



Contesting and Contextualising CITES: Wildlife Trafficking in Colombia and Brazil¹

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Abstract

This article raises the question of whether recently implemented legislation in Colombia and Brazil (1) provides the necessary tools to prevent the harms of wildlife trafficking (WLT) and (2) influences humans' practices concerning the use of nonhuman animals. These questions are investigated from the dual perspectives of green criminology and public policy. The analysis is based on a qualitative empirical study undertaken in Colombia and Brazil whereby we discuss the function of the legislation in Colombia and Brazil in preventing illegal WLT. We consider the legitimacy of different practices of WLT and evaluate them with respect to species justice and environmental justice.

Keywords

CITES; green criminology; illegal wildlife trade.

Please cite this article as:

Goyes DR and Sollund R (2016) Contesting and contextualising CITES: Wildlife trafficking in Colombia and Brazil. *International Journal for Crime, Justice and Social Democracy* 5(4): 87-102. DOI: 10.5204/ijcjsd.v5i4.331.



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Introduction

Drawing on Burgener and colleagues (2001), Sollund (2012b: 319) has defined wildlife trade (WLT) as ‘the abduction, acquisition, collection, destruction, possession, or transportation of animals [...] for the purpose of barter, exchange, export, import, sale or purchase’. Therefore, the phases of WLT include *abducting*² a nonhuman animal (henceforth animal), *selling* or *exchanging* the animal, *forcefully moving/transporting* him/her to another location where the animal is made a *captive*, or where the animal is *killed* for the purpose of selling the animal or his/her parts or derivatives thereof for different purposes.³ When choosing to apply the term ‘trafficking’ rather than the term ‘trade’, we acknowledge that, for the victimized animals, this crime is equally harmful irrespective of whether trade is considered legal or illegal (Sollund 2012b).⁴

During the past 40 years, the Living Planet Index, which measures more than 10,000 representative populations of mammals, birds, reptiles, amphibians and fish, has identified a 52 per cent decline of these populations (WWF 2014). Although habitat loss accounts for much of this decline, WLT also constitutes a serious threat for many species. Illegal WLT (IWT) is one of the fastest growing illegal trades today and is repeatedly positioned alongside the illegal drug trade, arms trade and human trafficking (Wyatt 2013; Zimmerman 2003). There is a growing involvement by organized crime groups in IWT due to the economic value of various animals and their parts, such as ivory and rhinoceros horn (European Commission 2014). The potential rewards for offenders far outweigh the risk of punishment; low rates of detection are also a factor (European Commission 2014: 3; Europol 2013; Lowther, Cook and Roberts 2002; Sollund 2013). Estimates put the *legal* trade in wildlife to be worth from 5-50 billion USD annually (Reeve 2002: 10), while high estimates place it at 98 billion USD⁵ (Van Uhm 2015) to 159-160 billion USD annually (Schneider 2008; Warchol 2007).⁶ Some put the amount at over 300 billion USD per year (Lawson and Vines 2014: 9). Because the *illegal* trade based on segment studies is estimated to be worth a quarter of the legal trade, roughly 22 billion USD may be a realistic estimate of the annual economic worth of illegal trade in wildlife (Alacs and Georges 2008; Van Uhm 2015: 91).

The seriousness of the IWT, its numerous harmful consequences, including threats to national security that result when it is used to fund terrorist groups (Wyatt 2013), and the direct harm that the victims suffer (Sollund and Maher 2015), has caused a sizeable international response from the EU, the UN, Interpol and Europol, among others (for an overview, see Fajardo del Castillo 2016). Efforts to create awareness, such as burning seized stockpiled ivory, have been undertaken in several countries. Conscious of the magnitude of the IWT in terms of the crimes and harms it entails and aware of the links between the IWT and other types of illegal trade (see Sollund and Maher 2015), we raise the question of whether legislation implemented to fight IWT actually provides the necessary tools to prevent harms. For this task, we draw on data collected from 2012 to 2014 in Colombia and Brazil. We probe into the question of whether the relevant laws as they currently stand in these two countries serve to influence humans’ practices regarding trafficking in animals and, if not, the reasons. In addition, while we argue that, in order to effectively prevent the harms of WLT, all aspects of it should be banned, we evaluate the legitimacy of different practices of the WLT in terms of green criminology’s justice perspectives; specifically, species justice and environmental justice. Before addressing these questions and examining our data, we discuss the legal context pertaining to WLT and IWT. In so doing, we present a brief literature review of WLT and IWT before proceeding to our theoretical framework. This is followed by a description of our methodological approaches and a discussion of our findings.

Legal context

Most trade in ‘wild’⁷ nonhuman animals does not involve breaching laws or regulations. Trade and hunting are usually *regulated* rather than *banned*. The *Convention on International Trade in*

Endangered Species of Wild Fauna and Flora (CITES), now with 181 parties, regulates the trade in endangered species, including 5600 animal species, many of which are threatened because of WLT or the combination of the loss of habitat and trade (WWF 2014). Parties to the convention, such as Brazil and Colombia, must ensure CITES is fulfilled in their respective state statutory legal codes.

CITES operates within the parameters of its three appendices. Appendix I lists species that are critically endangered and trade in these species is banned, with a few exceptions. Appendix II lists species for which trade must be controlled in order to avoid utilization of those species incompatible with their survival. Species that are threatened in at least one member state are listed in Appendix III (CITES n.d.; Wyatt 2013; Zimmerman 2003).

The logic behind CITES, then, is that, when the trade in a species (or trade in combination with habitat loss) has resulted in a critical threat to its survival, the trade in individuals of that species will be banned. Thus, CITES sends the message that trade must be regulated *in order to secure a species continuation*, not for the purposes of protecting individual animals. In other words, animals are regarded as exploitable resources (Sollund 2011).

Much of the trafficking is not transnational but internal, meaning that animals are trafficked within a country's borders and in local markets (da Nóbrega Alves, da Silva Vieira and Santana 2008; Warchol, Zupan and Clarke 2003; Zhang, Hua and Sun 2008). That said, the IWT is facilitated by globalization, which opens borders and expands markets. Not surprisingly, the Internet plays a significant role as an intermediary between supply and demand (International Fund for Animal Welfare (IFAW) 2008; INTERPOL-IFAW 2013; Lavorgna 2014), providing western consumers with access to products from far away (eBay is one site that is used (Sollund 2015)), but also, according to interview data (see below), providing consumers with products from within their borders.

Practices that involve the use of animals for human consumption and for medicinal purposes are widespread and expanding, and they are facilitated by globalization, including human migration and travel. The trade in reptiles, as a case in point, is evidence of the extensiveness of WLT. Alves and colleagues (2008) have shown their widespread use for medicinal purposes in Brazil. Zhang and colleagues (2008) have studied their use as food in southwestern China. There is also substantial trade in reptiles for the pet trade (Herbig 2010; Sollund 2013). In addition to the trade in reptiles, the demand for tiger and rhinoceros derivatives used in traditional medicine also plays an important role in the growth of the IWT (Van Uhm 2015).

Theoretical and conceptual background: Public policy and law from a species justice approach

The first theoretical pillar of this paper is green criminology. Green criminology was born from the realization that the research done on environmental affairs by other social sciences was of interest to criminology (South 2014). Given that a critical tradition within criminology seeks to identify the structural pressures that undermine wellbeing and social justice, green criminologists have noted that many crimes and harms are the result of interaction between human beings and their natural surroundings. This particular perspective in criminology acknowledges that not only criminal acts are of interest to criminologists but also acts which are not criminalized but cause environmental harm (Beirne 2007; White 2013). Beirne and South (2007: xiv) thus argue that 'green criminology should be a harm-based discourse that addresses violations of what some have variously termed environmental morality, environmental ethics, and animal rights'.

Of special concern for green criminologists is the concept of justice (Benton 1998; Halsey and White 1998; White 2013). This is of particular relevance when discussing both the legal and the

illegal WLT. Three main justice positions have been identified by scholars. In *environmental justice*, environmental rights are seen as an extension of human or social rights with the goal of enhancing the quality of human life, now and in the future. From an *ecological justice* perspective, humans are merely one component of complex ecosystems that should be preserved in their own right in light of the rights of the environment. Finally, in *species justice*, environmental harm is constructed in relation to the role animals play within environments and their intrinsic right not to suffer abuse, whether at the individual level (one-on-one harm), as institutionalized harm, or as harm arising from human actions that affect climates and environments globally (White 2013: 6).

Following a species justice approach, the present study adopts a non-speciesist moral point of departure which asserts that animal abuse can be defined as such regardless of whether abuse takes place in accordance with or in breach of law, or as individual or institutionalized harm (Beirne 1999). From this perspective, WLT is seen as a *crime* irrespective of whether it is a breach of law because those who are victims of the trade undeniably suffer and often die as a consequence of it. Finally, because animals experience suffering (Regan 1983), we attribute the status of victimhood to animals (see Fitzgerald 2010).

An initial hypothesis for this research is that CITES conveys a mixed message because, according to its regulations, an act that results in the loss of freedom and even death of a trafficked individual can be lawful in one situation and unlawful in another; similar acts can be simultaneously legally justified or condemned. When an act is permissible and when it is not may be hard to establish not only for law enforcement officers but also for the general public. Such difficulty is not exclusive of CITES but pertains to other public policies, both national and international; for example, use of polluting substances and drugs. Provided that CITES is intended to regulate and/or ban WLT among the parties of the convention, the rules governing the trade should, ideally, also be conveyed to those who partake in trade at the bottom level; that is, ordinary citizens. CITES exposes several difficulties inasmuch as it makes ground for parallel legal and illegal markets, through which legal markets may be used to 'laundry' illegal animals/products. Furthermore, understanding that wildlife trade is illegal may be difficult when the parties' enforcement agencies fail to comply with/enforce the Convention (Han and Nelen 2015). Consequently, a second pillar of this paper is public policy analysis.

The degree to which law and public policies contribute to modifying human practices has long been debated in philosophy and sociology of law. We intend to contribute to the debate using WLT and CITES as the case example. Whereas numerous diverse and diverging criteria measure the role of law in modifying conduct, influential authors agree that a prerequisite to discussing the efficacy or efficiency of law is to first check its validity; that is, the extent to which a given law/policy is a usable frame of reference to guide human behaviour. Kelsen argues that for a law to be valid it has to 'be obeyed to an extent that lies at or goes beyond a certain minimum threshold' (quoted in Eng 2015: 13). For a law to be valid, it has to serve as a 'scheme of interpretation' or as 'accepted legal standards of behaviour' (Hart 1997: 165, 137). Finally, Ross refers to the validity of law in terms of 'connections of meaning' (in Eng 2015: 7). In sum, for a law to be valid, it must work as a framework to interpret reality and, hence, guide behaviour.

This criterion makes sense if read with a constructivist epistemology that asserts that we access and give meaning to reality through the use of symbols, languages, beliefs, norms, actions and horizons, in the sense that 'man is an animal suspended in webs of significance he himself has spun' (Geertz 1973: 5). Culture, including laws, regulations, and practices, are part of this web that conditions and legitimizes both ways of exploiting nature (for example, food traditions) but also the ways in which practices (for example, the pet trade) are controlled and counteracted by laws (for example, CITES regulations). The question is which part of the web of significance will triumph: practices inscribed throughout centuries or practices inscribed by law (that prohibit the centuries-old practices)? Laws and public policies, to be valid, should work as one such

symbol through which we create a sense of how reality *should* be, especially since traditional practices are bound to change.

Public policies should then be a system of representation (Hall 1997), composed of a signifier (the text of the law) and the signified (the expected behaviour of the people ruled by that law), which is used as an instrument of social control (Hart 1997). Due to the fact that the meaning intended by the producer of the law may not automatically and clearly be grasped by the receiver of the message, the challenge for policy makers is to create a clear correlation between the signifier (laws and policies) and the signified (desired behaviour). This challenge emerges from the abstract nature of language, which does not always match up with a clear material reality. In addition, given the fact that the different contextual backgrounds of the transmitter and the receiver of the message means that they do not share a set of common references and values, transmitting a message is difficult and sometimes impossible (Henry 2010). Finally, the obscure characteristic of legal language makes it difficult for non-legal scholars to understand and therefore hard for ordinary people to decipher, be familiar with, and obey. To overcome this difficulty and send a clear message, Saussure (1974) proposed that signifiers need to be arranged in a system of differences; for example, the colour black is 'good', the colour white is 'bad'. This means that for a law to be valid it needs to be laid out in a way that makes clear what is expected from the citizens. This allows them to use it as a framework to interpret reality from a normative stance. Even if, as Merton (2002) showed, people react differently to the law by adhering to it or actively rejecting it, it is valid in the sense that people know what is expected from them.

The consequential question is to what degree wildlife trade legislation in Colombia and Brazil is used by the many actors involved in animal trade as a framework to interpret reality. To state it simply, does the existence of CITES and adhering legislation actually serve to prevent IWT? By means of a 'casuistic case analysis' (Arras 1991) and with the backup of quantitative and qualitative data, we seek to answer this question in this article.

Methods

As alluded to at the outset, this article is based on data collected between 2012 and 2014 in Colombia and Brazil. Semi-structured interviews were conducted in each location and comprised a combination of face-to-face interviews with individual participants and groups.⁸ Expert interviews were conducted principally on agency premises. Interviews and observation were also carried out at wildlife reception and rehabilitation centres and with non-government organizations (NGOs) engaged in efforts to stop wildlife trafficking. This interaction with NGOs facilitated a close inspection of the consequences of the trade for the direct animal victims, as well as insight into the *modus operandi* of traffickers. While we followed a general guide for each interview, interviewees were also encouraged to discuss other topics that were important to understanding the interviewees' experiences of and knowledge about the IWT. Interviews, which lasted one to two hours, were recorded and then transcribed. Sampling involved identifying key organizations and individuals involved in regulating and responding to the IWT, some with wildlife expertise, and asking interviewees to suggest relevant agencies and individuals for further research. Fourteen interviews were conducted in Colombia and four were conducted in Brazil.

Findings

Colombian and Brazilian legislation⁹ differentiates three main categories of animals, wild or domesticated: 1) animals with whom trade is absolutely forbidden; 2) animals with whom trade is forbidden if they were abducted from the wild but allowed if they were bred in hatcheries; and 3) animals with whom all trade is legal. While these distinctions may seem straightforward, two factors complicate matters. First, two phenotypically similar species may have different legal status; that is, trade may be permitted for one but prohibited for the other. This can cause

confusion for citizens and enforcement officers alike. Second, it is virtually impossible to determine whether an animal has been bred in captivity or abducted from the wild. For example, while there is a high demand for parrots and many species of parrots are threatened with extinction, trading those bred in captivity is legal. To identify which parrots are bred legally, a ring, which states the date of birth of the animal and the name of the breeding facility, is sometimes used. The same facilities, however, sell these rings to illegal traders, who force them onto the legs of birds abducted from the wild, making them appear as if they were bred legally (Interview 11).

According to our interviews, it appears that, due to the different degrees of legality and the physically subtle differences between the animals who are trafficked, for many actors involved in trafficking – abductors, police and prosecutors, as well as consumers (collectors) – the law is difficult to follow and/or implement. For example, a staff member of the Secretary of Environment of Bogotá remarked that ‘there are a lot of laws and they are not clear [...] and sometimes you find that the people who have the animals as pets cannot read or write; they are peasants’ (interview 2). Similarly, a section head of the Secretary of the Environment stated: ‘The rule exists but the prosecutors do not know it’ (Interview 9). This is a general problem with CITES because of the large number of species that are listed. Given the way CITES works and the speed with which species are added to the endangered list suggest that this is not a problem that can be solved. It is unlikely that the number of species that are threatened will be reduced in the future, thus making the CITES appendices more penetrable.

Undeniably, some employees of the relevant authorities are making a big effort to control the IWT, but the existing laws have failed to provide a clear and applicable scheme of interpretation for citizens and public police forces, and even for executive and judiciary state branches. One reason for this may be the lack of clarity of the law, as the signifiers used by the law are likely to be beyond the reach of most of the population. Sometimes trade with animals is encouraged under ‘sustainable development’ discourses – for example, in relation to trophy hunting – and at other times it is discouraged, thus transmitting a contradictory message.

A further reason for the failure of the legislation is the weight of cultural practices based on wildlife use. Laws and general norms have been shown to be in constant interplay (Aubert 1954). If laws have no civic support, they may not be enforced (and thereby rendered nonfunctional), and consequently fail to have a normative or a deterrent effect. When laws (pursuant to CITES) are implemented as a consequence of the change in available ‘animal resources’, whether these laws will have normative, educative and deterring effects will depend tremendously on the awareness that is created about the law and about the situation that brought about the implementation of the law. When people have used wildlife for food and pets for centuries (Mancera Rodríguez and Reyes García 2008), the weight of information regarding the harms of such practices must be far greater than the weight of the cultural and social heritage upon which they are based for change to happen.

Although not conclusive, statistics suggest that law has not served to influence humans’ practices regarding the use of animals (see Figures 1 and 2). An article from *Centro de Investigación de Crimen organizado* states that 58,000 trafficked animals are seized in Colombia every year, the equivalent of 160 per day (Southwick 2013). Our seizure data from the *Centro de Rehabilitación de Fauna Silvestre* in Bogotá and from the *Policía Militar Ambiental* in Sao Paulo do not indicate that the law and resolutions from 2010 and 2011 have succeeded in favourably influencing to any substantial degree attitudes and behaviours of Colombians and Brazilians concerning WLT. Using the data given by these official authorities as an indicator of the fluctuations in the number of animals who are trafficked is problematic because increases or decreases in the numbers are not necessarily related to individuals trafficked. Rather, fluctuating numbers can be caused by the strengthening or weakening of the efforts to combat the IWT or by enhancement or carelessness in the techniques used by the traffickers. When the

numbers we were given are considered in the light of our qualitative data, however, our quantitative analysis (Figures 1 and 2) allowed us to reach the findings presented here.

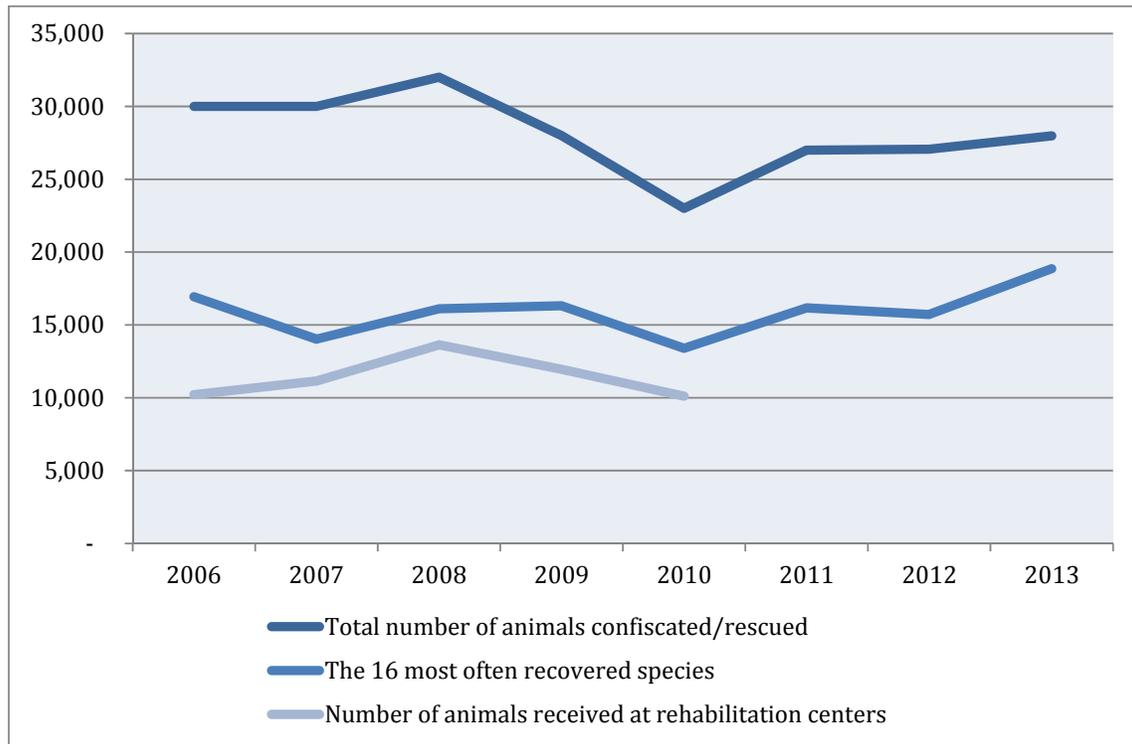


Figure 1: Number of animals seized by the Environmental Military Police in the State of São Paulo, Brazil

Source: Environmental Military Police, Secretary of Environment, State of São Paulo, Brazil

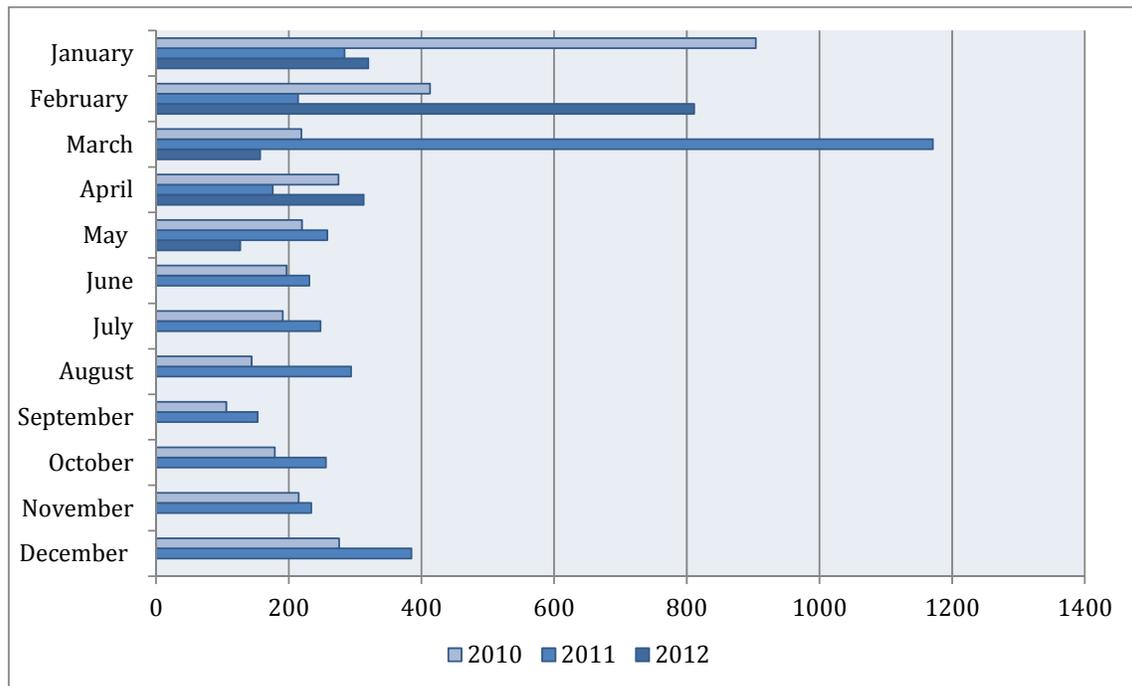


Figure 2: Number of animals delivered at the Rehabilitation Centre of Bogotá, Colombia

Occasional peak recordings in numbers of animals recovered – seized by authorities or delivered to rehabilitation centres – are the main reason for fluctuations in the data. Overall, there has not been a substantial reduction in the numbers of animals recovered from trafficking over the period for which data are available. In fact, numbers in São Paulo, Brazil (2006-2013) and Bogotá, Colombia (2010-2012) remain relatively stable. This implies that wild animals continue to be traded illegally. In the case of Colombia, the three peaks in the numbers of animals delivered at the *Centro de Rehabilitación* after they are seized by the authorities have all occurred in the first quarter of each of the three years. According to the qualitative data, this has to do with cultural practices. In January and February, animals are bought by travellers, often as gifts, when visiting the countryside. In the Lenten season (March and April), when red meat is prohibited for Catholics, the demand for the white meat of turtle rises. Currently, the main market in Colombia and Brazil is the pet market. When rural populations move to the large urban centres, they retain the tradition of keeping wild animals. Finally, wild animals are illegally trafficked for use in scientific experiments (Goyes 2015), even though this practice has been scientifically discredited for decades (Maldonado and Peck 2014).

Discussion: A more appropriate public policy

For every public problem that is known to the authorities, there are three possible public policy responses: allowance, regulation or total prohibition. These are the current options used to confront illegal trade. By way of example, some argue that all drugs (legal and illegal) should be legal (Christie and Bruun 1985); others claim that non-pharmaceutical drugs should be forbidden (see Pryce 2012), while still others claim that the use of drugs that are currently illegal should be regulated and/or allowed for therapeutic practices (Caulkins, Tragler and Wallner 2009). Not surprisingly, given the important characteristics shared by drug trafficking and the IWT (South and Wyatt 2011), the same logic has operated with respect to the IWT, although in the case of the IWT, CITES (and its 181 parties) ensures agreement about regulation. The above-explained problems regarding regulation responses implemented to prevent IWT, however, should re-open the debate.

Based on our analysis in the previous section, we argue that the attempts to regulate WLT through conventions, such as CITES in conjunction with national laws, have largely failed. There are numerous reasons why WLT is highly undesirable. For instance, the main purpose in trafficking animals is not to supply companion animals with good living conditions but to treat them as collectors' items or as processed commodities (for example, food, medicinal purposes) (Sollund and Maher 2015; Van Uhm 2015; Wyatt 2013).

When neither legalization nor the current regulatory model seems to be the answer, the logical conclusion is that the only possible path is total prohibition. Total prohibition presents some problems, however. Some interviewees cited economic reasons against a total ban. Claudia Luz Rodríguez from the Colombian Ministry of Environment pointed out that 'a prohibition would close every possibility in the international market. We still hope to get important profits from trading with our biodiversity'. Bernardo Ortiz-Von-Halle, regional director of the NGO TRAFFIC, suggested that animal trade could teach people to value and protect ecosystems and the species within them *because* they are a potential economic resource: 'If wildlife trade was prohibited in our countries, we would only watch how other countries exploit our resources, how they go in here and make species go extinct and how the habitat is degraded; however, this is a resource that can generate some kind of business'.

A second criticism of a total ban is that it may worsen the situation of the animals it would seek to protect. Some scholars suggest that a ban may increase the value of the animals in the black market, making them more desirable for traffickers (Lemieux and Clarke 2009; Rivalan et al. 2007). Based on a study of the parrot trade in Mexico, Guzmán and colleagues (2007) assert that bans would reduce transnational WLT but not the *abduction* of animals because local markets

are guided by cultural practices and traditions. As such, an international ban may increase the domestic trade of a species.

A third criticism of a complete ban is that it could lead to legal fetishism, a situation wherein people advocating for a general ban would be 'desiring and enjoying law not as a means to an end but rather, as an end in itself' (Lemaitre 2009: 1). In other words, when a prohibition is implemented, it is assumed the situation is resolved and no further efforts are required. This is what Mathiesen (1990) refers to as the 'effect of diversion'. While implementing a law can give the appearance of something being done to tackle a problem, the underlying reasons for the problem remain unaltered, and if the law fails to be enforced, the law may have an adverse effect because it could create the impression that the matter is no longer a problem.

We address each of these criticisms in turn. With respect to economic arguments against a ban, we contend that animals have intrinsic value and that, as such, they should not be conceptualized or treated as economic resources. We also question whether the WLT generates as many economic opportunities as proponents maintain. While WLT is highly profitable for individuals in the chain, based on our interviews and scholarship in the area (see Wyatt 2013; Van Uhm 2015), 'lay collectors' receive only a small fraction of the profit; thus, the individuals affected by a total ban would be those who do not need that income.

With respect to the second argument, we wish to point out that the existence of black markets for human trafficking does not lend support to suggestions that it be decriminalised, because humans, unlike animals, have rights. (For a comparison of human trafficking and the IWT, see Sollund 2012b.)

As to the third argument that a total ban might lead to legal fetishism, we accept that this might be the case but no more so than for other illegalities. Indeed, law often does not 'solve' a problem but may be part of the measures used to address it, and public efforts must make use of other tools and sets of knowledge to confront a given situation or predicament. A very clear message – a clear scheme with which to interpret reality – would accompany a total ban: trade of any kind of wild animal is forbidden under all circumstances. Such has been the case in Costa Rica where, as of 2012, there is a ban against all sport hunting and wildlife trafficking (AFP 2012).

Guided by a species justice approach, we propose to use as a criterion for public policy the attribution of fundamental rights for all beings (not only humans), and consequently we argue that WLT should be completely banned. We acknowledge that it is debatable whether attributing rights to animals would secure their integrity (see Benton 1998). Nevertheless, we still maintain that such a measure would provide more protection to animals and, at the same time, would be more effective in fighting the IWT. To support these assertions, we offer a typology of uses of wildlife, which considers how necessary the different WLT practices are in order to satisfy fundamental human needs. This determination is based on a proportionality test¹⁰ that examines first the validity of the practice in terms of fundamental needs; that is, whether the practice is indeed being conducted in order to satisfy a fundamental need. Second, it evaluates the suitability of the practice to satisfy the fundamental need at hand. Third, it checks its necessity, focusing on whether there are other less harmful ways to satisfy the fundamental need. If all three criteria are met, the activity is then deemed legitimate.¹¹

Thus, Figure 3 categorizes four main uses of animals in the WLT. We are aware that some practices may fit into more than one category. The figure is thus a rough sectionalizing of what motivates IWT. The main purpose of this typology is to allow us to explore the legitimacy of wildlife use and trade.

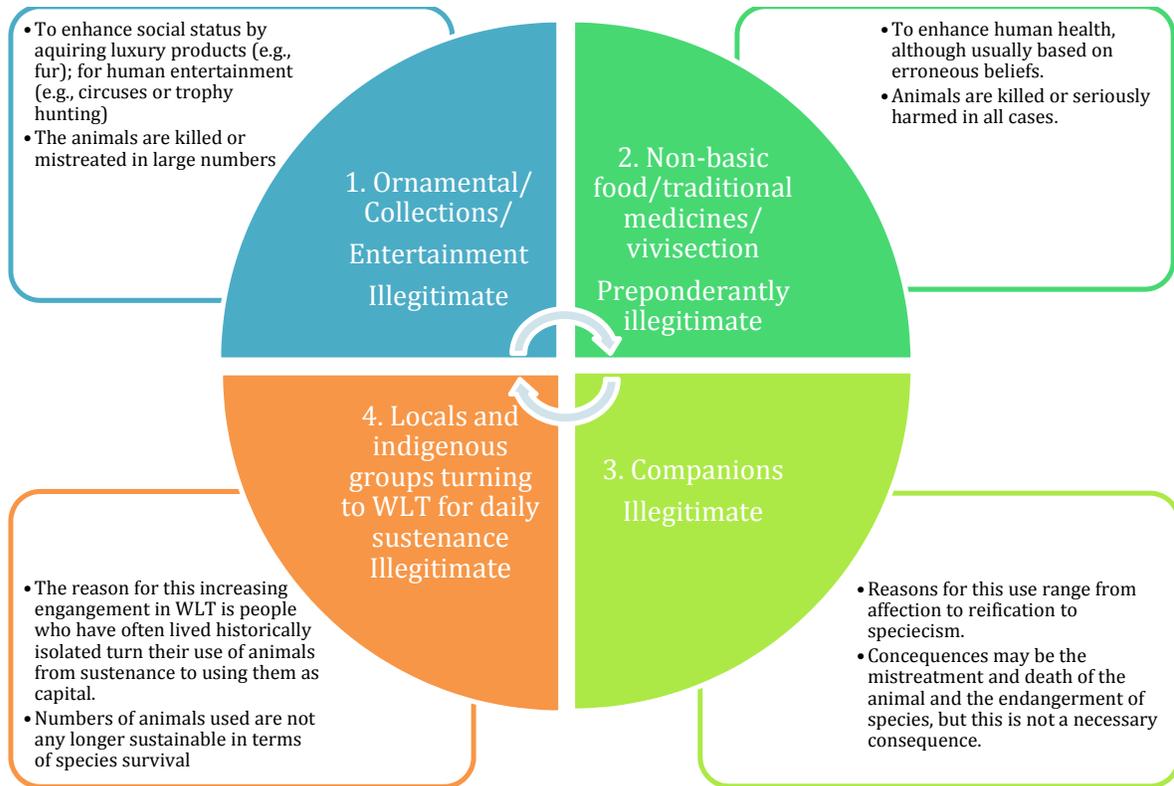


Figure 3: IWT motives sectionalisation

Typologies 1 and 3 may be deemed as clearly superficial/illegitimate. It must be mentioned, however, that rescuing an animal who has been trafficked and who cannot be returned can be a legitimate endeavor if the animal finds acceptable conditions in a human’s home, as the interests of the animal are taken into consideration.

In typology 2, we acknowledge that at various junctures in history, the use of some animal species for medicinal reasons may have been believed to be necessary, and thus legitimate. Most often, such practices rely on superstitions rather than facts; for example, there are widespread beliefs that rhinoceros horns are medicinally efficacious, despite their physiological resemblance to human fingernails (see Minnaar 2013). If such medicine is indeed effectual, once the effective component is established and genetically characterized, it is possible to make such medicine synthetically rather than exploiting new animals all the time. Many argue also that experiments on animals may be superfluous by application of the three Rs: Replacement, Reduction and Refinement. F.ex computer models can replace experiments on animals. Further discussion of the experimental and medicinal use of animals would lead us into an extended philosophical debate (see, for example, Regan 1986). Therefore we limit ourselves to stating that while from an *anthropocentric* viewpoint, any vivisection or exploitation of animals which can be of benefit for humans may be regarded as justified, from a *nonspeciesist* criminology approach (for example, Beirne 1999), and a species justice perspective (for example, Sollund 2013), this is a position we do not take.

Typology 4 represents a challenge. As with other environmental issues (Davis 2014), an absolute prohibition for indigenous groups to be involved in WLT may represent a genuine clash between cultural and religious rights and environmental rights (Brisman 2014). Some groups that have been marginalized and impoverished – or those that have decided to remain

isolated – and who have in the past depended on hunting practices to cover their nutritional needs, may see turning to WLT as a natural prolongation of former practices. Very often in this context, indigenous groups which have not previously been engaged in WLT are enticed to become part of the chain in order to remedy hardship or because they regard it as an easier option than living by traditional means. This has, for example, led indigenous people in Ecuador, whose forests have been penetrated by roads for the petrol industry, to take up WLT in a way that severely threatens the survival of many species (Mowbray 2015). From a species and ecological justice perspective, were they to return to less harmful lifestyles, many animals and species would be saved. Their new ways of exploitation of wildlife may in this context be regarded as less legitimate than the exploitation they previously depended on for their own survival and for their own cultural practices, ones that were far more sustainable. Under circumstances in which they turn to IWT as the only means of sustenance, the issue becomes more problematic. This shows the necessity of going to the root of the problems that contribute to IWT; for example, protecting forests from exploitation by logging and oil companies that profit from such environmental destruction. This example can also illustrate the interconnectedness of various environmental crimes; they often do not exist in isolation.

Conclusion

Through the use of qualitative and quantitative data, this article has shown that current WLT legislation is not an adequate tool to change peoples' relationship with nature because it sends mixed messages that render it untenable as a framework to interpret reality. When WLT is both banned and regulated, it is ignored rather than enforced by enforcement agents and the public (Han and Nelen 2015; Sollund 2013; Runhovde 2015); what is formally forbidden (or restricted) is informally permitted. We therefore argue for a complete ban of WLT. Given the importance of tackling IWT because of its harmful effects on millions of nonhuman and human lives, we propose to change the criteria used to regulate these activities. From a species justice perspective, maximizing the satisfaction of fundamental needs, whether humans' or animals', such as the right to freedom is deemed a more adequate and useful tool to combat the harms associated with IWT. While protecting the interests of all beings, this criterion, at the same time, sends a clear message.

When the direct perpetrators of many exploitative practices concerning animals are confronted with reduced or no other means of survival, this may be regarded as a case of structural violence (Galtung 1971); both the direct perpetrators and the animals who now suffer from these practices are victims. We then witness a double victimization. Nonetheless, the choice should not be between social justice (for the humans who exploit the environment) and species justice (for the exploited animals) but between justice (encompassing environmental and species justice) and structural violence. This is to say, poverty should be overcome not by exploiting and destroying the environment but by distributing opportunities and riches more equitably. For example, the Entropika Foundation (<http://www.entropika.org/en/index.html>) is working to establish alternative means of income for the indigenous groups that have been abducting night monkeys for malaria research (Maldonado, Nijman and Bearder 2009; Goyes 2015). Seeking to achieve social justice in the present through the exploitation of wildlife will only make it more difficult to achieve *any kind of justice in the future* and can entail unjust practices towards both human and nonhuman species. For example, indigenous groups and economically poor locals who are used by middlemen and wildlife traders are also exploited and, in partaking in WLT, they will eventually ruin the very ecosystems on which they depend. Even though their participation in WLT may provide them with a (temporary) income, in the long run their means of income will disappear. As such, social justice may be temporarily fulfilled but, when the habitats and ecosystems are depleted of its inhabitants, environmental justice, ecojustice and species justice may all be compromised.

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- ¹ We are grateful to the Norwegian Animal Protection Fund for financial support to carry out this study. The research has been part of the EU-funded project EFFACE: <http://efface.eu/>. We thank Avi Brisman and the anonymous reviewers of *International Journal for Crime, Justice and Social Democracy* for their helpful critiques on earlier drafts of this article.
 - ² Usually referred to as 'poaching' irrespective of whether the animal is killed illegally on the spot or is taken alive and sold (Sollund 2011).
 - ³ This definition means that the practices of indigenous peoples who take, kill and exploit animals for personal consumption are excluded from the concept of wildlife trafficking in this paper.
 - ⁴ While the term 'trafficking' is usually employed for illegal trade, we regard the victimization of animals to be the same whether they are traded legally or illegally. Accordingly, we use the term 'trafficking' for both legal and illegal activities.
 - ⁵ Equivalent to 86 billion Euro as of 16 August 2016.
 - ⁶ These numbers come with a high degree of uncertainty due to the black nature of the market. Furthermore, these estimates concern flora *and* fauna, while we here concentrate solely on animals.
 - ⁷ We contend that the othering implied in the use of wording like 'wild animal' should be avoided. Space does not permit a discussion about this topic here, but see, for example, Sollund (2012a, 2012b) and Beirne (2007). For purposes of this paper, 'wildlife' is defined here as free born animals or animals who are not adapted to domestication.
 - ⁸ Special care has been taken to follow the ethical guidelines of The Norwegian National Research Ethics Committees and the project has been approved by The Norwegian Social Science Data Services. Unless otherwise noted, all identifying information has been removed.
 - ⁹ Brazil has both federal laws and state laws regarding IWT and, as a consequence and as within Colombia, several laws deal with IWT. Due to space constraints, it is impossible to describe all the laws that deal with IWT in Colombia and Brazil. On IWT legislation in Colombia, see López, Rodríguez and González (2012); for Brazil, see Nassaro (2016). Of particular relevance to this article is Colombia's Resolution 438 of 2001 that explains the process that is required to get a permit to legally take animals and plants from the biological diversity; Law 1333 of 2009, which explains the procedure to follow upon the event of recovering illegally traded animals; Resolution 383 of 2010, which lists the wild species that are threatened with extinction in the country and whose trade is consequently punished as defined in Law 1453; and Law 1453 of 2011 which modifies Law 611 of 2000 and punishes the illegal exploitation of renewable natural resources (including fauna) with four to nine years of imprisonment. In Brazil, Federal Law 9605 of 1998, called the 'Law of Environmental Crimes', imposes a penalty of imprisonment for six months to a year for unlawful animal trade.
 - ¹⁰ This test originated in Germany and has been implemented and developed in several courts, including the European Tribunal of Human Rights and the Colombian Constitutional Court, to deal with clashes of fundamental human rights.
 - ¹¹ By *legitimacy*, we do not wish to enter into a discussion of the legality versus illegality of the acts in question. Instead, we use the concept as in its original meaning: 'appropriate' or 'just'. As Lohne (in press: 1) points out, 'a sociological approach to legitimacy is thus concerned with whether power is acknowledged as "rightful"'. As such, our criterion to identify practices as legitimate or illegitimate is whether or not they address fundamental needs.

References

- AFP (2012) Costa Rica se convierte en el primer país de América en prohibir la caza. Available at <http://expansion.mx/planetacnn/2012/12/13/costa-rica-se-convierte-en-el-primer-pais-de-america-en-prohibir-la-caza> (accessed 6 June 2016).
- Alacs E and Georges A (2008) Wildlife across our borders: A review of the illegal trade in Australia. *Australian Journal of Forensic Sciences* 40(2): 147-160.
- Arras JD (1991) Getting down to cases: The revival of casuistry in bioethics. *The Journal of Medicine and Philosophy* 16(1): 29-51. DOI: 10.1093/jmp/16.1.29.
- Aubert V (1954) *Om straffens sosiale funksjon* [The Social Function of Punishment]. Oslo: Universitetsforlaget.

- Beirne P (1999) For a nonspeciesist criminology: Animal abuse as an object of study. *Criminology* 37(1): 117-148. DOI: 10.1111/j.1745-9125.1999.tb00481.x.
- Beirne P (2007) Animal rights, animal abuse and green criminology. In Beirne P and South N (eds) *Issues in Green Criminology: Confronting Harms against Environments, Humanity and Other Animals*: 55-83. Portland: Willian Publishing.
- Beirne P and South N (2007) Introduction: Approaching green criminology. In Beirne P and South N (eds) *Issues in Green Criminology: Confronting Harms against Environments, Humanity and Other Animals*: xiii-xxii. Portland: Willian Publishing.
- Benton T (1998) Rights and justice on a shared planet: More rights or new relations? *Theoretical Criminology* 2(2): 149-175. DOI: 10.1177/1362480698002002002.
- Brisman A (2014) Environmental and human rights. In Bruinsma G and Weisburd D (eds) *Encyclopedia of Criminology and Criminal Justice*, Vol. 3: 1344-1345. New York: Springer Verlag.
- Burgener M, Snyman N and Hauck M (2001) *Towards a Sustainable Wildlife Trade: An Analysis of Nature Conservation Legislation in South Africa with Particular Reference to the Wildlife Trade*. Rondebosch, South Africa: Institute of Criminology, University of Cape Town.
- Caulkins J, Tragler G and Wallner D (2009) Optimal timing of use reduction vs. harm reduction in a drug epidemic model. *International Journal of Drug Policy* 20(6): 480-487. DOI: 10.1016/j.drugpo.2009.02.010.
- CITES (n.d.) *How CITES works*. Available at <http://www.cites.org/eng/disc/how.php> (accessed 8 June 2016).
- Christie N and Bruun K (1985) *Den gode fiende*. Oslo: Universitetsforlaget.
- da Nóbrega Alves RR, da Silva Vieira WL and Santana GG (2008) Reptiles used in traditional folk medicine: Conservation implications. *Biodiversity and Conservation* 17(8): 2037-2049. DOI: 10.1007/s10531-007-9305-0.
- Davis PA (2014) Green crime and victimization: Tensions between social and environmental justice. *Theoretical Criminology* 18(3): 300-316. DOI: 10.1177/1362480614522286.
- Eng S (2015) *Context or Concept? Kelsen and Ross on Valid Law and Efficacy*. Oslo: Department of Public and International Law, University of Oslo.
- European Commission (2014) *Communication from the European Commission and the European Parliament on the EU Approach on Wildlife Trafficking*. Brussels: European Commission. Available at http://ec.europa.eu/environment/cites/pdf/communication_en.pdf (accessed 8 June 2016).
- Europol (2013) *Threat Assessment 2013 Environmental Crime in the EU*. The Hague, The Netherlands: Europol. Available at <https://www.europol.europa.eu/content/threat-assessment-2013-environmental-crime-eu> (accessed 6 October 2016).
- Fajardo del Castillo T (2016) The European Union's approach in the fight against wildlife trafficking: Challenges ahead. *Journal of International Wildlife Law and Policy* 19(1): 1-20. DOI: 10.1080/13880292.2016.1131516.
- Fitzgerald AJ (2010) The 'underdog' as 'ideal victim'? The attribution of victimhood in the 2007 pet food recall. *International Review of Victimology* 17(2): 131-157. DOI: 10.1177/026975801001700201.
- Galtung J (1971) A structural theory of imperialism. *Journal of Peace Research* 8(2): 81-117.
- Geertz C (1973) *The Interpretation of Cultures: Selected Essays*. New York: Basic Books.
- Goyes D (2015) Denying the harms of animal abductions for biomedical research. In Sollund R (ed.) *Green Harms and Crimes: Critical Criminology in a Changing World*: 170-188. London: Ashgate
- Guzmán J, Saldaña M, Teyeliz A, Grosselet M and Gamez J (2007) *The Illegal Parrot Trade in Mexico*. Mexico City: Defenders of Wildlife.

- Hall S (1997) *Representation: Cultural Representations and Signifying Practices*. London: Sage Publications.
- Halsey M and White R (1998) Crime, ecophilosophy and environmental harm. *Theoretical Criminology* 2(3): 345-371. DOI:10.1177/136248069800200300.
- Han C-R and Nelen H (2015) Decoupling policy and practice in the fight against wildlife smuggling. *British Journal of Criminology*. DOI:10.1093/bjc/azv109.
- Hart HLA (1997) *The Concept of Law*. Oxford: Oxford University Press.
- Henry N (2010) The impossibility of bearing witness: Wartime rape and the promise of justice. *Violence against Women* 16(10): 1098-1119. DOI: 10.1177/1077801210382860.
- Herbig J (2010) The illegal reptile trade as a form of conservation crime: A South African criminological investigation. In White R (ed.) *Global Environmental Harm: Criminological Perspectives*: 110-131. Devon: Willan Publishing.
- International Fund for Animal Welfare (IFAW) (2008) *Killing with Keystrokes: An Investigation of Illegal Wildlife Trade on the World Wide Web*. Yarmouth Port, Massachusetts: IFAW.
- INTERPOL/IFAW (2013) *Project WEB: An Investigation into the Ivory Trade over the Internet within the European Union*. Yarmouth Port, Massachusetts: IFAW. Available at <http://www.ifaw.org/sites/default/files/Project%20Web%20-%20PUBLIC.pdf> (accessed 8 June 2016).
- Lavorgna A (2014) Wildlife trafficking in the Internet age. *Crime Science* 3(1): 1-12. DOI: 10.1186/s40163-014-0005-2.
- Lawson K and Vines A (2014) *Global Impacts of the Illegal Wildlife Trade. The Costs of Crime, Insecurity and Institutional Erosion*. London: Chatham House (The Royal Institute for International Affairs).
- Lemaitre RJ (2009) *El Derecho como Conjuro. Fetichismo Legal, Violencia y Movimientos Sociales*. Bogotá, Colombia: Siglo del Hombre Editores, Universidad de los Andes.
- Lemieux A and Clarke R (2009) The international ban on ivory sales and its effects on elephant poaching in Africa. *British Journal of Criminology* 49(4): 451-471. DOI: 10.1093/bjc/azp030.
- Lohne K (in press) Claiming authority in the name of the other: Human rights NGOs and the ICC. In Hayashi N and Bailliet C (eds) *The Legitimacy and Effectiveness of International Criminal Tribunals*. Cambridge: Cambridge University Press.
- Lowther J, Cook D and Roberts M (2002) *Crime and Punishment in the Wildlife Trade*. Wolverhampton, UK: Regional Research Institute, University of Wolverhampton.
- López RN, Rodríguez C and González D (2012) *Revisión de la normativa actual del comercio de fauna silvestre en Colombia. Un análisis comparativo con España*. Manizales: Facultad de ciencias administrativas y agropecuarias; Caldas: Corporación Universitaria Lasallista. Especialización en Gerencia Agropecuaria.
- Maldonado ÁM, Nijman V and Bearder SK (2009) Trade in night monkeys *Aotus* spp. in the Brazil-Colombia-Peru tri-border area: International wildlife trade regulations are ineffectively enforced. *Endangered Species Research* 9(2): 143-149.
- Maldonado ÁM and Peck MR (2014) Research and in situ conservation of owl monkeys enhances environmental law enforcement at the Colombian-Peruvian border. *American Journal of Primatology* 76(7): 658-669. DOI:10.1002/ajp.22260.
- Mancera Rodríguez NJ and Reyes García O (2008) Comercio de fauna silvestre en Colombia. *Revista de la Facultad Nacional de Agronomía de Medellín* 61(2): 4618-4645.
- Minnaar A (2013) The poaching of rhino in South Africa: A conservation, organised and economic crime? In Sorvatzioti D, Antonopolous G, Papanicolaou G and Sollund R (eds) *Critical Views on Crime, Policy and Social Control*: 196-229. Nicosia: University of Nicosia Press.
- Mathiesen T (1990) *Retten i Samfunnet. En Innføring i Retts sosiologi*. Oslo: Pax forlag.

- Merton R (2002) *Teoría y Estructura Sociales*. Mexico City: Fondo de Cultura Económica.
- Mowbray S (2015) Oil roads to ecological ruin: Ecuador's bushmeat and wildlife trade. *Mongabay*, 29 October. Available at <https://news.mongabay.com/2015/10/oil-roads-to-ecological-ruin-ecuadors-bushmeat-and-wildlife-trade/> (accessed 3 January 2016).
- Nassaró MRF (2016) Wildlife trafficking in the State of Sao Paulo, Brazil. In Goyes D, Mol H, Brisman A and South N (eds) *Environmental Crime in Latin America: The Theft of Nature and the Poisoning of the Land*. New York: Palgrave Macmillan.
- Pryce S (2012) *Fixing Drugs: The Politics of Drug Prohibition*. London: Palgrave Macmillan.
- Regan T (1983) *The Case for Animal Rights*. Oakland, California: University of California Press.
- Reeve R (2002) *Policing International Trade in Endangered Species. The CITES Treaty and Compliance*. London: Earthscan.
- Rivalan P, Delmas V, Angulo E, Bull L, Hall R, Courchamp F, Rosser AM and Leader-Williams N (2007) Can bans stimulate wildlife trade? *Nature* 447: 529-530. DOI: 10.1038/447529a.
- Runhovde S (2015) Seizures of inconvenience? Policy, discretion and accidental discoveries in policing the illegal wildlife trade at the Norwegian border. *Crime, Law and Social Change* 64(2-3): 177-192. DOI: 10.1007/s10611-015-9596-0.
- Saussure FD (1974) *Course in General Linguistics*. London: Owen.
- Schneider J (2008) Reducing the illicit trade in endangered wildlife: The market reduction approach. *Journal of Contemporary Criminal Justice* 24(3): 274-295. DOI: 10.1177/1043986208318226.
- Sollund R (2011) Expressions of speciesism: The effects of keeping companion animals on animal abuse, animal trafficking and species decline. *Crime Law and Social Change* 55(5): 437-451. DOI:10.1007/s10611-011-9296-3.
- Sollund R (2012a) Speciesism as doxic practice versus valuing difference and plurality. In Ellefsen R, Sollund R and Larsen G (eds) *Eco-global Crimes, Contemporary Problems and Future Challenges*: 91-113. Surrey: Ashgate.
- Sollund R (2012b) Victimisation of women, children and non-human species through trafficking and trade: Crimes understood under an ecofeminist perspective. In South N and Brisman A (eds) *Routledge International Handbook of Green Criminology*: 317-330. Abingdon, Oxon: Routledge International Handbooks.
- Sollund R (2013) Animal trafficking and trade: Abuse and species injustice. In Walters R, Westerhuis D and Wyatt T (eds) *Emerging Issues in Green Criminology*: 72-92. London: Palgrave Macmillan.
- Sollund R (2015) Wildlife trafficking in a globalized world: An example of motivations and modus operandi from a Norwegian case study. In Angelici F (ed.) *Problematic Wildlife: A Cross-Disciplinary Approach*: 553-570. New York: Springer.
- Sollund R and Maher J (2015) *The Illegal Wildlife Trade: A Case Study Report on the Illegal Wildlife Trade in the United Kingdom, Norway, Colombia and Brazil*. European Union Action to Fight Environmental Crime.
- South N (2014) Green criminology: Reflections, connections, horizons. *International Journal for Crime, Justice and Social Democracy* 3(2): 5-20. DOI: 10.5204/ijcjsd.v3i2.172.
- South N and Wyatt T (2011) Comparing illicit trades in wildlife and drugs: An exploratory study. *Deviant Behaviour* 32(6): 538-561. DOI: 10.1080/01639625.2010.483162.
- Southwick N (2013) 58000 animales confiscados anualmente en Colombia. *Insight Crime*, 28 November. Centro de Investigación de Crimen Organizado. Available at <http://es.insightcrime.org/noticias-del-dia/58000-animales-traficados-son-confiscados-anualmente-en-colombia> (accessed 21 April 2016).
- Van Uhm D (2015) *Uncovering the Illegal Wildlife Trade*. The Netherlands: Universitet Utrecht

- Warchol G (2007) The transnational illegal wildlife trade. *Criminal Justice Studies: A Critical Journal of Crime, Law and Society* 17(1): 57-73. DOI: 10.1080/08884310420001679334.
- Warchol G, Zupan L and Clarke W (2003) Transnational criminality: An analysis of the illegal wildlife market in Southern Africa. *International Criminal Justice Review* 13(1): 1-26. DOI: 10.1177/105756770301300101.
- White R (2013) *Environmental Harm: An Eco-Justice Perspective*. Bristol, UK: Policy Press.
- World Wildlife Fund (WWF) (2014) *How Many Species Are We Losing?* Available at http://wwf.panda.org/about_our_earth/biodiversity/biodiversity/ (accessed 6 October 2016).
- Wyatt T (2013) *Wildlife Trafficking: A Deconstruction of the Crime, the Victims and the Offenders*. New York: Palgrave Macmillan.
- Zhang L, Hua N and Sun S (2008) Wildlife trade, consumption and conservation awareness in southwest China. *Biodiversity and Conservation* 17(6): 1493-1516. DOI: 10.1007/s10531-008-9358-8.
- Zimmerman M (2003) The black market for wildlife: Combating transnational organised crime in the illegal wildlife trade. *Vanderbilt Journal of Transnational Law* 1(36): 1657-1690.