Long *Iran upholds heavy sentences for conservationists convicted of spying* Mongabay, 21 February 2020.

⁹² An advocacy group based in New York.

⁹³ See n.90.

⁹⁴ Ibid.

There was further punishment for Morad Tahbaz, PWHF's founder and Niloufar Bayani, PWHF's programme manager, both of whom had received ten-year prison sentences. They had to repay what was described as '*illicit income*', which in Bayani's case was USD360,000, a sum that '*appeared to have been calculated from the total salary she drew in her years as a UNEP consultant*'.⁹⁵ Following the announcement of the appeal court's judgement, the BBC's Persian service reported that Bayani had sent letters to the Iranian authorities, which contained details of torture.⁹⁶

Fortunately, the Iranian government has allowed other organizations a limited resumption of efforts to save their cheetahs.

By 2020, the future was looking slightly brighter. The ICS launched '*Explorers of Hope – in search of the Asiatic cheetah*' as part of their cheetah programme. They were about to go in search

⁹⁵ Ibid. She had worked for UNEP for a number of years.

⁹⁶ Ibid. The information came from a source close to the case.

of the cats in places where they had not previously been seen, places outside the protected areas where help would be needed from the local communities. Data collection was essential, and any information would be valuable because in some of the known cheetah habitats, the animals did not appear to be breeding and new individuals were no longer seen.⁹⁷

Over the years, reports had come in of cheetahs seen in areas such as Khorasan Razavi, a province that had always confirmed reports of the cats, as well as Bardaskan, Khaaaf, Taybad and Sabzevar counties, but because the data had not been systematically collected it was difficult to work out how to progress the information. In July 2020, attended by experts from Khorasan Razavi Department of the Environment and the Iranian Cheetah Society (ICS), a meeting was convened to discuss ways to co-operate. It was decided that working together, and as part of its programme to conserve northern habitats of the Asiatic cheetah, the ICS would carry out new studies in the province and collect scattered data from other cheetah habitats, the results being fed into the framework of the Explorers of Hope project.⁹⁸

Although the future of Asiatic cheetahs is not looking good, there might still be a future for cheetahs in Asia, as there is an ambitious plan to 'reintroduce' some south-east African cheetahs to India, where the cats were declared extinct in 1952. The plan, first put forward by Jairesh Ramesh the then Environment Minister, was put on hold by the apex court which is monitoring this government project. The cats would be translocated from Namibia to Nauradehi Wildlife Sanctuary in Madhya Pradesh,⁹⁹ and it would actually be an introduction rather than a re-introduction, because the cheetahs would be African not Asian cheetahs.

The decision whether or not to go ahead, would eventually be taken by the National Tiger Conservation Society, with the guidance of a com-

mittee set up by the apex court and consisting of the former director of the Wildlife Trust of India, Ramjit Singh, together with a retired Indian Forest Service officer, and assisted by officials from the Environment Ministry. In early 2019, ten years later, the National Tiger Conservation Society returned to the Supreme Court of India, to seek permission for the introduction.

Permission to continue the project was granted and the court decided that it should be left to the National Tiger Conservation Society to take the final decision. Before that could happen however, a proper survey had to be carried out to find the best suitable habitat, after which the cheetahs would be introduced on an experimental basis only, to see whether they could adapt to life in India. The apex court would continue to monitor the project, with the committee submitting a report to it every four months. In other words, every effort was being made to ensure the best possible outcome, whatever that would prove to be.¹⁰⁰

The history of cheetahs in India has been an unhappy one. Popular with the Mughal emperors for coursing, Akbar, ruling from 1556 -1605, allegedly owned 9,000 of them, almost all wild-caught. By the time of the British Raj they were already becoming rare and their numbers decreased further as some were shot for 'bounty' while others were killed by trophy hunters. The interest in coursing continued into the early twentieth century, so, by then short of indigenous cheetahs, some 200 cheetahs were imported from Africa for that purpose. The last three Indian cheetahs that were confirmed as such, were shot in 1947, with the animals becoming extinct probably sometime during the 1960s. So it is to be hoped that if/when this (re)-introduction is made, the new cheetahs will be properly protected. Not least among the various dangers they will face is the ever-present threat of illegal wildlife trade, most recently highlighted by UNEP in May 2019 when they launched their Wild for Life Campaign.¹⁰¹

97 Iranian Cheetah Society.

98 *New habitats to be surveyed for cheetah presence* Explorers of Hope, 19 July 2020. See hope.wildlife.ir/en/new-habitats-to-be-surveyed-for-cheetah-presence/ Accessed 25/07/2020.

99 *Insights Cheetah Reintroduction Project*, 25 February 2019. See <https://www.insightsonindia.com/2019/02/25/cheetah-reintroduction-project/> Accessed 9/02/2020.

100 Hindustan Times *Supreme Court allows introduction of African cheetahs in India*, 28 January 2020. See [hindustantimes.com/india-news/supreme-court-allows-introduction-of-african-cheetahs-in-india/story-MTyJFOGdFibIP63A7hNkml.html](https://www.hindustantimes.com/india-news/supreme-court-allows-introduction-of-african-cheetahs-in-india/story-MTyJFOGdFibIP63A7hNkml.html) Accessed 9/02/2020.

101 UN Environment Programme *Spotlight on India's soaring wildlife crime*, 21 May 2019. See [unenvironment.org/news-and-stories/story/spotlight-indias-soaring-wildlife-crime](https://www.unenvironment.org/news-and-stories/story/spotlight-indias-soaring-wildlife-crime) Accessed 23/11/2020.

March 2020 saw the publication of the most recent research into the mitochondrial DNA of the extinct Indian cheetah of the subspecies, *Acinonyx jubatus venaticus*.¹⁰² The researchers had managed to acquire slightly more samples of the rare genetic material available, and this enabled them 'to finely date the matrilineal relationship and divergence of African and Asiatic subspecies'.

The results showed 'an unexpectedly deep mtDNA divergence between the Indian and Southeast and Northeast African cheetahs', as well as 'a closer mitochondrial association between Indian and Southeast African rather than Northeast African cheetahs'. In other words, there had been an ancient divergence between the extinct Asiatic and live African cheetahs, that was 'strongly supporting the genetic uniqueness of Asiatic cheetahs'. So 'given their extreme rarity', it was very important to conserve them. They also showed the south-east African cheetahs to be more genetically close to the Asiatic cheetahs than the north-east African cheetahs were.

After making it quite clear that the research was an attempt to establish when Asiatic and African cheetahs had diverged, and not about 'the potential and pitfalls of cheetah re-introduction into India', or whether the African cheetah could survive in India, it could be very useful regarding the possible introduction/re-introduction of African cheetahs. The researchers ended their discussion by posing two fundamental questions:

- 1) Should there be re-introductions if appropriate sites could be found; and
- 2) Which subspecies would be appropriate if they did go ahead?

There have been some genuine re-introductions in Africa. South-east African cheetahs have been re-introduced to Swaziland. In 2017, after twenty years of absence, cheetahs were re-introduced to Malawi,¹⁰³ and in December 2020, African Parks announced the return of cheetahs to Zambia, to the globally significant Bangweulu Wetlands. Owned by the community and home to some 50,000 people, after 100 years, these Wetlands, 'a living example for community-based conservation in Africa', are once again providing

a home for cheetahs. A small founder population of wild cheetahs have returned to their former hunting grounds. It has taken twelve years of very hard work on the part of African Parks, the Zambian government and the local communities, but in that time the level of poaching has been greatly reduced, numbers of fish and wildlife have increased and the livelihoods of the local communities have been improved. Now there is education, healthcare, employment and food security for all those living in and around the Park. And because this is a phased translocation 'paving the way for a healthy breeding population', more cheetahs are due to arrive in 2021.¹⁰⁴

A rather different method of increasing the cheetah population is by artificial insemination. In 2007, the first cheetah embryo was produced using the technique of IVF, the result of a collaboration of the Cheetah Conservation Fund, the Smithsonian Institution and the University of California, but it was not until the end of February 2020, many years later, that there was another breakthrough. This time it took place in the Columbus Zoo and Aquarium, USA, when twin cheetah cubs, a male and female were born to a surrogate mother, Izzy. Their biological mother Kibibi had reached the age of six and a half years without ever giving birth, so scientists decided this was now unlikely to happen. However, her eggs were still viable, so they were harvested and fertilized by sperm from Slash, a young male cheetah (three years old) who was living in Fossil Rim Wildlife Centre in Texas. The impregnated embryos were then implanted into Izzy and three months later, she gave birth to the twin cubs.

This was hailed as 'a huge scientific breakthrough' by a cheetah biologist at the Smithsonian Conservation Biology Institute,¹⁰⁵ because it should now be possible to enhance captive breeding programmes, which, over time could gradually add much needed genetic diversity to the species, a positive development that should benefit the survival of these beautiful cats.

As a major problem for cheetahs has been their

¹⁰² See <https://www.nature.com/articles/s41598-020-60751-7?fbclid=IwAROI->

¹⁰³ See <https://www.africanparks.org/cheetahs-return-malawi-after-20-year-absence> Accessed 11/05/2021.

¹⁰⁴ An email from African Parks, 18 December 2020, sent by James Milanzi, Country Director, Zambia African Parks.

¹⁰⁵ Dr Adrienne Crosier. See Ben Hoyle *Cheetah cubs are first in the world born to surrogate* The Times, 28 February 2020,

propensity/need to either live outside protected areas, or move in and out of them, they should benefit from KAZA, the Kavango-Zambesi Trans-frontier Conservation Area. Five countries are involved with this ambitious plan: Angola; Botswana; Namibia; Zambia and Zimbabwe. Working with Panthera, the KAZA Carnivore Conservation Coalition (KCCC), the Botswana Predator Conservation Trust, Kwando Carnivore Project, Wilderness Safaris and WWF, the objective is *'to uplift community livelihoods while building a massive connected conservation landscape the size of France'*.¹⁰⁶

Part of the initiative has involved tracking a coalition of three male cheetahs, one of them collared, between August 2019 and June 2020. Starting in Nkasa Rupara National Park in Namibia one soon vanished, but the remaining two took a roundabout journey ending up in northern Botswana where there are some key protected areas. It enabled the researchers to follow cheetahs as they dispersed in the field rather than *'just seeing them as a data point on the map'*. They described this as *'an exciting and important development'*.¹⁰⁷

Meanwhile, the shock and consternation that had been the initial reaction to the fiasco at CoP18, had been quickly translated by some countries and NGOs into a steely determination that something like that should not be allowed to happen again. A group, comprised of the same countries and NGOs that have been working on cheetah trade since the CITES – commissioned study was presented in 2014,¹⁰⁸ are continuing to work together towards resuscitating the issue following the CoP17 disappointment. More data, published data would be a key component of the fight back. It would be harder for CITES to ignore. With the illegal wildlife trade continuing to decimate the small population of cheetahs in the Horn of Africa, threatening their very existence, Patricia Tricorache, who remains with the group as an independent expert, gave up her position in CCF, a difficult decision, but made easier by knowing the care and welfare of the cheetahs was in very safe hands.

This has enabled her to commit herself full time to enforcement and research, her real expertise, and doing what she had previously done but never having quite enough time to do it properly. As well as the CITES cheetah group, she also collaborates with and supports other partners, including Torrid Analytics and Colorado State University, while monitoring online platforms and collecting more data, something she has been doing since 2005, and which was instrumental in establishing the protections so carelessly rejected by first Standing Committee 70, and then by CoP18.

The all-important data regarding the illegal cheetah trade, was finally published in 2021. It comprised the analysis of the global dataset for seized and non-intercepted illegal cheetah trade between 2010 to 2019.

- It came from 300 sources.
- From 56 countries in Africa, the Middle East, Asia, Europe, Oceania and North America.
- 1,884 individual incidents were recorded, involving a minimum of 4,000 cheetahs/cheetah parts/products.
- These were likely or confirmed to have breached national laws or CITES regulations.
- Over 50% of cheetahs in the dataset were offered for sale on the internet, most of them on Instagram.

The results enabled the authors to argue that this information *'demonstrates the need for a more in-depth look into the illegal cheetah trade, including sustainability assessments with emphasis in regions where cheetah populations are small and widely exploited, such as the Horn of Africa'* leading to *'improved enforcement and legal frameworks'* and thus providing *'a guide for CITES' actions involving international co-operation and demand reduction efforts'*.¹⁰⁹

Do cheetahs now stand on the brink? In the September/October 2020 edition of their Risk Bulletin, the Global Initiative Against Transnational Organized Crime published an article *'Somaliland: East Africa's largest conduit for cheetah trafficking to the Gulf'*, which drew attention to the continuing risk posed by Somaliland with its tempt-

106 Paul Funston *International Cheetah*, June E-News 2020, Field Notes, Panthera's Blog.

107 Ibid.

108 See n.24.

109 Patricia Tricorache, Shira Yashphe, Laurie Marker *Global dataset for seized and non-intercepted illegal cheetah trade (Acinonyx jubatus) 2010-2019*, Science Direct, Volume 35, April 2021, 106848 (available online 8 February 2021). See <https://www.sciencedirect.com/science/article/pii/S2352340921001323> Accessed 2/3/21.

ing crossing point into the Arabian Peninsula, as well as exposing the potential threat of trafficking links with transnational organized crime. And this is despite the country's strengthened legislation which '*has reportedly led to increased awareness and better coordination between wildlife officials, police and the army*'.¹¹⁰ Saving the cheetahs in Somaliland continues to be a work in progress with, as yet, no end in sight.

But cheetahs are much loved animals. Their plight has been recognized and a great many countries, NGOs, and people are determined to save them, however tiny the numbers and desperate the situation. The cheetah group working on CITES issues, is determined there will be no more fiascos like the one at CoP18. Cheetah Conservation Fund continues its important work in both southern Africa and Somaliland. Anatolian Shepherd and other dogs are helping alleviate some of the effects of human-cheetah conflict. Iran's Explorers of Hope are doing their best to save the few remaining Asian cheetahs, and if India succeeds in introducing African cheetahs, this will expand their global range. Research continues unabated. Cheetahs do stand on the brink, some populations more endangered than others, but there are still grounds for optimism. The candle flame may be flickering, but it continues to stay alight.

Acknowledgement: I am indebted to Patricia Tricorache for her kindness and her patience. She took time out of her very busy schedule to help me fill in some gaps and disentangle some confusing reports, finally correcting the whole. Thank you so much.

110 Patricia Tricorache *Somaliland: East Africa's largest conduit for cheetah trafficking to the Gulf*, Global Initiative Against Transnational Organized Crime. Risk Bulletin, Issue 12 September – October 2020, pp.14-17. See <https://globalinitiative.net/analysis/esaobs-risk-bulletin-12/> Accessed 13/10/20.

A-LAW Essay Competition Winner: Invasive Species

2021: Is the UK's legal approach to "invasive" species of animals justified in the interests of protecting the UK's native wildlife?

By Emily Treneman

Introduction

As a planet we are enduring a fifth mass extinction, with at least 550 known animal species extinct in the last 300 years, and an estimated 1 million more species facing the possible threat¹. There is a plethora of contributing factors to this phenomenon, nearly all with an anthropogenic cause, including invasive species. The term invasive or alien species refers to species that has invaded a foreign environment and consequentially caused adverse effects on the native ecosystems. Although this process is not uncommon in the natural world when considering the historic movement of species, the current abundance and scale has undoubtedly been exacerbated by humans. It aligns with the globalisation of our own species as we open up wildlife corridors². And as such, it seems only consequential that laws be employed to counter the devastating effects of invasive species. Notably one of the cheapest and most rapid methods is extermination, which raises the moral dilemma as to the justifiability of devaluing the life of one species in the bid to protect another.

UK legislation on 'invasive' species

The authoritative UK law that tackles the wide-

spread issue of invasive species is enshrined in the Invasive Alien Species (Enforcement and Permitting) Order 2019 along with the EC Habitats Directive, the Convention on Biological Diversity and the Bern Convention amongst others. The approach of the legislations highlights the need for prevention- s.3 of the Invasive Alien Species (Enforcement and Permitting) Order 2019 lists native species where it is an offence to release them into the wild-and immediate response, namely extermination³.

It is interesting to consider that studies have proven the most effective way of protecting native wildlife is through prevention methods and worth noting that many of the methods employed in the UK to eradicate one species are not able to ensure the protection of others. A pinnacle example is the culling experiments authorized by the British Government in 2013 on Eurasian badgers. It was demonstrated they were ineffective at reducing the spread of TB amongst cattle, nor did they reach the standard of humaneness expected⁴. Nonetheless, culls continue to be used and expanded, with approximately 164,000 culled since the experiments began⁵. When considering UK law, introductions of new species are not strictly prohibited, only regulated⁶. S1.18 of The Bern Convention only necessitates strict control⁷, which questions whether the drastic extermination provisions are justified when methods of prevention are not of an equal (if not greater) magnitude. The Invasive Alien Species Order stresses the need for emergency eradication procedures where

¹ Tollefson J, 'Humans Are Driving One Million Species To Extinction' (2019) 569 Nature

² Westphal M and others, 'The Link Between International Trade And The Global Distribution Of Invasive Alien Species' (2007) 10 Biological Invasions

³ Manchester S, and Bullock J, 'The Impacts Of Non-Native Species On UK Biodiversity And The Effectiveness Of Control' (2000) 37 Journal of Applied Ecology

⁴ Dubois S and others, 'International Consensus Principles For Ethical Wildlife Control' (2017) 31 Conservation Biology

⁵ ([Badgertrust.org.uk](https://www.badgertrust.org.uk), 2021) <<https://www.badgertrust.org.uk/cull>> accessed 26 February 2021

⁶ Manchester (1)

⁷ Convention on the Conservation of European Wildlife and Natural Habitats, (1979) ETS No.104



prevention methods fail⁸. It seems indefensible that the efforts and regulations are not weighted more towards the altogether prevention, where the resulting effect is one of such inhumane proportions- the mass culling of entire populations.

The threat to native wildlife

It is widely accepted that extinction is as much a natural process in our world as evolution, however as we are living in the fifth cataclysmic event the world has seen, the rate at which it is unfolding is unprecedented. The loss of a single species can result in resounding impacts on the ecosystem functioning, particularly with regards to keystone species. Take pollinators for example, like the bee, whose extinction would reverberate throughout the food web.

The UK's wildlife is one of the most depleted in the world, it has seen reductions of 60% in some of our most endangered species since

1970⁹. Invasive species hold some of the blame for this tragedy, which recent studies pinpointing them as a contributing factor to nearly half of all endangered species¹⁰. There are currently an estimated 193 non-native species in Britain that are impacting the local wildlife¹¹. We have witnessed the grey squirrel drive the red to the brink of extinction, the American mink dominate lotic ecosystems, and cane toads poisoning entire food chains. Protecting indigenous species is paramount in their survival and eradication is considered by many to be the lesser of two evils.

⁸ Invasive Alien Species (Enforcement and Permitting) Order 2019

⁹ 'One In 10 UK Wildlife Species Faces Extinction, Major Report Shows' (*the Guardian*, 2021) <<https://www.theguardian.com/environment/2016/sep/14/one-in-10-uk-wildlife-species-faces-extinction-major-report-shows>> accessed 26 February 2021

¹⁰ 'Invasive Species | National Wildlife Federation' (*National Wildlife Federation*, 2021) <<https://www.nwf.org/Educational-Resources/Wildlife-Guide/Threats-to-Wildlife/Invasive-Species>> accessed 26 February 2021

¹¹ 'UKBI - B6. Invasive Species | JNCC - Adviser To Government On Nature Conservation' (*Uncc.gov.uk*, 2021) <<https://jncc.gov.uk/our-work/ukbi-b6-invasive-species/>> accessed 26 February 2021



Alternative approaches

However, there are humane options available that have been proven to be equally, if not more, effective. During a global extinction epidemic, can we justify killing one to prevent the death of another? I am of the view that all animals need to be treated as what they are, a life, a vessel of their species genetics, and a part of the continuation of that species- a species that is no less important than another. There are viable humane methods at our disposal such as immunocontraception, co-habitation promotion and capture and relocation programmes- they should be our absolute frontline defence where prevention has failed¹². It would be unwise and unjust to continue down a path of destruction in a world that is going extinct. There is undeniably the financial issue concerned with more humane methods, however if we refer to the costs incurred by invasive species at 1.3 billion in England and 125 million in Wales, effective management of any

kind would have an overall positive effect on the economy¹³. Humane methods are also less harsh on the native wildlife, as eradication methods can not be 100% targeted at the alien species alone. The extermination programme of the topmouth gudgeon consisted of the poisoning of entire river ecosystems with pesticides, all local wildlife is impacted during this process¹⁴.

The dispersal of species into novel environments is not an unfamiliar concept in the natural world. Whether it be Japanese sea creatures carried across the Pacific by the Tohoku tsunami of 2011¹⁵, or marine iguanas floating to the Galapagos millions of years ago; history is punctuated with these species that have moved

¹² Strive T, Hardy C, and Reubel G, 'Prospects For Immunocontraception In The European Red Fox (*Vulpes Vulpes*)' (2007) 34 *Wildlife Research*

¹³ 'The Economic Impact Of Invasive Species On Great Britain Revealed - The Invasives Blog' (*The Invasives Blog*, 2021) <<https://blog.invasive-species.org/2010/12/15/the-economic-impact-of-invasive-species-on-great-britain-revealed/>> accessed 26 February 2021

¹⁴ Britton J, and Brazier M, 'Eradicating The Invasive Topmouth Gudgeon, *Pseudorasbora Parva*, From A Recreational Fishery In Northern England' (2006) 13 *Fisheries Management and Ecology*

¹⁵ Gewin V, 'Tsunami Triggers Invasion Concerns' (2021)

and successfully flourished in their new environment. Least to say, the most notorious and successful of all being the human. It could be argued we should let 'nature' take its course and allow the survival of the fittest to prevail. This will undeniably result in some animals being out competed. Yet these alien species often take up the ecological function of the ones they drive out, and in some circumstances allowing another species to flourish. Animals have also been known to adapt to the introduction of invasive species. Australia has witnessed the cane toad eliciting morphological changes to occur in native snakes¹⁶, demonstrating the extent of the durability of nature and its unrelenting ability to adapt and overcome the harsh conditions it may face. This outcome, is surely, more favourable than wiping out an entire population.

Conclusion

The law cannot justify the pursuit of the protection of our self-constructed hierarchy of animals and choose who dies an often-agonising death, so another has an uncertain better chance of survival¹⁷. It is an unjustifiable ideology that itself needs to become extinct. This problem is a man-made one, and yet to no surprise the animals are the ones to suffer. Strict regulations should be imposed on regulating human activity more. The root cause should be resolved instead of killing the animals we have caused to be here. UK law should be altered to a more humane and justified approach to redirect the focus and funding towards preventative measure. Regarding already existent invasive species, a compassionate balance can be struck. Humane long-term control such as those discussed and co-habitation strategies instead of extermination programmes should be favoured, for the preservation of all life; native and non-native alike.

Emily Treneman has just finished studying for the GDL after graduating from Cardiff University in Biological Science. She is very passion-

ate about animal rights and enjoys writing about legal issues on the matter. She hopes to pursue a career in this field of law and help improve the legal rights of animals.

¹⁶ Phillips B, and Shine R, 'Adapting To An Invasive Species: Toxic Cane Toads Induce Morphological Change In Australian Snakes' (2004) 101 Proceedings of the National Academy of Sciences

¹⁷ Barkham P, 'Should We Cull One Species To Save Another?' (*the Guardian*, 2021) <<https://www.theguardian.com/environment/2020/jun/28/should-we-cull-one-species-to-save-another-huge-mice-killing-birds-gough-island>> accessed 25 February 2021

A-LAW Essay Competition Winner: Sentencing

2020: Will increasing the maximum sentence for causing unnecessary suffering, contrary to the UK's Animal Welfare Acts, enhance the effectiveness of the offence?

By Violet Smart

At first sight, the disparity between the UK's love for animals and the sentencing powers afforded to the courts for animal welfare offences under the 2006 Animal Welfare Act is stark. An estimated 44% of UK households have at least one pet¹. This figure suggests that around 12 million animals are kept domestically annually and, alongside the additional potential for feral animals under 'human control'² to be abused, demonstrates the sizeable scope for the offence to be committed. It comes as no surprise, then, that animal welfare groups have long petitioned for an increase from the current six month maximum available custodial sentence for those who commit the gravest of these offences. The Bill proposes an increase from the current six months to a maximum sentence of five years for indictable offences, while summary-only offences would retain their current maximum in line with Magistrates' powers. This would bring the UK in line with the maximum penalties available in Australia, Canada, New Zealand, Ireland and India and, it is suggested, would better enable the courts to deal with offences according to their gravity. Indeed, it has been suggested by

magistrates in a number of recent high-profile cases that, had higher sentencing powers been available, they would have been utilised. Such cases have turned the tide of public opinion, with a sizeable 70%³ washing up in favour of increased sentences for the most serious offences. But while all can agree that a six month custodial sentence and/or unlimited fine seems a paltry punishment for gravely injuring – or even killing – an animal, whether or not an increase in jail time will make the offence more effective is moot. It may well be that the proposed amendment to the act will carry far greater symbolic weight than practical implication.

Increased sentences are intended to have a dual⁴ effect wherever implemented. The first element is manifestly political; the longer a sentence, the more seriously policy makers are seen to be taking issues of public importance. Between 2016 and 2019, the government's position changed drastically. The initial response to the EFRA report on animal welfare in 2016 was that "current sentencing practice for offences of animal cruelty in the Animal Welfare Act 2006 does not suggest that the courts are finding current sentencing powers inadequate"⁵. By 2019, a string of high-profile media cases, including the disturbing case of Chunky the Chihuahua⁶ had surfaced, leading the government to announce proposals to bring forward the new legislation.

1 <https://www.rspca.org.uk/whatwedo/latest/facts>, accessed 10/02/2020.

2 During the Bill's reading stages, it was criticised for applying a double standard whereby domestic animals would be protected but feral ones would not. It has been clarified that the offence would apply to any animal who is 'under human control', which means that any animal subjected to cruelty by a person who has for that reason control over the animal will be protected.

3 <https://www.gov.uk/government/news/government-announces-support-for-animal-welfare-sentencing-bill-in-parliament>, paragraph 4, accessed 10/02/2020

4 This analysis takes for granted the fact that sentences are also for retribution and public safety reasons, which can be taken as a given with most crimes.

5 EFRA Select Committee, 4th Special Report - Animal welfare in England: domestic pets: Government response to the Committee's Third Report of Session 2016-17, 7 February 2017

6 This case concerned four boys, aged 15-16 who stole and abused a chihuahua. The case sparked outrage and led to petitions demanding harsher punishments for animal abuses. The case can be read at <https://www.bbc.co.uk/news/av/uk-england-kent-34952962/chunky-the-chihuahua-abuse-teenagers-targeted-online>

When the Bill was introduced to Parliament in June 2019, Michael Gove stated “Our new Bill sends a clear message that [animal cruelty] will not be tolerated, with the maximum five-year sentence one of the toughest punishments in Europe”⁷. Understandably, the introduction of the Bill was met with celebration by campaigners and animal lovers alike, but little regard was paid to the fact that in the decade between 2008-18, only between 6% and 11% of cases resulted in a custodial sentence⁸, and of these, even fewer incurred the maximum penalty. Indeed, the House of Commons Briefing Paper on the Bill freely acknowledges that “cases of extreme cruelty are rare”⁹ with fewer than five out of 1150 convictions being awarded the maximum sentence. The BBC Wales also reported that between 2010-2018, “only two six-month maximum sentences were issued by Welsh courts”¹⁰. These figures suggest that the amendments to the Bill are likely to have very little practical power in reducing offending and the majority of abuses against animals will continue to be prosecuted as summary-only offences, maintaining the current six-month maximum under the reform.

The second function of increased sentencing is, of course, deterrence. It has long been assumed that the harsher a punishment, the less likely an offence. This, alongside the obvious retributive element of incarceration, is for instance one of the major driving forces behind the USA’s sustained commitment to long sentences. While prison undoubtedly keeps crime from the streets, its power beyond that in the UK is more limited. Over 70% of people in the UK are reconvicted in the year after release from a custodial sentence, as compared to those who are given a suspended sentence order¹¹. While this is not specific to animal cruelty offences, it is a statistic that speaks loudly. But the practical implications of sending somebody to prison are quite separate from the potential effect of it being a possibility that they are aware might result

from their behaviour. The deterrent effect of a long sentence may redeem an otherwise arguably misguided reform.

According to the deterrence theory of crime, nascent in the writings of early philosophers such as Bentham and Becker, and recently assimilated into modern criminal policy, the “certainty of punishment is generally considered to be more important than the severity of that punishment... [and] the subjective certainty is more important than the objective certainty”¹². Certainty refers not only to how likely an individual is to get caught, but also to how likely the courts are to exercise their maximum sentencing powers. The effectiveness of the amendment would therefore rest partly on how willing the courts are to use any new power attributed to them. Notoriously, the Corporate Manslaughter and Corporate Homicide Act of 2007 set out to give the Courts greater sentencing powers and secure more convictions. At its ten-year anniversary, there had been fewer than 25 successful convictions.¹³ Certainty cannot have any meaningful effect if the individual involved is unaware of the sentencing guidelines or the act (s)he is governed by. It was noted, however, in the RSPCA report of 2018 that awareness of the Act *is* low. The PDSA 2019 report confirmed that “over a quarter of owners (26%) are unaware of the Animal Welfare Acts”¹⁴. The deterrent effect of these longer sentences is, therefore, limited. In effect, this means that the quantity of offences is unlikely to decrease as a result of the amendment. Instead, the rare cases of extreme cruelty will be punishable by a more severe custodial term. The majority of offenders will continue unaffected, escaping with nominal fines (the courts have established a nexus between the defendant’s economic circumstance and the fine imposed, meaning that the potential ‘unlimited’ nature of the fine becomes fable) and perhaps a ban on

7 <https://www.gov.uk/government/news/gove-delivers-new-bill-to-punish-animal-abusers>, accessed 10/02/2020

8 Elena Ares, (2019), House of Commons Briefing Paper, no. 8612, 24 October 2019; Animal Welfare (Sentencing) Bill

9 Ibid.

10 Caleb Spencer & Gwyndaf Hughes, (2019) ‘Animal Cruelty Sentencing: Just 8% of Convicts Jailed’, <https://www.bbc.co.uk/news/uk-wales-48120542>, accessed 10/02/2020

11 Prison Reform Trust, (2019) ‘Prison: the Facts’, Bromley Briefings Summer

12 Ben Johnson (2019), Do Criminal Laws Deter Crime? Deterrence Theory in Criminal Justice Policy: a primer, page 6.

13 James Gobert (2017) ‘The Corporate Manslaughter and Corporate Homicide Act 2007 - 13 years in the making, but was it worth the wait?’, page 23. Indeed, the statistics show no positive improvement in the number of cases under the CMCHA 2007 as compared to its predecessor and the full extent of its power is yet to be demonstrated. It would be easy for the Animal Welfare Act to suffer the same fate if the increased sentencing powers were delegated as a political tool rather than with a real view to securing justice for the animals involved in the offences.

14 PDSA Animal Wellbeing Report 2019, page 16



keeping animals domestically or short sentence. The RSPCA's own website states in bolded text, however, that "when someone is cruel to an animal, many people feel that they should be punished. But in order to prevent reoffending, punishment is often not enough"¹⁵.

The question then becomes: can the effectiveness of an offence be enhanced if the purported means of doing so fails to address the issues inherent in offending. Rather than five years behind bars, could offenders not be enrolled on a compulsory animal welfare and rights programme that educates and rehabilitates in line with the RSPCA and other animal welfare groups' guidelines? The provision of alternatives is unfortunately beyond the scope of this paper, but is certainly worth bearing in mind.

While the increase in jail term is unlikely to affect the majority of offenders, and therefore will arguably fail to enhance the effectiveness of the offence as far as statistics are concerned, its symbolic significance may supersede any prac-

tical failing. The change ensures that Animal Law statute does not stagnate, but evolves in line with public morality, which, vitally, has reached a point where animal rights abuses can no longer be treated flippantly. With the increase from six months to five years, the UK will have among the harshest punishments for animal welfare abuses in Europe. Such severity will send a very clear and direct message to other jurisdictions and indeed to potential offenders that the rights of animals are not subsidiary and that they must be respected. The issue faced is in raising awareness of the Act and the ramifications of breaching it. Once the public is made aware that the courts of law will regard with every seriousness an offence against an animal, and the courts affirm this by exercising their sentencing rights where appropriate against the most grave offenders, the amendment to the Act can be said to have had an effect. The change also safeguards against "facing the prospect of no prison terms for animal cruelty or for fighting with animals being available to the courts, if the Ministry of Justice's proposal to abolish sentences of six months or less is taken forward and implement-

¹⁵ <https://www.rspca.org.uk/whatwedo/education/offenders>, accessed 10/02/2020

ed"¹⁶, giving animal justice a future that will endure.

Violet completed a degree in Philosophy & Theology at the University of Oxford, where she studied animal rights through the ethics module and first became seriously interested in the moral implications of our treatment of animals. She has just finished the GDL at BPP Waterloo and will commence the BPTC in September after which she will be joining 25 Bedford Row for pupillage.

¹⁶ Angela Smith in Hansard, Commons Chamber, July 10, 2019

Cases, Updates & Materials

Hunting Updates

Mark Hankinson's Conviction

R v Hankinson 2021 (Judgment: https://www.judiciary.uk/judgments/r-v-hankinson/?fbclid=IwARoBTO-nXgS5FyhV-joeglgsfHfTlwXNob8P-8koggS_4Z-iNdPsddNk1B9M)

Mark Hankinson, director of the Masters of Foxhounds Association, on 15 October 2021 was found guilty at Westminster Magistrates' Court of encouraging or assisting others to commit an offence under the Hunting Act 2004.

Facts

Mark Hankinson was the director of the Masters of Foxhounds Association, one of the governing bodies for hunting in the UK. On 11 and 13 August 2020, Hankinson spoke at webinars organised by the Hunting Office (which runs the administrative, advisory and supervisory functions of the Hunting Associations) and attended by over 100 hunt masters.

Other speakers at the webinars, obtained by the Hunt Saboteurs Association and made available online in November 2020, included:

- Lord Mancroft – Conservative Peer, Chair of the Masters of Foxhounds Association and former Chair of the Countryside Alliance.
- Phil Davies – ex-Police Inspector and Police Liaison Consultant to the Countryside Alliance.
- Richard Tyacke – Chairman of the Association of Masters of Harriers and Beagles, Hunting Office Executive Director and former Master and Huntsman of the Wynnstey Hunt.

- Paul Jelley – Master of the Chilmark and Clifton Foot Beagles from 1990-2013 and a police officer for 30 years.
- Richard Gurney – former Master of the Old Surrey and Burstow Hunt

Fox hunting was banned in 2005, when the Hunting Act 2004 (the "Hunting Act") came into force. Traditionally, fox hunting involves the use of a pack of around 30-40 hounds who, under the control of the huntsman, seek out, chase, and kill foxes. The huntsman and hounds are usually accompanied by members of hunt staff, hunt masters, and riders who pay to attend for the day. Trail hunting, which started after the Hunting Act came into effect, involves the use of an artificial trail, usually fox-based, which the huntsman and hounds seek out and follow. Anti-hunt activists claim that trail hunting does not exist, and that it was invented to subvert the Hunting Act. The argument is that by using a fox-based scent, it is possible for the hounds to chase and kill a real fox, meanwhile the hunt can claim that it was an "accident" and avoid prosecution.

At Hankinson's trial, the prosecution argued that, during the course of the webinars, the defendant offered advice on how to hunt illegally, behind a smokescreen of trail hunting. They said that his advice was aimed at making it difficult for anyone watching, or filming, to know whether they were witnessing a trail hunt or an illegal fox hunt, and therefore to reduce the likelihood that a member of the hunt would be prosecuted, or convicted, of illegal hunting.

In particular, during the webinars Hankinson made the following statements, among others (emphasis added):

"...it's a lot easier to create a smoke screen if you've got more than 1 trail layer operating, um, and that



is what it's all about, trying to portray um, to the people watching that you're going about your legitimate business."

"...I think the most important thing that, that we need to bear in mind is that if you've got saboteurs out with you in any shape or form, we need to have clear, visible, plausible trail laying done throughout the day."

"Um, it's probably just as well to have something pretty foul smelling on the end of their, end of their drag just in case an anti leaps out from behind a gateway and grabs hold of it and says this is just a clean silk hanky or something."

"Um, a lot of people in the past have tried to say oh we laid trails earlier, or we lay them the day before. In a situation where you've got saboteurs out, or antis or whatever, that's not really going to work too well. We need to have clear and visible trail laying going on, on the day, and it needs to be as plausible as possible."

"Um, I always love Will Day who might be joining

us on Thursday, when he lays trails for the New Forest he has emblazoned on the back of his sweatshirt 'TRAIL LAYER NO. 3'"

"Some people say well what's the point in laying trails? Well I think it's fairly self-explanatory. Er, if you haven't you're not going to be covered by the insurance."

"Um, obviously we also need it um, if we're going to get any support from the Police, particularly when they're dealing with saboteurs and the like, if you haven't got any viable trail laying evidence, how on earth are we going to refute these allegations?"

"Um, so coming back to the, to the sort of modus operandi of the day, um, the trail layers, in my view, you need to have at least 1 trail layer out there, particularly if you've got the presence of undesirables."

Held

In giving judgment, Deputy Chief Magistrate, Judge Tan found Hankinson guilty of an offence

under section 44 of the Serious Crime Act 2007, namely committing an act capable of encouraging the commission of the offence of hunting a wild mammal with a dog, and that he intended to encourage its commission.

Judge Tan rejected the defence's suggestion that Hankinson's choice of words was "bad language" or "clumsy".

In reference to Hankinson's repeated statements about trail laying needing to be "plausible" or "credible", the court's position was "Why would you need to try to portray anything as legitimate if you were in fact engaged in legitimate business?"

In relation to Hankinson's statement that laying trails is required so that the hunting is covered by insurance, the court held that "Trail laying is essential if that is what is genuinely going on. It is a simple answer and an unnecessary question. This was clearly a warning of the risk to those watching on if they could not show trail laying going on. It was a clear statement that in order to hunt illegally, there would have to be trail laying as a cover or smoke screen to be protected through insurance".

In relation to Hankinson's statement that "you need to have at least 1 trail layer out there", the court held that "If it were genuine trail hunting, it goes without saying that there would be at least 1 trail layer for it simply couldn't happen with one. There would be no need to suggest one was necessary unless it were a sham and a smoke screen."

In concluding, the court held:

"I am sure that the Defendant through his words was giving advice on how to illegally hunt. This was through the pretence of laying trails which it could be said the hounds were following. As he himself said, he was speaking to 'like-minded people' and could therefore speak freely. He did not expect his words to be recorded and released into the public domain. It was clearly advice and encouragement to commit the offence of hunting a wild mammal with a dog. I am sure he intended to encourage the commission of that offence."

Hankinson was fined £1,000 and ordered to pay £2,500 as a contribution towards costs.

Commentary

The conviction has been met with celebration and relief from members of the anti-hunt community, who for many years have sought to expose trail hunting as a smokescreen for illegal hunting, which has continued despite the ban.

As director of the Masters of Foxhounds Association, Hankinson is a senior figure in the hunting world; there are 170 packs registered with the Masters of Foxhounds Association in total. The other speakers were similarly senior figures in the hunting fraternity. The webinars were attended by over 100 hunt masters from across the country. The webinars ran for several hours across multiple days, with no one attempting to question or correct any implication that illegal hunting could take place.

Following this conviction and the damning conclusions of the court, one would struggle to conclude anything other than that trail hunting is used as a smokescreen to cover for illegal hunting.

If it is true that trail hunting has been used as a smokescreen for illegal hunting since the ban, it begs questions about how many other criminal offences have been committed during that time.

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Hunt master of the Western Hunt convicted after death of cat

On 10 December 2021 at Truro Magistrates' Court, John Sampson, hunt master of the Western Hunt, was found guilty of being in charge of a dog that mauled a pet cat called Mini to death. Sampson, his son Edward and his girlfriend were exercising a pack of hounds on 6 March 2021. The first charge was that Sampson without lawful excuse destroyed the cat intending to destroy or being reckless as to whether property would be destroyed or damaged. The second was that Sampson was in charge of a dangerous animal, one or more of at least six hunting dogs, which was dangerously out of control. Sampson pleaded not guilty to both charges.

The first charge was dismissed by the magistrates on hearing the evidence. The magistrates found Sampson guilty of the second charge under the Dangerous Dogs Act based solely on the death of the cat. Sampson was fined £480 and ordered to pay the owner of the cat £350 in compensation.

The tragic incident took place in a cul de sac of a housing estate in West Cornwall. It was filmed by a neighbour of Carly Jose (Mini's owner) who heard a cat cry and a commotion outside. The footage showed six hounds converging on Mini. After a hound dropped the cat Sampson's son Edward was videoed throwing her body over a garden wall.

A veterinary pathologist reported that Mini died as a result of being grabbed and crushed by at least one dog.

The incident has sparked a campaign for 'Mini's Law' "to prohibit any activity involving hunting hounds, such as trail hunts and hound exercise, taking place in a residential area or in any other public place." Campaigners cited an "average one reported incident every two weeks". A parliamentary petition in support of the campaign in 2021 reached over 100,000 signatures - [Mini's law - Protect the public and animals from hunting activities - Petitions \(parliament.uk\)](#).

The government's response (which can be read in full on the Petitions page) includes that "The police can take action under the Dogs Act 1871 where dogs are out of control and dangerous to other animals. This Government will not amend the Hunting Act."

Sampson is appealing his conviction. UPDATE: Sampson's appeal was unsuccessful.

National Trust

National Trust members voted by 76,816 to 38,184 in favour of banning trail hunting on Trust land. On 25 November 2021 the board of trustees announced that the NT will no longer issue licences for trail hunting on Trust Land. The National Trust commented:

"This activity (trail hunting) has been suspended on Trust land since November 2020 follow-

ing a police investigation into webinars involving hunts people discussing the practice.

In October, the then director of the Masters of the Fox Hounds Association (MFHA) was found guilty of encouraging the use of legal trail hunting as a screen to carry out the unlawful chasing and killing of animals.

Harry Bowell, Director of Land and Nature said

"The board of trustees has carefully considered this issue. Its decision to issue no further licences for trail hunting is based on a wide range of considerations. These include - but are not limited to - a loss of trust and confidence in the MFHA, which governs trail hunting, the vote by National Trust members at our recent AGM, the considerable resources needed to facilitate trail hunting and the reputational risk of this activity continuing on our land."

Wales

Natural Resources Wales (NRW) has banned trail hunting on its land. NRW manages 362,456 acres (146,681 hectares) of land. It suspended trail hunting in November 2020 following a police investigation into the Hunting Office's webinar discussing the practice in August. The move comes after the conviction of MFHA director Mark Hankinson

Northern Ireland

Northern Ireland is the only part of the UK without a ban on hunting wild animals with dogs. The Hunting of Wild Mammals (Northern Ireland) private members bill brought by Alliance MLA John Blair aimed to bring Northern Ireland into line with the rest of the UK. It was defeated at the second stage by 45 to 38 at an MLA vote on 6 December 2021.

Extending scope of Animal Welfare (Sentience) Bill to include cephalopod molluscs and decapod crustaceans

The scope of the Animal Welfare (Sentience) Bill

has been widened to include lobsters, crabs, octopus and other decapod crustaceans and cephalopod molluscs in recognition of their sentience. This follows on from the findings of an independent government-commissioned review¹ published November 2021.

The review conducted by the London School of Economics and Political Science (LSE) concluded that there is strong evidence to suggest that these animals, with their complex central nervous systems, are sentient. The review defined sentience as the capacity to have feelings including the ability not only to experience pain, fear and distress but also positive feelings such as pleasure.

The Animal Welfare (Sentience) Bill already recognises vertebrates (animals with a backbone) as sentient beings.

The inclusion of invertebrates (animals without a backbone) as sentient is a welcome step forward as consideration of animal welfare will need to take place in relation to future decision-making. However, inclusion in the Bill will not affect existing legislation or impact current industry practice in fishing and restaurants. This means that extreme methods of slaughter such as live boiling, declawing, eyestalk ablation (removing eye stalks of a living animal) and the sale of live crustaceans to untrained handlers is set to continue.

Listen to A-LAW's recent Talking Animal Law podcast with Claire Howard here.

The Glue Traps (Offences) Bill

The Glue Traps (Offences) Bill, sponsored by Jane Stevenson MP (Conservative) has reached second stage reading in the House of Commons. The Private Members Bill proposes to make certain uses of glue traps in England an offence punishable by fines and/or a period of imprisonment not exceeding 51 weeks. Specifically, the use of a glue trap by a member of the

¹ Review of the Evidence of Sentience in Cephalopod Molluscs and Decapod Crustaceans Jonathan Birch, Charlotte Burn, Alexandra Schnell, Heather Browning and Andrew Crump November 2021 accessed 13/12/21

public to catch rodents would be prohibited and its use by pest controllers regulated by licence. Minister of State Lord Zac Goldsmith commented in June 2021:

Glue traps cause slow and unimaginably painful deaths...I am delighted we are able to back Jane Stevenson MP's important Private Member's Bill today. We will do all we can to help her get this new law onto the statute books.

Glue traps are easily purchased online or in stores for a few pounds. They are sold to trap rodents. A glue trap consists of a sheet made of plastic, cardboard or wood coated with a strong non-drying adhesive. Animals are caught by sticking to the adhesive if they come in contact with the trap. The adhesive is so strong that escape is virtually impossible.

The Humane Society International's report, IN-HUMANE INDISCRIMINATE INDEFENSIBLE: THE CASE FOR A UK BAN ON RODENT GLUE TRAPS² sets out the widespread concerns about their use including the duration of suffering (they are not meant to kill outright but rely on a human despatching the trapped animal), the humaneness of the death and the indiscriminatory nature of the traps citing birds, hedgehogs and even kittens as victims.

In general, the use of glue traps to trap rodents is not illegal. A person using a glue trap and failing to release or kill the animal in an appropriate manner may have committed an offence under section 4 of the Animal Welfare Act 2006 where an animal becomes a 'protected animal' if under the control of man either on a permanent or temporary basis. Under section 5(1)(a) and (b) of the Wildlife and Countryside Act 1981 it is an offence to either set in position or use an article which is of a nature and is calculated to either cause bodily injury to, or to kill or take alive, any wild bird coming into contact with it. This includes the use of baited boards and the sticky substance known as bird lime.

Other jurisdictions have placed restrictions on the use of glue traps. New Zealand's Animal Welfare (Glueboard Traps) Order 2009 declares glue board traps to be restricted traps under section 32 of the Animal Welfare Act 1999 and

² hsi-glue-trap-report.pdf accessed 13/12/2021

imposes restrictions on their sale and use. In Australia, the Australian Capital Territory, Tasmania and Victoria have similarly restricted the use of glue traps.

UPDATE: The Glue Traps (Offences) Bill received unanimous support during its third and final reading in the House of Lords in April.

For further information, A-LAW's Wildlife Law Co-Chair, Rob Espin, discusses the use of glue traps, including the Glue Traps (Offences) Bill on this episode of the Talking Animal Law podcast - Talking Animal Law: Glue traps - problems and legal solutions on Apple Podcasts.

Geronimo

On 31 August 2021, Geronimo was dragged screaming from his farm to slaughter by Animal and Plant Health Agency officials following two positive tests for bovine tuberculosis (bTB) using a disputed method for camelids, the Enferplex test.

His owner, Helen McDonald, claims the Enferplex test used by Defra is flawed arguing that a positive test resulted because the alpaca was primed with tuberculin (a purified protein derivative of the bTB bacteria) as part of the testing process. This view is supported by the British Alpaca Society (BAS), the industry's main representative body in the UK.

Ms McDonald mounted several High Court challenges to save Geronimo. She sought permission from Defra to have Geronimo retested using what is claimed to be the more reliable phage PCR blood test, however, this was refused.

Following Geronimo's removal, BAS formally complained to George Eustace regarding his handling including the use of a halter which BAS believed could have hampered his ability to breathe. Geronimo was witnessed gasping for breath.

Ms McDonald or an independent observer were refused attendance at Geronimo's post mortem despite requests to do so.

Defra reported that Geronimo had "TB-like" le-

sions but said that it was not possible to culture bacteria from tissue samples and therefore not possible to determine how the alpaca contracted the disease.

Ms McDonald's team insists that the reason bacteria could not be cultured from tissue samples was that the alpaca was disease-free. Vet Times reported Geronimo's vet Bob Broadbent:

"He arrived from a TB free farm in New Zealand having passed the pre-export testing and then failed a non-validated test in the UK.

"Geronimo never failed a validated test. He remained clinically and physically very fit and well."³ Ms McDonald is calling for a public inquiry into how bTB investigations are handled in the UK.

Wales Animal health and welfare framework: Implementation plan 2022 to 2024

The implementation plan for 2022-24 launched on 4 January 2022 under the Wales Animal Health and Welfare Framework 2014-24 ("the Framework") and covers the final two years of the Framework.

The Framework itself is a ten year strategic document which aims to improve the health and welfare of kept animals as well as protecting public health, the rural economy and the environment.

It covers the health and welfare of all kept animals, including farm animals, companion animals, zoo animals, animals used in sport and those used in apiculture and aquaculture. Wild animals are also considered where human actions affect their health and welfare or where there is a risk of wildlife transmitting disease to other animals or humans.

Oversight of the implementation plan is the responsibility of the Wales Animal Health and Welfare Framework Group which consists of industry representatives, farming unions, the

³ Silverwood, J Vet Times 7 January 2022 accessed at <https://www.vettimes.co.uk/news/calls-for-an-apology-as-geronimo-postmortem-finds-no-tb/>



veterinarian profession and animal welfare organisations.

Link to plan: Wales Animal Health and Welfare Framework Implementation Plan 2022-24 (gov.wales)

Two members of A-LAW involved in legal challenge

Trees for Life a rewilding charity, launched a judicial review in the Court of Session arguing that NatureScot issued too many licences to kill beavers and that this was unlawful under EU law where the killing of a protected species should only occur as a last resort.

Judge Lady Carmichael ruled that NatureScot's failure to publish its reasons for issuing licences to kill beavers was unlawful and that until this situation is rectified all current lethal permits must be halted.

However, four of Trees for Life's other com-

plaints were dismissed including that the Habitats Directive was incorrectly interpreted; that there was a failure to consider the individual circumstances of each application, and where prime agricultural land was involved NatureScot had a blanket policy of authorising lethal control.

While the challenge was only partially successful many conservationists see the ruling as a positive step forward as NatureScot now needs to clearly demonstrate full consideration of the issues when authorising lethal control with culling as a last resort. The ruling also has wider implications for other protected species subject to lethal control measures.

A-Law members Advocate Scott Blair was a member of Trees for Life's legal team with Rob Espin helping to support the challenge.

NFU Scotland and Scottish Land Estates Ltd were listed as third and fourth respondents.

Link to judgment [2021csoh108.pdf](#) ([scot-](#)

Legislation and policy in Scotland - snapshot 2021 - 2022

The Scottish Government has continued to work through its animal welfare policy and legislation agenda since the elections in May 2021. As in other UK administrations, additional workload to finalise Brexit-related regulations has combined over the last two years with the constraints of the pandemic to delay many matters, but most recent legislative commitments on animal welfare remain active.

Almost all animal welfare legislation is devolved to the Scottish Parliament, unless it is a specifically reserved matter (such as the regulation of scientific procedures) or otherwise cuts across reserved matters. One of these is trade and the Scottish Government has stated that it will work with other administrations towards ending the export of livestock for slaughter or fattening, as provided by the Westminster Animal Welfare (Kept Animals) Bill. Similarly, the provisions on zoos under that Bill will also extend to Scotland. (Legislative consent is not necessarily a "given", however: in October 2020, the Scottish Parliament withheld consent for the Internal Market Act on the grounds that it would reduce standards, including animal welfare standards.)

In the devolved areas, last year saw the commencement of outstanding measures under the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020 as well as a new Act on the protection of livestock from dog attacks. Regulations were also passed to provide for the licensing of activities involving animals in Scotland.

Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020

While most of this wide-ranging Act came into effect on 30 November 2020, a number of provisions remained to be carried over to 2021. The Act was introduced to increase penalties for serious offences to animal welfare, health and wildlife crime, building on commitments in the

Scottish Programme for Government 2016-2017. (See ALAW Journal date ... for a more detailed description of the legislation.)

The Act amends the Animal Health and Welfare (Scotland) Act 2006 as well as several pieces of wildlife legislation. It increases maximum penalties for the most serious offences to a five-year custodial sentence and/or unlimited fines, which introduces the option of trial on indictment. This in turn has the effect of circumventing the 6-month time bar that applies to prosecutions under summary process. The change is seen as particularly significant with regard to wildlife crime, due to the difficulty of tracing, reporting and sourcing evidence for wildlife crimes in the remote countryside.

The new maximum wildlife crime penalties are also notable in that they match with those for similar offences against domestic animals, following the Wildlife Crime Penalties Review Group (the Poustie review) which reported in 2014.

Measures (s.14(2) – (6)) to amend the seal licensing regime under the Marine (Scotland) Act 2010 came into effect on 1 February 2021, removing the protection of fisheries and the welfare of farmed fish as reasons for obtaining a licence to shoot seals. This provision was introduced late to the Bill in order to protect Scottish farmed salmon exports to the USA, where the Marine Mammal Protection Act prohibits the import of fish from countries that allow the killing of marine mammals. A related change (s.15) created a requirement for the Scottish Government to provide a report on the impacts of acoustic deterrent devices – often used as an alternative to shooting seals – on marine wildlife.

Section 18, providing measures to protect mountain hares, came into force on 1 March 2021. It removes the open season provided under the Wildlife and Countryside Act 1981 and places the species on the protected list at Schedule 5 of that Act. It is now an offence intentionally or recklessly to kill, injure or take mountain hares throughout the year in Scotland, other than under licence.

Section 19 introduced a dozen new sections (ss. 32A – M) to the 2006 Act, providing new pow-

ers and arrangements for authorised persons taking animals in distress into their possession. These measures allow local authority officials and Scottish SPCA Inspectors to make timely arrangements for the animals' welfare, treatment, transfer or destruction, without the need to obtain court orders. Instead, a decision notice can be issued with a three-week deadline for response. Prior to this, animals taken into care often spent long periods in shelters awaiting the outcome of legal proceedings, exacting both financial and welfare costs. The new measures are complex and the Scottish Government issued detailed guidance when they came into force on 30 September 2021.

The Act gives the Scottish Government power to make regulations for fixed penalty notices in relation to offences relating to domestic animals and wildlife (ss.2 and 13), although these too are still to come. Notices will only be issued for offences considered to be at the lower end of the spectrum, specified as those that would attract only a penalty of imprisonment for a term of 6 months and/or a fine of level 5 on the standard scale.

It also provides for greater protection for police dogs and horses, removing the defence of self-defence when a police animal has been harmed, on the same principle as the English "Finn's law".

A further useful reform (s.4) is the requirement for courts to explain their decisions regarding the making or not making of disqualification orders following animal cruelty convictions. The Scottish courts were already required to consider disqualification, widely seen as a practical adjunct to penalties, but there has been some uncertainty as to whether this was consistent practice. Under the Act, the Scottish Courts and Tribunals Service is now required to establish and maintain a record of reasons relating to disqualification orders and this will allow court practice and understanding of the provision to be monitored. Usefully, the Act also clarifies (s.5) that the purpose of a disqualification order is the future protection of animals, and not a substitute for a penalty.

Following attempts to introduce amendments to the Bill on issues such as pet theft and a

potential ban on electric shock collars for dog training, a measure was added requiring a review of the legislation by 1 April 2025. The review is intended to ensure that the provisions of the Act meet animal welfare, health and protection standards and to consider the creation of additional offences. There is also a requirement to provide an information sharing report within five years to evidence steps taken to ensure transparency and communication amongst enforcement authorities regarding individuals with a fixed penalty notice or convicted of a relevant animal health, animal welfare or wildlife offence.

Dogs (Protection of Livestock) (Amendment) (Scotland) Act 2021

This Act came into force in November 2021, aimed at addressing the widespread concern that livestock worrying incidents are on the increase in Scotland. It amends the Dogs (Protection of Livestock) Act 1953 to increase the maximum available penalty for allowing dogs to chase or attack livestock from a £1,000 fine to 12 months' imprisonment and/or a fine of up to £40,000. While convicted persons are unlikely to receive a custodial sentence, due to the statutory presumption against short sentences in Scotland, the custodial provision does open the way for courts to make alternative disposals such as community payback orders, which could potentially be of use in addressing persistently negligent behaviour. Courts will also have powers to disqualify persons convicted of relevant offences from keeping dogs. The Act gives new powers to Police Scotland to seize dogs for examination by a veterinary surgeon, with specific guidance for veterinary surgeons on examination of dogs currently in the pipeline.

To improve public understanding of the serious consequences of these incidents, the principal offence was reframed as "Offence where dog *attacks or worries* livestock on agricultural land". The categories of livestock involved were also widened to include llamas, alpacas, deer, buffalo and enclosed game birds as well as the original cattle, sheep, goats, swine, horses, or poultry.

Animal Welfare (Licensing of Activities Involving Animals) (Scotland) Regulations 2021

Arguably the most significant animal welfare measures of 2021 came in the shape of secondary legislation – the Animal Welfare (Licensing of Activities Involving Animals) (Scotland) Regulations 2021 – which build on and extend similar measures already implemented south of the border.

The Regulations build on a longstanding Scottish Government to introduce registration and licensing of animal sanctuaries and rehoming activities, as well as reforming breeding licensing. They cover the licensing of selling animals as pets, rehoming animals as pets, operating animal welfare establishments (including sanctuaries and rehoming centres), breeding dogs, breeding cats and breeding rabbits. The operation of animal welfare establishments, rehoming of animals as pets, cat and rabbit breeding have not previously required licensing in the UK. Introducing the licensing of animal rehoming centres and the rehoming of animals as pets without a physical rehoming centre is intended to address concerns about the lack of regulation of individuals posing as well-meaning rescue organisations but being motivated by profit from transport or rehoming fees, or placing unsuitable animals with new owners.

The Regulations provide for licensing authorities (generally local authorities) to charge fees and inspect premises. They modernise and replace previous licensing requirements for dog breeding and pet sales by allowing licences to be suspended, varied or revoked and issued for periods of up to three years based on risk assessment. They also replicate “Lucy’s Law” by preventing the commercial sale of puppies or kittens not bred by the seller.

Mandatory Use of Closed-Circuit Television in Slaughterhouses (Scotland) Regulations 2020

These Regulations came into effect in July 2021, bringing Scotland into line with standards in England with regard to mandatory video recording in abattoirs and the requirement to share this information with authorised persons, such as official vets.

Looking ahead

The Scottish Government has committed to

consider the welfare of animals used in exhibition and display, with potential new regulations under the Animal Health and Welfare (Scotland) Act 2006. It is not yet known when, or if, the Scottish Government will follow the example of Westminster and include protection for cephalopods and decapod crustaceans within the Act, but previous Ministerial assurances indicate that this will be forthcoming.

2022 looks like being a year with considerable emphasis on wildlife, however, with a number of new measures and policy developments on the horizon.

Hunting with Dogs (Scotland) Bill

The Scottish Government introduced its new Hunting with Dogs (Scotland) Bill on 25 February 2022. The Bill builds on recommendations from the Bonomy review to improve and clarify the current Protection of Wild Mammals (Scotland) Act 2002, as well as a further public consultation on reducing to two the number of dogs allowed for searching, stalking or flushing permitted in certain circumstances, and prohibiting trail hunting.

The new Bill allows dogs to be used to search for, stalk or flush a wild mammal, but only for specified purposes and as long as the activity meets the requirements in the Bill. These purposes include preventing serious damage to livestock, timber or crops, protecting human health or preventing the spread of disease. No more than two dogs may be used without a licence granted by NatureScot, any dog used is kept under control, and permission has been obtained from the landowner or the person who manages or controls the use of the land.

Trail hunting, defined as laying animal-based scents, will be banned although there is an exception for training up to two dogs to follow such scents for lawful purposes, as long as no wild mammal is killed.

The Bill will be subject to close scrutiny from both opponents and supporters, aiming to ensure that the loopholes and confusion that have dogged the current legislation are eradicated. Animal welfare advocates will be keen to prevent Scottish mounted hunts engaging in sport-

ing activities under another guise, as is currently thought to be the case with their “pest control services”. There is some concern that the provision in the Bill for licensing the use of more than two dogs for “environmental purposes” might be exploited as a pretext for using a full pack. On a more positive note, however, the word “pest” has been dropped from the legislation altogether and the protection of the Bill extends to all wild mammals other than rats and mice.

Fireworks and Pyrotechnic Articles (Scotland) Bill

This Bill, introduced in February 2022, follows the report of an independent Firework Review Group which recommended tightening legislation to reduce the harm fireworks can cause.

The Bill's proposals include: the introduction of a fireworks licensing system; a new power for local authorities to designate firework control zones, where it is not permitted for the public to use fireworks; restricting the days fireworks can be sold to and used by the general public; a new offence to criminalise the supply of fireworks and pyrotechnics to under-18s to ensure adults do not purchase such products on behalf of children, and a new offence of being in possession of a pyrotechnic while at, or travelling to, certain places or events, without reasonable excuse. It does not refer specifically to animal issues, but these were represented on the Review group and are acknowledged in the accompanying policy memorandum and explanatory notes.

Deer Working Group Review

The Deer Working Group was established in 2017 and conducted independent research on the current legal framework for the managing of wild deer throughout Scotland. Its report in January 2020 made 99 recommendations for wild deer welfare and management. Proposals included phasing out the use of lead ammunition to cull deer, modernisation of existing deer legislation, the development of robust deer management plans and enhanced monitoring of deer numbers. Consideration was also given to the potential welfare implications where densities are particularly high, suggesting that sustainable deer management might benefit the

welfare of wild deer.

In 2021, the Scottish Government acknowledged a need for effective deer management, but also addressed the importance of ensuring deer welfare and health, whilst maintaining, and improving standards, where necessary. The Scottish Animal Welfare Commission also commented on the need to study welfare implications further and improve the available data.

Legislation is expected during the current session of the Scottish Parliament and will be preceded by a public consultation.

Grouse Moor Management Group (Werritty Review)

The Scottish Government accepted the Group's recommendation for a licensing scheme for grouse moors in Scotland and decided that it would not avail itself of a potential five-year delay. Development of a licensing scheme is underway with legislation expected during this session.

Strategic Approach to Wildlife Management

In its Programme for Government 2019-2020, the Scottish Government announced its intention to develop “a strategic approach to wildlife management that puts animal welfare at the centre while protecting public health and economic and conservation considerations”, with the publication of a set of principles planned for the following year. The principles have not yet been published but animal welfare stakeholders have urged the Scottish Government to include ethical principles in line with the International Consensus Principles for Ethical Wildlife Control published in 2017 by Dubois et al.

Glue traps

In January, the Scottish Government announced its intention to ban the use of glue, as well as the sale of these devices, subject to the provisions of the Internal Market Act. This follows a review by the Scottish Animal Welfare Commission (SAWC) which concluded that there are significant animal welfare issues related to their use, not only for rodents but also for non-target species such as wild birds. Legislation is expected



during the current parliamentary term.

By Libby Anderson

The CITES' National Legislation Project (NLP)

In May 2018, I began my two-year Arts and Humanities Research Council (AHRC) Leadership Fellowship - Lessons Learned from the Implementation of and Compliance with the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (AH/R002584/1) - which sought to address the lack of empirical investigation of CITES implementation and compliance. The NLP is a project administered by CITES to assess member countries' implementation of the convention through four components: 1. designate at least one Management Authority and one Scientific Authority; 2. prohibit trade in specimens in violation of CITES; 3. penalise such trade; and 4. confiscate specimens illegally traded or possessed. After 45 years, coun-

tries' implementation breaks down as follows:

- Category 1 - implementation meets the requirements - 92 members (50+%)
- Category 2 - implementation does not meet all of the requirements - 46 members (25.3%)
- Category 3 - implementation does not meet the requirements - 36 members (19.8%)
- 8 countries have not been assessed (4.3%)

The CITES Secretariat also monitor compliance in terms of annual and biennial reporting.

- 18 countries are in need of urgent action
- 31 countries have some form of trade suspensions
- 9 of these are the same country

Methods

In order to contribute new data and deeper understanding to this discussion, I analysed academic and grey literature, analysed the content of as many member countries' legislation as could be found and read, and analysed the compliance

data from CITES⁴. Based upon this analysis, in 2019, I conducted a two-round Delphi iterative survey (32 participants the first round; 23 second round), which identified three case studies (Canada, Indonesia, and South Africa). I conducted 20 semi-structured interviews with experts about the three case studies to get more information about best practices and lessons learned.

Findings

Legislative content analysis

Component 1 - Authorities

Five countries do not have a Scientific Authority, which means that they cannot properly implement CITES. Of interest, although not required in CITES, 85 countries do not have an Enforcement Authority. This raises the issue of how violations are discovered as well as to any resulting arrests, prosecutions, and so forth when violations do take place. All other countries have Management and Scientific Authorities with varying structures – either separate organisations or the same agency.

Component 2 - Prohibit violations

From the legislative content analysis, it appears that 103 countries prohibit trade that violates CITES. Yet, 80 countries have legislation that does not.

Component 3 - Penalise violations

Penalties is a difficult component to analyse since it is possible that the penalties for violations of the main law implementing CITES sit within another piece of administrative, civil or criminal legislation that outlines sanctions. So while, a majority of countries appear to have provisions to penalise violations, there were 65 countries for which penalties could not be determined. The most common approach to penalisation was a combination of fines and prisons (99 countries).

Component 4 - Confiscation of illegally traded or possessed wildlife, including products

A majority of countries seem to have provi-

sions to confiscate wildlife (118) and some go further to mention equipment (i.e. tools, vehicles). I could not determine for 55 countries what confiscation measures are in place.

Compliance

As mentioned, there are 31 countries under suspension for their reporting practices. The number of countries which have failed to submit biennial reports is much higher, with 67 countries having *never* submitted a biennial report. These reports are critical to assess implementation as well as challenges and limitations. In addition, the quality of reporting can be poor, which also needs to be addressed.

Delphi iterative survey results

The most important aspect for authorities is that each of them are independent without pressure when making decisions and that they have clearly defined roles. In regards to prohibiting trade and penalising such violations, participants agreed with suggestions, which were supportive rather than punitive. For instance, suggestions for introducing measures to restrict trade from countries failing to completely implement CITES, were somewhat agreed with, but suggestions for a mentorship scheme between countries were agreed with more. The same was true for the suggestions for improving implementation of confiscation measures. In terms of confiscations, it was recommended that members utilise mechanisms for cost recovery for housing live wildlife and storing evidence and for asset forfeiture.

Concerning compliance, again participants supported non-punitive measures to improve compliance, such as working groups. There was also some support (25 out of 32) for there to be more visibility on the CITES' website of whether or not countries have submitted their annual and biennial reports.

Round 2 of the Delphi Iterative Survey unpacked the responses of the 32 participants from the first round. For the authorities, this quote from a participant sums up the consensus:

“The keys to success for enforcement are: independent decision making for risk management, good communication with the MA (regardless

⁴ I found that CITES legislation or review of the legislation is available in English for 112 member countries. I have working knowledge of Spanish and Russian, which comprised a further 20 countries. Therefore, Google translate was relied upon in 47 instances. In four instances, the text could not be translated or was unclear (three in Arabic; one in Somali).

of embedded or outside agency enforcing), and a values-based understanding of trade and application of law.”

In regards to prohibition, further exploration revolved around the lack of protection given by some countries to non-native species. A majority felt that ‘Stricter domestic measures are good mechanisms for preventing trade in wild-taken specimens of nationally endangered species’. It was recommended that ‘Importing countries could respond more strongly by not allowing countries with poor implementation of or compliance with CITES to import CITES species’. Finally, Round 2 participants mostly agreed with suggestions to add additional criteria to the NLP, particularly around successful prosecutions and the specific types of penalties that are allowed.

For more detail of the findings, particularly of the case studies and recommendations, please contact me (tanya.wyatt@northumbria.ac.uk) or visit my webpage (<https://drtwyatt.weebly.com>).

By Dr Tanya Wyatt

The need for a broader constitutionalisation of environmental and animal protection: A question of preserving States’ identify and modernising it

Last February, the Chamber of Deputies of Italy approved an amendment of the article 9 of the country’s Constitution to incorporate the need to protect the environment, biodiversity, ecosystems, and animals for the benefit of “*future generations*”.⁵ It joins here the four members of the European Union having previously granted the protection of the environment constitutional value (Germany, Slovenia, Luxembourg, Austria) and certain other States such as India and Switzerland. Some States, such as France, have recognised the importance of preserving the environment not directly by amending their Constitution but via Charters and documents integrated into a “constitutional bloc” established in their internal order.⁶

However, it is worth noting that the step made by Italy in granting constitutional rights to, not only the environment, but also to animals, is completely outstanding as only four other countries in the world had done it yet.

If it is important to welcome the Italian decision, and in a general way, these global initiatives in favor of a recognition of the importance of preserving the environment at the highest level of the legislative scale, a question remains.

Why, in 2022, when studies on the sentience

5 Camera dei deputati, Documentazione parlamentare, « Modifiche agli articoli 9 e 41 della Costituzione in materia di tutela dell’ambiente », 2022, <<https://temi.camera.it/leg18/temi/modifiche-agli-articoli-9-e-41-della-costituzione-in-materia-di-tutela-dell-ambiente.html>>.

6 The Charter of Environment of 2004 has a constitutional value in France, having been integrated into the « *bloc de constitutionnalité* » of the country in 2005, <<https://www.conseil-constitutionnel.fr/la-constitution/la-charte-de-l-environnement>>.



and cognitive abilities of animals continue to multiply, as well as those relating to the interdependence between human health and its environment, is it still rare to observe steps such as those of Italy?

Of course, when the Constitutions of most of the States of the world were drafted, the standards having been laid down as priorities concerned, under a restricted prism, the structures of society (e.g. separation of powers, the right of freedom, of property, etc.) and the values that Humans should promote in their interactions (e.g. equality, fraternity...). At the time, scientific knowledge of the environment and animals was not as advanced, so it is not surprising that the protection of the environment or animals was not integrated into Constitutions from the start (although it would have already been welcomed).

However, today, and has been for many years, it is indisputable that the environment must be preserved, not only for future generations but also for present generations, who are already

experiencing some of the effects of climate change.

On another note, the extinction of biodiversity conduct to the decrease of ecosystem services which are vital for Humanity (we notably think here to the maintenance of plant diversity and agriculture's economies' structure offered by the bees⁷) or to the propagation of zoonoses (threatening human health and/or constraining individuals to stay at home, as the COVID crisis showed).

It is then an unquestionable fact that the preservation of Human rights (notably the right to live, to be free and to property) is connected to environment and biodiversity protection.

These rights and, therefore, the identity (or even, for some Pacific territories, the very existence) of the States, as it was defined when

⁷ FAO, "The importance of bees and other pollinators for food and agriculture", May 2018, <<https://www.fao.org/3/i9527en/i9527en.pdf>>.

their Constitution was drafted, depends on the maintenance of a healthy and stable environment and on a higher degree of empathy towards animals. Thus, under a broader prism than that originally envisaged by many of the Constitutions around the world, the protection of the environment and of animals must henceforth be considered as contributing directly to the maintenance of dynamic societies and healthy and balanced human relations.

These values should therefore be incorporated as quickly as possible into the Constitutions of States that have not already done so, in order to proclaim their recognition and understanding of current scientific data. This proclamation will thus enable these values to be protected at the highest level and guide in a new light future reports and activities relating to the environment and animals.

Italy has made a welcome update to its Constitution in the light of the advances and challenges of the 21st century, thereby giving itself the power to modernise its identity while allowing the perpetuation of its original and fundamental values. It is now imperative that other States follow suit.

By Meganne Natali

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