Distinguished guests,

Ladies and gentlemen,

It is my honor to deliver a presentation on the theme of “illegal trafficking of wildlife species” with a view to share and exchange information with your honor at this Conference and hope to enhance the fight against this type of crime.

Wildlife species are not only part of the natural world and an important element maintaining biological balance on the earth, but also entail biodiversity and abundance of creatures that the nature has granted to us. In the recent decades, biodiversity has been seriously eroded, and such rare wildlife species like elephant, tiger, rhinoceros, bear, gayal, etc. are endangered of being extinct in all continent. Vietnam is ranked the 16th among countries with rich biodiversity. With full understanding of the importance of this issue, Vietnam has paid much attention to the development of relevant environment policies, of which protection of rare wildlife species has gained attention since 1980s. In addition to the propaganda, education programs, research project, categorization activities, as well as classification of some national forests as natural reservation areas, Vietnam has also accessed into international treaties and issued several legislations on the protection of wildlife species. Especially, Vietnam has criminalized very early in time the act breaching regulations on the protection of precious rare wildlife species and provided in the Penal Code with an aim to form a strict legal basis for protection of wildlife species. The biodiversity in Vietnam, like many other countries in the world, however, is in danger of being broken and some species might be gone. It will, in turn, severely affect the sustainable development of the nature.

Within the content of this paper, I would like to mention briefly the fight against crimes relating to wildlife species stipulated in Article 190 of the Penal
Code 1999 that titled “Breaching regulations on the protection of rare wild animals” and which is amended and supplemented in 2009 as “Breaching regulations on protection of endangered, valuable, rare species with high protection priority”

I/ Provisions of the Penal Code relating to violation of regulations on protection of endangered, valuable and rare wildlife species

Provisions of the Penal Code 1999 on “breaching regulations on protection of previous rare wildlife animals” has regulated clearly, specifically and appropriately both in the aspect of criminal composition and in the aspect of applicable punishment. It clearly indicates strong attitude of the State in the protection of wildlife, valuable and rare animals.

Newly amended Article 190 of the Penal Code criminalizes not only the hunting and catching of wildlife animals but also the act of their illegal killing, trafficking, trading. It should also be noted that only act of breaching regulations on protection of wildlife animals is sufficient to constitute a crime without any consideration to the severe consequence of the offence or whether the offender has previously committed the same violation and been disciplined by administrative order.

In this crime, consequence of the offense is not a compulsory element in the crime composition and only single violation of regulations by an act of the offender is sufficient to constitute the crime. However, the clarification of criminal consequence is of importance as it shall be an element determining the range of penalty applicable. If the consequence is very severe, the offender shall be charged with the crime under clause 2 of the Article.

The Penal Code 1999, which was amended and supplemented by the Law No. 37/2009/QH12 of 19 June 2009 on the Amendment and Supplement of Some Articles of the Penal Code 1999 provides at its Article 190 that: “breaching of regulations on the protection of previous and rare wildlife animals.

1. Those who illegally hunt, catch, kill, transport and/or trade in precious and rare wildlife animals which are banned therefore under Government regulations or illegally transport and/or trade in the products made of such animals, shall be subject to a fine of between five million Vietnamese Dong and fifty million Vietnamese Dong, non-custodial reform for up to two years or a imprisonment of between six months and three years.
2. In cases of committing the crime in one of the following circumstances, the offenders shall be sentenced to between two and seven years of imprisonment:
   a) In an organized manner;
   b) Abusing positions and/or powers;
   c) Using banned hunting/catching tools or means;
   d) Hunting/catching in prohibited areas or during prohibited time;
   e) Causing very serious or particularly serious consequences.

3. The offenders may also be subject to a fine of between two million and twenty million Vietnamese Dong, a ban from holding certain posts, practicing certain occupations or doing certain jobs for one to five years.

   - With regard to basic composition of crime, Article 190 of the revised Penal Code 2009 provides wider protection. In addition to the animals listed as endangered, precious, rare species with high priority of protection and products of such animals as prescribed in the Penal Code 1999, the object of protection in new law also covers “body parts of such animal”, for example, bear hands, rhinoceros horns, tiger bone without being initially processed etc.

   - Concerning about the criminal act, the article supplements act of “illegally growing and keeping in custody” endangered, precious and rare animals as an offense criminalized by the Code.

   - The article also enhances the applicable penalties, including pecuniary main penalty from 50 million Vietnamese Dong to 500 million Vietnamese Dong, and supplementary fine from 10 million VND to 100 million VND; and increase the maximum of non-custodial reform up to 3 years.

II/ Criminal offences and solutions applicable by procedure conducting agencies

According to statistics collected by Forest Protection Department, there have been 5,376 cases of breaching regulations on the management and protection of wildlife animals nationwide in the past 5 years, which is equivalent to 1,095 cases per year.

The number of wildlife, endangered, precious and rare animals confiscated from infringement cases in the past 5 years are 59,326 items of which endangered, precious and rare animals accounts for 3,267 items. This figure illustrates that an average of 600 precious and rare animal are seized in a year among cases of
breaching regulations on protection of wildlife animals that have been explored. This number does not exactly cover the numbers of case relating to illegal trade, transport of wildlife animals which have not been revealed.

According to the statistics collected by Criminal Statistics Bureau of the Supreme People’s Procuracy, the number of cases criminally constituted, investigated and prosecuted against the offence of breaching regulations on protection of endangered, precious and rare animals with high priority of protection are listed below.

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<th>Criminally Constituted and investigated</th>
<th>Criminally prosecuted</th>
<th>Brought before trial</th>
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<td></td>
<td>Case</td>
<td>Offender</td>
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<td>2009</td>
<td>70</td>
<td>104</td>
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<td>2010</td>
<td>103</td>
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<td>2012</td>
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<td>159</td>
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<td>2013</td>
<td>113</td>
<td>153</td>
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According to the data collected by Statistics and Information Synthesis Department of the Supreme People’s Court, there are 51 cases of 72 defendants brought before the courts. Among them, 11 cases of 15 defendants sent back to Procuracy Office for further investigation, 39 cases of 56 defendants sentenced, and one case pending for trial.

The penalties applicable to defendant include:
- Main penalty of 100.000.00 VND: against defendants in one case,
- Non-custodial reform: defendants in 3 cases,
- Suspended imprisonment: 28 defendants
- 23 defendants are sentenced up to three years of imprisonment, and
- one defendant is sentenced for more than three years of imprisonment.

Defendant with special status includes:
- Defendant belonging to ethnic minority: 7 defendants
Female defendants: 1 defendant

Defendant between 16-18 years of age: 1 defendant

Defendant between 18-30 years of age: 12 defendants

The fight and prevention campaign against this crime in the past years reveals that the trafficking and illegal transporting of ivory and rhinoceros horn tends to be more serious and complicated.

The Prime Minister also requests the Supreme People’s Procuracy and the Supreme People’s Court to instruct procedure conducting agencies under their control to firmly cooperate with investigation agencies in order to enhance the investigation, prosecution and adjudication process against offenders who commit criminal acts of trading, transporting products of rhinoceros, elephant and other endangered, precious and rare species wild fauna.

Currently, relevant Vietnamese agencies are jointly drafting an Inter-ministerial circular which will be jointly issued by the Supreme People’s Procuracy, the Supreme People’s Court, Ministry of Public Security, Ministry of Justice, Ministry of Finance, Ministry of Agriculture and Rural Development, “guiding the criminal prosecution against offenders illegally trafficking, transporting, possessing rhinoceros horn, elephant ivory”. The Inter-circular is expected to promulgated soon.

III/ Obstacles and difficulties incurred in the course of fighting against this crime

1. Immense benefit from trading in endangered species, their parts and derived products in Vietnam

According to domestic and international experts, the trading in endangered species brings about great benefit, which ranks second after drug trafficking. Thus, illegal trading in species of wildlife fauna is a serious problem of any countries, especially in countries maintaining enriched biodiversity like Vietnam. It is expected that the benefit gained from illegal trading in wildlife animals in Vietnam is of 66.5 million USD. Such immense benefit of this business also becomes an obstacle preventing an effective fight against the illegal trading in endangered wildlife animal and its derived product in Vietnam.

In addition, tiger in Vietnam is usually illegally traded as its body part may be used for making wine (tiger bone glue, tiger extracted wine), or souvenir.
In domestic unofficial market, most wildlife animals is consumed by restaurants or used as materials for Eastern medicine. The biggest market for wildlife animals are big cities, including Hanoi and Hochiminh city, where rich businessmen and enterprises are located. Other provinces like Quang Tri, Thua Thien-Hue, Quang Nam, Ha Tinh, Nghe An, Gia Lai, Kon Tum etc. are locations where wildlife animals are exploited. It is expected that the seizure of illegal trading in wildlife animals only accounts for 20% of actual trading. This figure shows that thousands tons of wildlife animals and hundred thousand wildlife items are domestically consumed or exported every year.

2. Activities conducted by State agencies in charge of environment management and local government

In the past years, local government and relevant ministries have actively conducted many education campaigns, and implemented necessary measures for management and protection of wildlife, precious and rare animals that effectively restrict their trading and hunting. However, the state management responsibility in this field is delegated to many agencies, including Ministry of Natural Resources and Environment, Ministry of Industry and Trade, Ministry of Health, Ministry of Agriculture and Rural Development, Ministry of Finance etc. In addition, the lack of comprehensive and consistent understanding among these agencies as well as their poor cooperation also contributes to the difficulty in protection of wildlife, precious and rare animals.

3. Obstacles in the application of relevant regulations

In addition to the Penal Code, Vietnam also adopts Law on Environment Protection, Law on Forest Protection and other sub-law regulating the protection of wildlife, precious and rare animals, including:

- Inter-Circular No. 19 of 3 March 2007 on the handling of violation in the field of forest management and protection, wood management as prescribed in Article 190 of the Penal Code. According to the Government Decree No. 32/2006/ND-CP, the acts of illegally hunting, killing, transporting and trading wildlife precious rare animals belonging to group IB shall be considered as criminal offense, but the Inter-Circular does not criminalize the act of possessing wildlife animal that make it impossible to deal with this act.

- The Inter-Circular No. 19 also denotes that wildlife precious rare animal belonging to group IIB listed in the Government Decree No. 32/2006/ND-CP shall
not be criminalized in accordance with Article 190 of the Penal Code. Meanwhile, the Official Dispatch No. 05/KHXX of 19 February 2008 of the Supreme People’s Court instructs that if the act comprises sufficient elements of crime composition under Article 159 of the Penal Code, the offender shall be prosecuted for crime of “conducting business illegally”. If it is not sufficient to constitute a crime under Article 159 of the Penal Code, the offender shall be given administrative fine. In reality, the law enforcement agencies mainly arrest hired transporters without catching the true owner of the shipment; thus, there are very few owners sentenced with criminal penalties. Moreover, if the owners are caught and prosecuted for crime of “conducting business illegally”, the penalties applicable is not strict enough for prevention purpose.

- Relevant state authorities have not issued sufficient guideline to ensure consistent perception of the criteria distinguishing between derived products and artistic products made from wildlife animals. Therefore, there is still a debate on how to deal with act of transporting and trading dicerorhinus sumatrensis hone and initially process products of African elephant ivory from abroad to Vietnam. Because, according to CITES to which Vietnam is a member since 1994, this items belong to group IIB but the transporter only declares that the transport of this item is for artistic purpose but not for commercial purpose. Meanwhile, elephant ivory and rhinoceros hone belong to group I, which includes animals strictly forbidden from exploitation or use for commercial purpose and banned from transporting, processing, advertising, possessing, exporting and importing, thus there is no ground for evaluation of its pecuniary value which then obstructs the prosecution against and adjudication of the offenders.

- Most of the illegal transportation of wildlife precious rare animals is over the national border such as the transportation of turtle and snake from Vietnam to China etc. Though Vietnam and other countries are parties to CITES but not all of its members have judicial cooperation agreement with Vietnam, and sometimes offenders escape from a country which has a bilateral cooperation agreement with Vietnam to another country which does not have that causes serious difficulty for Vietnamese law enforcement agencies to pursue the arrest. As a result, it makes the investigation against offender staying in other side of the national border almost impossible.

- The offenders are of various categories, including Vietnamese nationals and foreign nationals. Some offenders are professional but some others are not, some offenders transport and trade in wildlife precious rare animals and its products to gain benefit, or use complicated method and trick, well organized
manner. Some offenders are even over-reactive, carrying weapon or may fire against the law enforcement officers. The transportation may be carried out on road, by ship or airlines, or using means of temporary importation for export, or using cross-border transport service to transport wildlife animal and its product into Vietnam. The transport usually originates from mountainous provinces to delta provinces, from Cau Treo and Lao Bao border gates to big cities like Hanoi, Hochiminh, Haiphong, Quang Ninh etc., or from bordered areas of Quang Ninh, Nghe An, Ha Tinh, Lang Son, Tay Ninh down to central city or town for consumption.

IV/ Proposals and recommendations

1. Development of regulations in criminal law

We strongly suggest to amend and supplement inappropriate regulations for more comprehensive and extensive provisions, as following:

Firstly, the act of illegal use or possession of body parts or products of endangered, precious, rare wildlife animals must be criminalized.

Second, there must be an increase in the maximum of imprisonment and other supplemental penalties applicable to this crime.

"Article 190 namely breaching of regulations on the protection of endangered, precious, rare species with high priority of protection" should be amended as following:

1. Any person who illegally hunts, catches, kills, transports, raises, keeps in custody, uses and/or trades in precious and rare wild animals which are given high priority of protection, or possesses, transport, trades in body parts or products made of such animals shall be subject to a fine of between fifty million Vietnamese Dong and five hundred million Vietnamese Dong, non-custodial reform for up to two years or imprisonment of between five years and ten years.

2. When the offenders commit the crime in one of the following circumstances, they shall be sentenced to between five and ten years of imprisonment:

   a) In an organized manner;
   b) Abusing positions and/or powers;
   c) Using banned hunting/catching tools or means;
   d) Hunting/catching in prohibited areas or during prohibited times;
e) Causing very serious consequences.

3. The offenders shall be subject to imprisonment between ten to fifteen years when they commit the crimes in one of the following circumstances:
   a) Committing this crime as dangerous recidivist;
   b) Causing particularly serious consequences;
   c) Leading the species to extinct.

4. The offenders may also be subject to a fine of between fifty million and five hundred million VND, or a ban from holding certain posts, practicing certain occupations or doing certain jobs for one to five years.

2. Improving the effective application of legal regulations

   It is necessary to adopt an Inter-Circular to elaborate unclear provisions of law with a view to improve the efficiency of the fight against and resolution of this crime.

   The prevention and fight against corruption campaign in law enforcement agencies must be maintained. In addition, professional training and in-depth seminars and capacity building or information sharing project must be held with regard to the implementation of laws on the protection of endangered, precious, rare animals which are given high priority of protection. The cooperative relation with international organizations or agencies, foreign countries and Vietnam-based international organizations should be built and well maintained.

3. Establishment of wildlife species management and monitoring agency

   The owner of forest shall be responsible to protect their interest but the forest protection agencies must take the lead and provide consultancy to local government to issue relevant documents regulating acts relevant to the protection of wildlife species and to conduct regular check and examination of the forest owner’s management activity. At the same time, forest protection officers must take the core role in forest and wildlife management and protection. When the wildlife animals are traded and transported outside the jurisdiction of Forest Protection Agencies, environment police and market management agencies shall be responsible to monitor and supervise their move. Meanwhile, the check and supervision of imported or exported wildlife animals must be conducted by custom agencies.

4. Enhancement of information sharing and dissemination scheme
The currently effective Government Decree No. 39/CP of 18 May 1994 issued by the Government on the organization, function and duty of Forest Protection Agencies provides that the latter shall be a professional and specialized force in charge of forest management and protection. In addition, it shall also be responsible for the information dissemination and propagation to enhance the public’s understanding.

The role of media in finding out, fighting and preventing forest crime as well as legal information dissemination must be improved. As the media has made very good job in finding out wildlife trading rings that effectively support the resolution of such violation.

In summary, Vietnam has adopted specific legislations and sub-law regulations to implement its commitments on the protection of wildlife species that includes the criminalization of some acts and apply appropriately strict punishment. It also applies necessary measures which contribute to the prevention and pull back activities relating to the trading of wildlife animals. However, due to objective and subjective reasons, its outcome is not satisfactory. For these reasons, I would like kindly request distinguished guests and participants in this conference to join together in a serious discussion and share experience of your countries. We would also like to ask international organizations to support us in all relevant aspects to ensure more effective protection of wildlife species in Vietnam.

May I on this occasion would like to express my sincere thanks for your kind attention and my wish for your good health and the success of this conference.

Thank you.