

COMMENTARY

Orangutan trade, confiscations, and lack of prosecutions in Indonesia

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Prosecuting and sentencing law breakers punishes the offender and acts as a deterrent for future law breakers. With thousands of Sumatran and Bornean orangutans (*Pongo abelii* and *P. pygmaeus*) having entered private and government rescue centers and facilities, I evaluate the role of successful prosecution in orangutan conservation in Indonesia. Orangutans have been protected in Indonesian since 1931 and they are not allowed to be traded or to be kept as pets. In the period 1993–2016 at least 440 orangutans were formally confiscated, and many more were “donated” to law enforcement agencies. This resulted in seven (7) successful prosecutions by six different courts. Sentencing was lenient (median fine US\$ 442 out of a possible US\$ 7,600, median prison sentence 8 months out of a possible 5 years) and certainly too low to act as a deterrent. A paradigm shift within government authorities, conservation organizations, the judiciary, and by the general public is needed where trade in orangutans is no longer seen as a crime against an individual animal but as an economic crime that negatively affects society as a whole. Prosecuting offenders for tax evasion, corruption, endangering public health, animal cruelty, and smuggling, in addition to violating protected species laws, would allow for an increase in sentencing, resulting in a stronger deterrent, and greater public support. Conservation and welfare NGOs have a duty to become more proactive in a drive to increase enforcement; rescuing orangutans always has to coincide with prosecuting offenders and failures, and successes of these prosecutions have to be vigorously publicized. Despite numerous commitments made by Indonesia to orangutan conservation, and clear failures to deliver on almost all components, international donors have increased their funding year on year; it is time that this changes to a system where not failure is rewarded but success.

KEYWORDS

CITES, illegal wildlife trade, law enforcement

1 | INTRODUCTION

One of the basic premises of the rule of law is that offenders are penalized in a just and timely manner (McCarthy, 2002). Prosecuting and sentencing law breakers not only punishes offenders but it also sends a clear message to society what is and what is not tolerated, and as such acts as a deterrent to future offenders. Fines, seizure of goods, recouping monetary proceeds of criminal activities, and prison sentences all increase the (real or perceived) cost facing criminals,

ideally up to the point where these costs outstrip the (potential) benefits. This should also be the case when considering protected species legislation and as such effective law enforcement can greatly benefit species conservation (Du Saussay, 1984). Unfortunately, when it comes to protecting imperilled primates in many range countries, law enforcement is not effective, and for instance the illegal trade in primates to meet the demand for pets continues unabated (Nijman, Spaan, Rode-Margono, & Nekaris, 2015; Reuter & Schaefer, 2016; Svensson et al., 2016).

Recently, Freund, Rahman, and Knott (2016) reported the results of a ten-year Bornean orangutan *Pongo pygmaeus* anti-poaching program in two districts in West Kalimantan province, Indonesian Borneo. Orangutans are protected under Indonesian law and have been so since 1931. The Conservation of Living Resources and their

Trading orangutans in Indonesia is an economic crime; prosecuting offenders is rare 440 confiscations led to 7 convictions; sentencing was lenient and does not act as a deterrent; prosecution needs to be consistent, thereby aiding conservation.

Ecosystems Act, No 5 of 1990, makes the keeping of and trade in orangutans a criminal offence. It is punishable with a maximum of 5 years imprisonment and/or, since 1990, an up to IDR 100 million (~US\$ 7,600 at 2016 exchange rates) fine. None of the 145 cases that were reported to the authorities by Freund et al. (2016), nor the 133 orangutan rescues / confiscations that were carried out over the duration of the program, resulted in legal charges.

Freund et al. (2016: p2) noted that "although poaching for the pet trade is an oft-cited driver of orangutan decline there have been few studies attempting to quantify the extent of the trade or to understand contributing factors." Between 2003 and 2008, commissioned by TRAFFIC the wildlife trade monitoring network, and working closely with the Indonesian Ministry of Forestry (MoF), I did precisely that. The resulting three reports, published in English and Indonesian, focused on Java and Bali as main centers for the Indonesian orangutan trade, and Kalimantan and Sumatra as source areas (Nijman, 2005a,b, 2009). Since completion of these reports I have kept records of trade in orangutans, especially where it pertains to the legal charges that were made against perpetrators and subsequent convictions, and I have continued to work with the Indonesian authorities and NGOs on wildlife trade issues.

The findings from Freund et al. (2016) from two districts in Kalimantan correspond well with my countrywide findings. Rescuing orangutans, that is, taking them from traders or owners and moving them to a wildlife rescue or rehabilitation center, is detached from the legal process and prosecution that should follow, and is rarely seen as a means to an end. In the period 1993–2016 at least 260 Bornean orangutans and 180 Sumatran orangutans *P. abelii* were formally confiscated (hundreds more were "donated" to the authorities when traders or owners were allowed to hand over their orangutans voluntarily, even up and until the point authorities were about to seize the animals: see Nijman, 2005a,b for details). The vast majority of these confiscations, conducted by the Regional Natural Resources Conservation Authorities, National Police, Forestry Police, and/or Customs Agencies are not brought to the prosecutor's agency. Fewer still are formally investigated, and very few result in a successful prosecution of the perpetrators. I was only able to document four such cases involving four Bornean orangutans (two in Bali, one on Java, and one in Kalimantan), and three cases involving seven Sumatran orangutans (all on Sumatra) (Table 1). Sentencing is lenient: prison sentences are half the maximum or less and although fines as a proportion of the maximum have increased somewhat (from 1% to 2% in the early 2,000s to 10–80% at present) they are still low compared to mean earnings or the value of the wildlife seized.

2 | DISCUSSION

Effective and consistent law enforcement can aid species conservation. A two per cent success rate in prosecuting orangutan traders or owners does not seem high but in an Indonesian wildlife conservation context where trade in the majority of protected wildlife goes unpunished unfortunately it is; the exception seems to

be a successful anti-poaching campaign focusing on tigers *Panthera tigris* in Kerinci-Seblat national park in Sumatra, but even here sentencing is lenient (Risdiyanto et al., 2016). With a lot of effort we can increase this success rate for high-profile species like orangutans, perhaps even double or triple it, but experience shows that prosecuting lawbreakers never has been part of the strategy to conserve orangutans in Indonesia.

Trade in orangutans within Indonesia has been illegal for over 80 years, and because of the species' iconic status this is, and in my view always has been, abundantly clear to traders, government officials, and the judiciary. Hitherto, the appetite to effectively curb this trade and to prosecute offenders all along the trade chain has simply not been there—not among the general Indonesian public, not among politicians, not among forestry department officials, not among the judiciary, and not among the majority of orangutan welfare / conservation NGOs. Most orangutans in trade in Indonesia are Bornean (Nijman, 2005a). Bornean orangutans were recently reclassified as Critically Endangered (Ancrenaz et al., 2016). With >100,000 km² of suitable orangutan habitat in Indonesian Borneo scheduled to be converted to plantations in the next decade (Wich et al., 2012), de facto resulting in a surplus of thousands of orangutans, their number in trade are unlikely to diminish. If history has taught us anything the majority of this trade will go unpunished, not just in West Kalimantan but throughout western Indonesia. Solutions to address this impending problem are urgently needed.

Most of the recommendations that Freund et al. (2016) made, that is, completion of a legislative revision, socialization of these new laws to government officials and the general public, and introducing educational programs targeting the judiciary, are very similar to recommendations that came out of the TRAFFIC / MoF assessment a decade ago (Nijman, 2005a,b, 2009). In hindsight it is clear that they were either never implemented, or when they were, for instance in the case of training law enforcement officers and judges, they were wholly ineffective. These recommendations to curb the trade in orangutans were very reminiscent of those presented in great detail by Rijksen and Meijaard (1999), the result of yet another several years long collaboration with the MoF, but as is clear from the above, this did not result in any tangible actions on the ground either. While changes have happened in the nature of the trade, with fewer orangutans traded openly in the markets on Java (Nijman et al., 2015) and orangutans are now offered for sale through Facebook and other social media (Anonymous, 2016; WCS, 2016), there is no evidence that any of this is due to improved enforcement of stricter sentencing. The situation with orangutans in Indonesia is not unique. Estrada et al. (2017) noted that, at a global level, meaningful primate conservation requires a major revolution in commitment and policy, involving education, rethinking, and investment from governments, NGOs, and the private sector. Criminological investigations targeting the primate trade are urgently needed and this must take into account systemic corruption. While it is acknowledged that wildlife trade is more than just an enforcement problem (Challender & MacMillan, 2014), when considering trade in orangutans, it would be good for Indonesia to give enforcement and prosecution of offenders a try.

TABLE 1 Overview of successful prosecutions for trade in orangutans in Indonesia between 1993 and 2016. Fines in Indonesian rupiah are converted to US\$ and then corrected for inflation to June 2016; the maximum fine calculated in this manner is US\$ 23,800 (for the year 2000) and US\$ 7,600 (for the year 2016)

Year	Location	Species	Imprisonment	Fine (US\$)	Source
2000	Denpasar, Bali	1 Bornean orangutan	6 mo	None	Nijman (2005a)
2000	Tangerang, Banten	1 Bornean orangutan	6 mo	47	Nijman (2005a)
2003	Denpasar, Bali	1 Bornean orangutan	None	89	Nijman, unpubl. data
2011	Pontianak, W Kalimantan	1 Bornean orangutan	8 mo/1.5 mo	99/none	Freund et al. (2016)
2015	Medan, N Sumatra	1 Sumatran orangutan ^a	2 yrs	785	WCS (2016)
2015	Langsa, W Aceh	3 Sumatran orangutans ^b	2 yrs	3,925	Anonymous (2015)
2016	Pekanbaru, Riau	3 Sumatran orangutans	2.5 yrs/2.5 yrs/2 yrs	6,072/6,702/6,702	Nofitra (2016)

^aThe convicted traded in a large number of protected wildlife, some of which were offered alongside the orangutan on Facebook, but it appears that the conviction was for trade in the orangutan only.

^bConviction was for trade in the orangutans and trade in two Brahminy kites *Haliastur indicus*, one argus pheasant *Argusianus argus*, and one clouded leopard *Neofelis diardi*.

Illegal wildlife trade, including the buying, selling or keeping of orangutans, is an economic crime that negatively affects society as a whole. It should not be seen as a crime committed against the individual orangutan that is physically traded thus avoiding falling into the “orangutan versus people” trap (Meijaard, Wich, Ancrenaz, & Marshall, 2012). The main motivation of traders is monetary and only when the costs of running an illegal wildlife trade operation outstrip the benefits can we expect to see change. Offenders should be prosecuted not only for violating protected species laws, but also for tax evasion (few if any traders will pay tax on their illegally gained profits), corruption (bribing government officials), endangering public health (increasing the risk of zoonosis), possession of weapons (firearms, traps), animal welfare and mistreatment (possible under the 1915 Penal Code, although penalties are low), etc. When the trade include attempts to smuggle orangutans out of Indonesia, prosecution under the Customs Law (No 17 of 2006) should be considered; sentences, including minimum sentences (i.e., imprisonment of up to 10 years and/or a fine of IDR 50 million–5 billion, US\$ 3,800–38,000), are significantly higher than under the Conservation of Living Resources and their Ecosystems Act, and if government officials or law enforcement officers are involved in the offence, penalties are increased by one third. Introducing these differences in approach, requires a paradigm shift on behalf of the government authorities, conservation organizations, the judiciary, including judges and prosecutors, and, especially in countries with a jury system, the general public.

Conservation and animal welfare NGOs can take a much more proactive stance in a drive to increase enforcement (Daut, Brightsmith, & Peterson, 2015), including by bringing on law suits against those involved in the illegal wildlife trade (Maldonado & Peck, 2014), working more closely with the authorities under the explicit understanding that “rescuing” wildlife always has to coincide with prosecuting offenders (the current system may make things worse by stimulating trade and certainly it does not act as a deterrent for future offenders), and by more vigorously publicizing failures and success of these prosecutions. In countries where this is legal, convicted criminals should be named and shamed. Between

2010 and 2016 US\$ 1.3 billion has become available to curb the illegal wildlife trade in Africa and Asia, and this amount has increased annually (Wright, Bhammar, Gonzalez Velosa, & Sobrevila, 2016). Increasing costs, if any, for successfully prosecuting offenders could be covered by these newly available funds.

The encourage the Indonesian authorities to be more proactive when tackling the illegal wildlife trade, including trade in iconic species such as orangutans, the global conservation community, including NGOs and donors, much more than now, should hold Indonesia accountable for its actions. Despite commitments made by Indonesia to orangutan conservation over the last half a century, and clear failures to deliver on almost all components, international donors have increased their funding year on year. This should change to a system where not failure is rewarded but success.

ACKNOWLEDGMENTS

I thank TRAFFIC's Chris R Shepherd, Azrina Abdullah, and Julia Ng and the Indonesian Ministry of Forestry's Widodo S. Ramono, Adi Susmianto, Kurni Raoef, and Antong Hartadi for help and support. An Anonymous reviewer is thanked for suggestions for improvement.

CONFLICT OF INTEREST

I have conducted paid consultancies related to orangutan conservation for TRAFFIC (2003, 2004, 2008) and WWF (2005).

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How to cite this article: Nijman V. Orangutan trade, confiscations, and lack of prosecutions in Indonesia. *Am J Primatol*. 2017;e22652, <https://doi.org/10.1002/ajp.22652>