Wildlife crime in the Republic of Congo

Analysis of selected legislation and court cases

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ABBREVIATIONS AND ACRONYMS

ACFAP    Agence Congolaise de la Faune et des Aires Protégées (Congolese Agency for Wildlife and Protected Areas)
AUCPCC   African Union Convention on Preventing and Combating Corruption
CBD      Convention on Biological Diversity
CITES    Convention on International Trade in Endangered Species of Wild Fauna and Flora
CNLCCF   Commission Nationale de Lutte Contre la Corruption et la Fraude (National Commission to Fight Corruption and Fraud)
CPC      Criminal Procedure Code
COMIFAC  Commission des Forêts d’Afrique Centrale (Forestry Commission of Central African States)
COP      Conference of the Parties
ECCAS    Economic Community of Central African States
ETIS     Elephant Trade Information System
LATF     Lusaka Agreement Task Force
NBSAP    National Biodiversity Strategy and Action Plan
NIAP     National Ivory Action Plan
NGO      Non-governmental Organisation
MEFDD    Ministère de l’Economie Forestière et du Développement Durable (Ministry of Forestry Economy and Sustainable Development)
OAC      Observatoire Anti-Corruption (Anti-Corruption Observatory)
PA       Protected Area
PNAE     Plan National sur l’Action Environnementale (National Plan on Environmental Action)
UNCAC    United Nations Convention Against Corruption
UNTDOC   United Nations Convention on Transnational Organized Crime
USD      United States Dollar
SC       Standing Committee
TRIDOM   Tri-National Dja-Odzala-Minkébé
WWF      World Wide Fund for Nature
XAF      Central African Franc
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FOREWORD

The significant decline in wildlife during the last decades is the result of habitat loss and the increase of poaching and illegal wildlife trade. Indeed, the latter is a growing business that contributes to a multi-billion-dollar illegal industry involving unlawful harvesting and trade in live animals and plants or their products.

The complexity and multi-dimensional aspects of these crimes make them difficult to prosecute and entirely unsustainable within the context of the current biodiversity crisis. They contribute to driving endangered species towards extinction and depriving current and future generations of this heritage.

Illegal trade not only threatens biodiversity but also affects negatively the environment, global economy and society. For this reason, it calls for urgent attention and action at local, regional and international level.

Since 1970, the IUCN Environmental Law Centre has been at the forefront of developing the legal arrangements and providing tools to practitioners from around the world to protect and conserve biodiversity and thus helping to address poaching and illegal wildlife trade.

Born out of the “Partnership against Poaching and Illegal Wildlife Trade (in Africa and Asia)”, this is a series of reports relating to wildlife crime case analysis in countries involved in the supply, transit, and demand sides of the wildlife trafficking chain. All the cases that served to prepared the reports are available on www.wildlex.org.

We do hope these reports will help to improve resources and tools available to policy makers, and the judiciary to address the various and complex matters relating to poaching and illegal wildlife trade, as well as disseminate information, and experiences to sensitize other stakeholders to find solutions to address the wide spectrum of problems associated with illegal wildlife trade and crime.

Special thanks to the Government of the Federal Republic of Germany alongside the GIZ (Deutsche Gesellschaft für Internationale Zusammenarbeit) for the financial contribution.

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INTRODUCTION

Species overexploitation, in the form of illegal hunting and poaching, is a direct threat to the survival of biodiversity around the world. In Central Africa, particularly in the Congo Basin, wildlife crime has been identified as the main driver of decline in animal species. The astronomical prices paid on the black market for wildlife products from endangered animals make illegal trade a particularly lucrative venture. Wildlife crime is considered as the fourth largest offence in the world, after trafficking in drugs, counterfeit products and people, and global annual revenue from the sale of illegally harvested wildlife products is estimated to be US$ 9-23 billion\(^1\). The loss of animals also has direct economic consequences on supply countries and their indigenous and local populations, depriving them of vital natural resources and the associated economic value. This can, in turn, severely undermine the economic development of many countries, especially since biodiversity can be a valuable source of tourism revenue\(^2\).

In the context of this report, wildlife crime refers to activities of harvesting and trade in wildlife products contrary to national law. Usually, hunting activities can be considered as illegal when they concern animals belonging to a protected species, or if they take place in geographical areas placed under environmental protection, such as national parks\(^3\). Depending on national legislation, poaching can also involve hunting using prohibited methods or without a valid licence. Offences relating to wildlife trafficking involve a range of commercial activities involving specimens of wild fauna and flora and activities relating to their transportation\(^4\).

In the last decade, Central Africa has become the target of criminal networks involved in illegal wildlife trafficking\(^5\). The Republic of Congo (hereinafter Congo), home to the second largest elephant population in the sub-region\(^6\) and several other high value species such as pangolins, has been particularly targeted by poachers and traffickers. In order to protect and conserve its wildlife heritage, Congo took several initiatives including the ratification of international and regional agreements, adoption of national legislation related to wildlife, creation of protected and conserved areas, and establishment of a dedicated wildlife agency assisting in the investigation and prosecution of wildlife offences. Nevertheless, there are still significant shortcomings in the legal and judicial proceedings for these offences.

In order to identify these gaps, the IUCN Environmental Law Centre (ELC), in collaboration with local experts, embarked on the selection, collection and analysis of 250 wildlife crime cases brought before courts in Congo, between 2009 and 2020. These court decisions are accessible on WILDLEX, an online database of wildlife crime court cases in a wide range of countries, managed by IUCN. This report will present the results of this analysis and provide an overview of the Congolese legal system, as well as the national legal framework relating to wildlife offences, and the international agreements ratified by Congo. It will highlight weaknesses in law enforcement and judicial processes for wildlife offences identified as a result of the court case analysis, as well as offer key recommendations to improve adjudication by the courts and deter poaching and wildlife trafficking.

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\(^1\) WWF, Poaching and Illegal Wildlife Trade, 2017.
\(^2\) Ibid.
\(^3\) UNODC, ICCWC Wildlife and Forest Crime Analytic Toolkit, 2012.
\(^4\) Ibid.
\(^5\) Environmental Investigation Agency, Out of Africa: How West and Central Africa have become the epicentre of ivory and pangolin scale trafficking to Asia, 2020.
This report is part of a series on wildlife crime court case analysis in countries involved in the supply and demand sides of the wildlife trafficking chain.
1 METHODOLOGY

The case selection, collection and initial analysis were carried out by a team of local experts. The team consisted of a regional expert based in Yaoundé, Cameroon and a Congolese national expert based in Ouesso, Congo. The national expert facilitated the case collection while the regional one was in charge of analysing the judgments collected.

![Figure 1: Area of collected cases](image)

The methodology used for the selection and collection of cases consisted of the following key steps:

- A first batch was selected from the WWF judiciary database for its Northern Congo Programme ETIC (in French: Espace TRIDOM Interzone Congo) in Ouesso;
- Other judicial authorities in Brazzaville and Pointe-Noire were contacted to provide a list of additional cases to make up the total of 250 cases required for the analysis. The objective was to have cases from tribunals located near protected areas (PAs), as cases on poaching and related offences were more likely to have been brought there, and courts located in large trading centres such as Brazzaville and Pointe Noire, as they were more likely to have heard cases on or related to illegal wildlife trade. Unfortunately, no feedback was received from judicial authorities in the said cities. Travel restrictions due to the COVID-19 pandemic, which broke out halfway through the development of this assessment, prevented the expert based in Ouesso from travelling to Brazzaville and Pointe-Noire for in-person meetings with the relevant authorities. The study was therefore limited to Ouesso (Figure 1);
• The list of 250 cases was completed under the supervision of the Public prosecutor\textsuperscript{7} and with the assistance of the Ouesso High Court clerks. The Ouesso High Court and Court of Appeal were selected as Ouesso is the largest city close to a number of PAs (Nouabale Ndoki, Odzala Kokoua and Ntokou Pikounda, three of the only four national parks in the country), including transfrontier ones, such as the TRIDOM\textsuperscript{8} forest, spread across Congo, Cameroon and Gabon and the Sangha Trinational, a UNESCO World Heritage Site encompassing three national parks in Congo, Cameroon and the Central African Republic. This proximity makes the city a major transfer point for ivory and other illegal wildlife products - and a strategic place to focus anti-trafficking efforts\textsuperscript{9}. By looking at cases heard at the Ouesso High Court, the team was able to retrieve judgments involving offences directly related to poaching and wildlife trafficking;

• The cases were collected according to specific selection criteria. Facts of the case had to be linked to either poaching and/or wildlife trafficking. Offences should also comprise and/or include the following key subjects: hunting, killing, capture, possession, elephant, protected animal, ivory, weapon, ammunition, protected area, national park, trespassing, permit etc. Even though other courts in the country could not be considered in the context of this study, the 250 judgments collected for analysis from the Ouesso High Court and Court of Appeal are likely to be representative of the majority of wildlife cases heard across the country, since Ouesso is the large city closest to the main PAs in the country, where most poaching activities and transportation of wildlife products occur. The results and trends presented below could therefore exemplify the country as a whole;

• Local experts oversaw the formalisation of judgments up until signature by the court registrar. The judgments were then sent to the legal experts, either as electronic copies by email or hard copies by post, for analysis (Figure 2).

\textsuperscript{7} Procureur de la République in French.
\textsuperscript{8} Tri-National Dja-Odzala-Minkébé trans-border forest split across northeast Gabon, northwest Republic of Congo and southeast Cameroon.
\textsuperscript{9} InfoCONGO, “Justice for Elephants”, 29 May 2018. Available at: https://infocongo.org/fr/justice-for-elephants/
The research team conducted an initial analysis of each of the 250 cases using a matrix developed by the ELC (see Annex I). The matrix was filled out with the following information, either directly retrieved from the court decisions or based on further legal analysis and research by the expert:

- General information on the case: country, territorial subdivision/state, title of the case, date of judgment, court name, type of court, seat of court, court jurisdiction, Justice(s) who rendered the judgment, prosecuting authority, representation of accused person, characteristics of defendants (age, gender, nationality), legal history of the case, original language of the judgment, reference number of the judgment, filing number and number of pages;
- Description of the case: subject(s) covered by the case, keywords (based on those used in ECOLEX\(^{10}\)), species, wildlife products involved, monetary value, whether the case was transnational, charge sheet, charge(s), if the seized products were processed, if the case was appealed, the facts and an abstract;
- Decision or judgment: brief summary of the judgment, basis of the decision, penalties, legal issues raised in the decision;
- References: to other court decisions, national legislation, or international agreements and link(s) to the full text(s) online.

The information from the matrix on the 250 cases was then collected and entered into a table to obtain an overview of the trends in judicial responses and adjudication practice in wildlife crime.

This report was compiled and drafted following three key steps:

- Compilation and literature review: most documents were accessed online, and some documents were drawn from the WWF legal library;
- Interviews with judicial authorities, specifically judges and prosecutors from the Ouesso High Court, which aimed at identifying the main challenges encountered by the judiciary in the prosecution and judgment of wildlife-related cases;
- The writing of the report itself.

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\(^{10}\) ECOLEX is an information service on environmental law, operated jointly by FAO, IUCN and UNEP. Available at: [https://www.ecolex.org/](https://www.ecolex.org/)
The majority of cases (248 cases) were collected from a first instance court, Ouesso High Court, while the rest (2 cases) were appeals (Figure 4). This difference in the number of cases at the first instance and appellate level indicates that most wildlife-related cases are not usually appealed. This could mean that the relevant parties, the Public prosecutor, the wildlife administration and the defendant(s), are generally satisfied with the outcome of the case, or that the request for an appeal was not submitted in time, although this does not necessarily mean that judgments at the first instance were adjudicated correctly.

![Figure 4: Proportion of first instance decisions and appeals](chart)

The cases were selected, collected and analysed in the course of 2020. The collected cases span a period of 11 years, from 2009 to 2020 (Figure 5). This enabled a diversified analysis, as the magistrates in the Ouesso courts changed several times in that period. The analysis on all cases was also done using the same criteria as no significant legislative reform was undertaken between 2009 and 2020, except for the adoption of Order 6075 of 9 April 2011 determining totally and partially protected animal species.

![Figure 5: Distribution of cases by year](chart)

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11 Magistrate turnover in Congo is between three to five years.
2 LEGAL SYSTEM AND CRIMINAL PROCEDURE

2.1 Legal system

The main types of legal norms in Congo are the following:

- Laws: legislative acts adopted by Parliament in accordance with the legislative procedure established by the Constitution of 6 November 2015. The Congolese Parliament is divided into two chambers, National Assembly and Senate, and is the only entity competent to enact laws. The law governs, amongst others, the following areas: the determination of felonies, misdemeanours and contraventions as well as the penalties applicable to them; the organisation of justice and procedure to be followed before the jurisdictions, the status of magistrates and the juridical regime of the Superior Council of the Magistracy; and the environment and the conservation of natural resources and sustainable development;

- Decrees: enforceable acts of general or individual scope issued by the President of the Republic or Prime Minister after deliberation in the Council of Ministers;

- Orders: enforceable decisions of general or individual scope issued by one or more ministers (ministerial or inter-ministerial decree) or other administrative authorities (municipal or prefectural decree, etc.);

- Ordinances, which allow the government to adopt rules in matters that normally fall within the areas of competence of the legislator.

The Congolese judicial system is organised in accordance with Law 022-92 of 20 August 1992 on the organisation of the judiciary in the Republic of Congo. Under Section 1 of this law, justice is administered in the name of the Congolese people by a single order of jurisdiction, which includes the following (Figure 6):

- The Supreme Court;
- The Court of Audit;
- Courts of Appeal;
- High Courts;
- Administrative Courts;
- Commercial Courts;
- District Courts;
- Labour Courts; and
- Military Tribunals.

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13 Ibid. Article 125.
14 Ibid. Article 88.
15 Lilian Laurin Barros, Ressources Naturelles, Droits et Politiques des Communautés Forestières au Congo : Architecture Légale et Institutionnelle, ClientEarth, 2013, translation by the authors.
16 Ibid.
17 Centre d'études stratégiqiques du bassin du Congo (CESBC), Recueil des lois de la République du Congo, Loi 022-92 du 20 août 1992 portant organisation du Pouvoir judiciaire. Available at: https://www.cesbc.org/congo/Lois/Loi%202022-92.pdf. All translations of Articles from this law are by the authors.
District Courts [in French: Tribunal d’Instance]

District Courts are established for each district. The seat and jurisdiction of district courts are provided in the law that establishes them. In criminal matters, the correctional powers of district courts are limited to minor offences and offences for which the penalty is equal to or less than one-year imprisonment.

High Courts [in French : Tribunal de Grande Instance]

High Courts are created for each district. Like the district courts, their seat and jurisdiction are determined in the law that establishes them. In criminal matters, High Courts are competent to adjudicate on offences punishable by correctional penalties and related minor offences.

Military Tribunals

A Military Tribunal may be established in a military region or garrison. The seat and jurisdiction, which can include one or more military regions and/or garrisons, of Military Tribunals are determined in the law creating them. The Military Tribunal is competent to adjudicate on military offences punishable by correctional penalties and related minor offences as well as military offences punishable by minor sentences committed within its jurisdiction. Military Tribunals are also competent to deal with offences established in the Military Justice Code and misdemeanours committed by military officials on duty.

Courts of Appeal

A Court of Appeal may be created per department or autonomous municipality. The seat and jurisdiction of these courts, which may include one or more departments or municipalities, are determined in the law that establishes them. Courts of Appeal are competent to hear appeals from District Courts, High Courts and Military Tribunals.

The Supreme Court

The Supreme Court is the highest national judicial instance, located in Brazzaville, with jurisdiction over the entire country.

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18 Congo is divided into 12 departments formerly called regions (namely, Bouenza, Cuvette, Cuvette-Ouest, Kouilou, Lékounou, Brazzaville, Likouala, Niari, Plateaux, Pool, Sangha and Pointe-Noire). Departments are divided into communes or districts.
20 Ibid. Article 128.
21 Ibid. Article 62.
22 Ibid. Article 64.
23 Ibid. Article 135.
24 Ibid. Article 139.
25 Ibid. Article 140.
26 Ibid. Article 46.
27 Ibid. Article 48.
28 Ibid. Article 5.
2.2 Criminal procedure

Criminal procedure in Congo is governed by Law 1-63 of January 13, 1963 on the Criminal Procedure Code. In general terms, matters are brought to justice either via the Public prosecutor or through direct summons\(^\text{29}\).

According to the Criminal Procedure Code (CPC), matters are brought to the public prosecutor either by way of a written information or denunciation; a written or oral complaint; or a written report by a competent authority, such as civil servants and public officials\(^\text{30}\). The Public prosecutor can also directly request public force\(^\text{31}\). Public force is made up of the national police, gendarmerie and armed forces\(^\text{32}\).

In wildlife-related matters, finding offenders and gathering evidence of their offence mainly falls under the jurisdiction of the wildlife administration, which is composed of agents of the Ministry of Forestry Economy and Sustainable Development (MEFDD) and, in exceptional cases, the police, gendarmerie and customs. Wildlife administration agents can request public force or be assisted by village chiefs and relevant local associations.

Legal proceedings against poachers or other types of wildlife law offenders are brought to the Public prosecutor by the wildlife administration through an offence statement or complaint report, and any other relevant documents. The Public prosecutor then commences a criminal action against wildlife

\(^{29}\) Alain Ononino, Lois et procédures en matière faunique au Cameroun: ouvrage destiné à la mise en application de la loi et à la lutte contre la corruption dans le secteur de la faune, Last Great Ape Organization and WWF 2012.

\(^{30}\) Centre d’études stratégiques du bassin du Congo (CESBC), Recueil des lois de la République du Congo, Loi n° 1-63 du 13 janvier 1963 portant code de procédure pénal. Available at: https://cesbc.org/congo/Lois/Loi%201-63.pdf. All translations of Articles from this law are by the authors. Article 28.

\(^{31}\) Ibid. Article 30.

\(^{32}\) Article 204, 2015 Constitution.
offenders before competent courts, as established in Article 102 of Law 37-2008 of 28 November 2008 on wildlife and protected areas\textsuperscript{33}.

The Public prosecutor is responsible for carrying out, or instructing another competent authority to do so, all acts necessary in the investigation and prosecution of violations of criminal law. To this end, the Public prosecutor manages the operations of the judicial police\textsuperscript{34}.

A detailed presentation of the judicial procedure applicable to wildlife matters can be found in Chapter 4.

\textsuperscript{33} Last Great Ape Organization, Legal regional library, Loi 37-2008 du 28 novembre 2008 sur la faune et les aires protégées. Available at: https://www.laga-enforcement.org/en. All translations of Articles from this law are by the authors.

\textsuperscript{34} Article 29.1 and 29.2 of the Criminal Procedure Code.
3 LEGAL FRAMEWORK

Congo adopted the first wildlife-related legislation in 1962, which was Law 7-62 of 20 January 1962 regulating the exploitation of wildlife\(^\text{35}\). Since that period, the country has adopted several other laws, decrees and orders governing the sector\(^\text{36}\).

3.1 Legal and policy framework applicable to wildlife crime

3.1.1 International agreements

**Convention on International Trade in Endangered Species (CITES)**

Congo became a Party to CITES on 31 January 1983 after ratification of Law 34-1982 of 7 July 1982 and the Convention entered into force on 1 May 1983. The main objective of CITES is to achieve a sustainable balance between biodiversity conservation and international trade in wildlife resources. It regulates trade in over 38,000 species of wild fauna and flora, which are listed in three Appendices, according to the degree of protection they need. As of 2021, there are 324 species of wild fauna or flora in Congo that are listed in the CITES Appendices\(^\text{37}\). In accordance with its obligations\(^\text{38}\) under the Convention, Congo adopted specific domestic measures aimed at implementing CITES:

- Law 37-2008 of 28 November 2008 on wildlife and protected areas: this law establishes the principles and general conditions for the conservation and sustainable management of wildlife and the habitats and ecosystems on which they depend;
- Order 0103/MEF/SGEF/DCPP of 30 January 1984 establishing provisions for the export of wildlife products: this order specifies procedures and competent authorities for the issuance of certificates of origin and export permits for exporting wild fauna or flora;
- Order 3863/MEF/SGEF/DCPP of 18 May 1984 determining animals totally and partially protected by Law 48/83 of 21 April 1983: this decree establishes the list of totally or partially protected animal species\(^\text{39}\);
- Order 6075 of 9 April 2011 determining totally and partially protected animals.

The Directorate of Wildlife and Protected Areas and the Directorate General for Forest Economy in the MEFDD are the national CITES Management Authorities. These authorities are in charge of ensuring that trade is taking place in accordance with the provisions of the Convention and of granting the relevant permits and certificates to authorise import, export or re-export. The Scientific Authority in Congo is a committee of 10 institutions presided over by the Directorate of Wildlife and Protected Areas. Its purpose is to work hand in hand with the management authorities to ensure that international trade is conducted sustainably and in line with CITES requirements.


\(^{37}\) As listed on Species+. Available at: [https://www.speciesplus.net/species](https://www.speciesplus.net/species)

\(^{38}\) CITES, Article VIII (1): The Parties shall take appropriate measures to enforce the provisions of the present Convention and to prohibit trade in specimens in violation thereof. These shall include measures: (a) to Criminalize trade in, or possession of, such specimens, or both; and (b) to provide for the confiscation or return to the State of export of such specimens.

CITES is essential for the regulation of elephant ivory trade in Central Africa, and especially in Congo which holds the second largest elephant population in the sub-region\textsuperscript{40}. African elephant (\textit{Loxodonta africana}) populations in Congo are included in CITES Appendix I, which means that any trade in specimens for commercial purposes is prohibited. The listing of the African elephant in Appendix I at COP7 in 1989 was a way to curb the rapid decline in populations in the region. However, three decades later, African elephant populations continue to face “an immediate threat to their survival from unacceptably high levels of poaching for their ivory, especially in Central and West Africa”\textsuperscript{41}.

To further address this issue, CITES identified 22 countries that are most implicated in illegal trade in ivory and categorised them as ‘primary concern’, ‘secondary concern’ and ‘importance to watch’. Nineteen of these countries were instructed by the CITES Standing Committee (SC)\textsuperscript{42}, whose responsibility is to oversee the implementation of the Convention, to develop National Ivory Action Plans (NIAPs). These countries were identified based on reports from the Elephant Trade Information System (ETIS) that monitors trends in illegal trade in elephant specimens.

Congo was designated as a ‘secondary concern’ country and submitted its NIAP in 2015. In the Plan, Congo identified priority actions to be undertaken in the country to reduce elephant poaching and illegal ivory trade, for example harmonisation of criminal sanctions in the sub-region for ivory trafficking by organised groups and the establishment of a national and regional mechanism for coordinating and exchanging information among key stakeholders. Following Congo’s submission of its most recent NIAP progress report in 2018, the SC determined that there had only been ‘limited progress’ attained towards the completion of the Plan\textsuperscript{43}. This was based on the Committee’s assessment that achievement of the specific milestones and timeframes in the Congolese NIAP appeared unlikely\textsuperscript{44}.

In 2017, SC69 also identified Congo as a priority Party as part of the National Legislation project. This means that according to the SC, legislation in Congo is not in full compliance with the Convention and that trade in CITES-listed species may not be fully in accordance with the provisions of the Convention\textsuperscript{45}. As such, it is the SC’s assessment that Congo may not be fully equipped, from a legislative perspective, to combat illegal trade\textsuperscript{46}.

Overall, based on the CITES Secretariat and SC evaluation, efforts in Congo to counter illegal wildlife trade, especially in ivory, have not been sufficient to fulfil its commitments under the Convention. National legislation is also deemed as not fully compliant with the provisions of the Convention, which can significantly hinder Congo’s ability to counter illegal wildlife trade. Nonetheless, it remains particularly difficult to adequately assess the level of implementation of the Convention due to lack of transparency and first-hand information, especially considering the fact Congo has not submitted a national report to the CITES Secretariat since 2016.

A report published by TRAFFIC in 2013 corroborates this evaluation by highlighting Congo as a country characterised by inadequate law enforcement efforts, operational ivory markets and frequent involvement in large ivory seizures, indicating the existence of organized criminal syndicates. Some of the challenges specific to the implementation of CITES include: (i) the frequent issuance of irregular documents; (ii) the absent or inadequate border controls; (iii) fraud; (iv) absent or inadequate coordination and communication between the Management Authority, Scientific Authority and law

\textsuperscript{40} Sone Nkoke Christopher et al., 2017.
\textsuperscript{41} CITES, Press release: African elephants still in decline due to high levels of poaching, 3 March 2016. Available at: https://cites.org/eng/node/43187
\textsuperscript{42} The CITES Standing Committee is composed of Parties representing each of the six major geographical regions (Africa, Asia, Europe, North America, Central and South America and the Caribbean, and Oceania), with the number of representatives weighted according to the number of Parties within the region (Resolution Conf. 18.2 Annex 1).
\textsuperscript{43} CITES SC71 Doc.11.
\textsuperscript{44} CITES Resolution Conf. 10.10 (Rev. CoP18) Annex 3.
\textsuperscript{45} CITES SC69 Doc.27.
\textsuperscript{46} Ibid.
enforcement agencies; (v) insufficient communication with the CITES Secretariat, and (vi) absent or inadequate control of domestic trade\textsuperscript{47}.

\textbf{Convention on Biological Diversity (CBD)}

The CBD is the key global instrument for biodiversity conservation and sustainable use of its components. It was ratified by Congo on 1 August 1996. In doing so, Congo became bound by the provisions of the Convention and committed to fulfilling certain obligations contained in Articles 6, 7, 8 and 9. One of these commitments is to develop national strategies for the conservation and sustainable use of biological diversity\textsuperscript{48}. Congo submitted its latest National Biodiversity Strategy and Action Plan\textsuperscript{49} (NBSAP) in 2015. This NBSAP recognises poaching as one of the main drivers of biodiversity loss. It also identifies other institutional, political and administrative challenges, such as lack of sufficient funding to counter poaching, the inadequate application of institutional reforms, incorrect or non-application of the relevant laws and the lack of synergies between projects and programmes relating to biodiversity conservation. The NBSAP refers to trade in mammal species as the main source of income for a significant portion of the Congolese population and classifies these mammals into three categories: animals of high (i.e. elephants, gorillas and panthers), medium (i.e. bushmeat) and low (i.e. rat, squirrel) economic value. However, it fails to mention illegal trade in these species, especially ivory trade, and the impact it has on the revenue of local communities and biodiversity as a whole. Countering illegal trade and poaching is not part of the specific actions to undertake either. The effectiveness of this NBSAP is questionable when it fails to address one of the main direct pressures on biodiversity in Congo. To date, Congo has not published its report on the implementation of the NBSAP.

\textbf{United Nations Convention against Transnational Organised Crime (UNTOC)}

UNTOC is the main international instrument adopted to promote cooperation to prevent and combat transnational organised crime. It was adopted in 2000 and currently has 190 Parties. States that have ratified this Convention commit to taking a series of measures against transnational organised crime, including the creation of domestic criminal offences; the adoption of frameworks for extradition, mutual legal assistance and law enforcement cooperation; and the promotion of training and technical assistance for building capacity of national authorities.

Although wildlife trafficking is not mentioned in the body of the Convention or its Protocols, it can be considered within the scope of the Convention as it is one of the most lucrative forms of transnational organised crime. In fact, the relevance of environmental crimes in the context of UNTOC was most recently acknowledged during COP10, in 2020, where Parties passed Resolution 10/6 on \textit{Preventing and combating crimes that affect the environment falling within the scope of the UNTOC}. The Resolution recognises that the Convention is an effective tool and essential part of the legal framework for preventing and combating transnational organised crimes that affect the environment, such as wildlife trafficking. It also calls upon Parties to implement legislation that will enable them to address wildlife crime that falls within the scope of UNTOC as a serious crime\textsuperscript{50}, as defined by the Convention, and to take measures to prevent the abuse of national, regional and global financial systems for the purposes of money laundering, including through the implementation of effective risk based anti-money laundering frameworks\textsuperscript{51}.

\textsuperscript{47} Onono A. et al., 2013.

\textsuperscript{48} Convention on Biological Diversity, Article 6.

\textsuperscript{49}Stratégie Nationale et Plan d’Actions sur la Diversité Biologique (Révisé), 2015. Available at: https://www.cbd.int/doc/world/cg/cg_nhsap-v2-fr.pdf

\textsuperscript{50} A serious crime, as defined by UNTOC, is a conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious Criminality (Article 2(b)).

\textsuperscript{51}CITES News, “CITES Secretariat welcomes UNTOC resolution on combatting crimes that affect the environment”, 2020. Available at: https://cites.org/eng/CITES_welcomes_UNTOC_Resolution_WildlifeCrime_environment_26102020
Congo signed the Convention in 2000 but has not ratified it. Ratifying the Convention could certainly build Congo’s capacity to counter and address wildlife crime, especially from a legal perspective, since UNTOC aims mainly to improve the effectiveness of legislation and avoid loopholes that can be taken advantage of by criminals, as well as to enhance enforcement of these laws and promote international cooperation.

**United Nations Convention Against Corruption (UNCAC)**

UNCAC is the only existing legally binding international anti-corruption instrument. It was adopted in 2003 and currently has 187 Parties. Although it does not provide a definition of corruption, it defines specific acts of corruption that should be considered in countries bound by the Convention, including bribery, embezzlement, money laundering, concealment and obstruction of justice. While the Convention text does not contain specific wildlife crime provisions, it applies to all forms of crime that may be facilitated by corrupt actors. It does also recognize in its preamble that corruption is particularly linked to organised crime and economic crime, both of which occur in wildlife crime.

Corruption exists in different levels and degrees depending on the country but it plays a significant part in facilitating criminal acts against wildlife species. Some examples of corruption in this context are public officials directly involved in the theft and illegal sale of ivory held in government stockpiles, border officials who have offered or sought bribes for clearance of an export or import or government officials providing individuals with blank export permits.

The Convention sets a series of minimum standards that are to be met under the framework and overseen by a review process. Parties to the Convention commit to adopting coordinated policies that prevent corruption, such as designating an “anti-corruption body or bodies”, creating a public procurement system based on transparency, competition, and objective selection criteria with legal recourse for violations and taking measures to prevent corruption among members of the judiciary. They also commit to take measures to ensure the criminalisation and prosecution of acts of corruption by, for example, ensuring the protection of whistle-blowers and establishing procedures to freeze, seize and confiscate the proceeds of corrupt acts. At its eighth session, in 2019, the COP adopted Resolution 8/12 on Preventing and combating corruption as it relates to crimes that have an impact on the environment, in which it affirms that UNCAC constitutes an effective tool and an important part of the legal framework for preventing and combating corruption as it relates to crimes that have an impact on the environment, thus confirming the relevance of wildlife crime in the scope of the Convention.

UNCAC was ratified by Congo on 13 July 2006, but more than a decade later corruption in the country remains widespread, affecting every sector of the economy. It is difficult to assess the implementation of the Convention in Congo since it has not submitted any national reports since becoming a Party. It has also not participated in the two review cycles that form the basis of the UNCAC Implementation Review Mechanism. This Mechanism is a peer review process that aims to assist Parties to effectively implement the Convention, in which each Party is revised by two peers. Since it has not taken part in

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54 Ibid.
55 OECD, 2019.
56 Article 6, UNCAC.
57 Article 9, UNCAC.
58 Article 11, UNCAC.
59 Article 32, UNCAC.
60 Article 31, UNCAC.
this process yet, there is very little information accessible to NGOs that can be used to evaluate the effectiveness of the Convention in Congo.

The Congolese Criminal Code criminalises active and passive bribery, promising or receiving gifts for an undue advantage, facilitation of payments, abuse of office and trading in influence by public civil servants and private sector employees. However, as emphasised in recent reports from NGOs, the enforcement of these laws and implementation of the anti-corruption framework in place remains insufficient and corruption amongst members of the judiciary, government officials, customs and police is still common practice. In the most recent Corruption Perceptions Index, Congo ranked 165 out of 180 countries, based on the perceived level of public sector corruption in the country, and was classified as “highly corrupt”.

The National Commission to Fight Corruption and Fraud (CNLCCF) and the Anti-Corruption Observatory (OAC) were responsible for combating corruption and fraud. In 2018, these two bodies were dissolved and replaced in 2019 by the High Authority to Combat Corruption upon adoption of Law 3-2019 of 7 February 2019. This newly created independent body is responsible for preventing and combating corruption, collusion, fraud and related criminal acts. It can act on its own initiative or at the request of the President of the Republic, the President of the National Assembly and the President of the Senate based on evidence. It is tasked with several missions, including monitoring the implementation of government reforms against corruption and making recommendations for the enhancement of governance. The establishment of this independent body with extended powers and financial autonomy could be seen as an important step in a country still rife with corruption. It became operational in mid-2020 after selection of its members.

Table 1: International conventions relevant to wildlife offences ratified by Congo and implementing legislation

<table>
<thead>
<tr>
<th>Instrument</th>
<th>Ratification</th>
<th>Implementing legislation</th>
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| CITES      | 31 January 1983 | • Order 0103/MEF/30/SGEF/DCPP of 30 January 1984 on provisions relating to the export of wildlife products;  
• Law 48/83 of 21 April 1983 defining conditions for conservation and exploitation of wild fauna;  
• Decree 85/879 of 6 July 1985 implementing Law 48-83 of 21 April 1983;  
• Law 003-91 of 23 April 1991 on protection of the environment;  
• Order 3282 of 18 November 1991 on absolute protection of elephants throughout the Republic of Congo;  
• Decree 2002-433 of 31 December 2002 on the organisation and functions of water and forestry officers;  
• Law 37-2008 of 28 November 2008 on wildlife and protected areas;  
• Order 6075 of 9 April 2011 determining totally and partially protected animal species;  
• Law 34-82 of 7 July 1982 authorizing the ratification of CITES;  
• Decree 82/987 of 6 November 1982 ratifying CITES. |

61 “Active bribery refers to the act of promising or giving the bribe, as opposed to the act of receiving a bribe (passive bribery)” from the U4 Anti-Corruption Resource Centre Glossary. Available at: https://www.u4.no/terms

62 Chapter III, Section II, paragraph 4 of the Criminal Code.


65 Article 3, Law 3-2019 of 7 February 2019 on the creation of the High Authority to Combat Corruption. Available at: https://economie.gov.co/sites/default/files/1.%C3%BC%C2%B03-2019%C0%97%C0%9F%C3%A0yrier%202019.pdf

All translations by the author.

66 Ibid. Article 2.
<table>
<thead>
<tr>
<th>CBD</th>
<th>1 August 1996</th>
</tr>
</thead>
</table>
|              | - Law 29-96 of 25 June 1996 authorizing accession to the CBD;  
|              | - Law 003-91 of 23 April 1991 on protection of the environment;  
|              | - Law 37-2008 of 28 November 2008 on wildlife and protected areas. |
| UNCAC        | 13 July 2006 |
|              | - Constitution of the Republic of Congo of 6 November 2015;  
|              | - Law 5-2009 of 22 September 2009 on corruption, bribery, fraud and similar offences;  
|              | - Law 13-2005 of 14 September 2005 authorizing the ratification UNCAC; and  

### 3.1.2 Regional and sub-regional agreements

At the sub-regional level, Congo is part of the Economic Community of Central African States (ECCAS) founded in 1983 and a Member State of the Central African Forest Commission (COMIFAC) created in 2006.

COMIFAC is an intergovernmental body responsible for the harmonisation of forest and environmental policies in Central Africa[67]. Member States commit to adopting “concerted actions to stop poaching and uncontrolled logging in the sub-region in conjunction with all stakeholders, notably business operators and local communities”[68] and “striving for the standardization of documents required for the circulation of forest and wildlife products”[69], amongst other commitments specified in Article 1 of the COMIFAC founding Treaty.

The actions of COMIFAC are based on a 10-year Convergence Plan (2015-2025)[70], which establishes biodiversity conservation and sustainable use of its components as one of the six priority intervention areas with specific operational goals and target indicators, some of which relate directly to wildlife crime:

- Target indicator 3.1 C: by 2025, populations of large mammals and other threatened species of wild fauna and flora in Central Africa are at least stabilised
- Operational goal 3.1.4: strengthen surveillance measures and capacity to counter poaching and wildlife crime

In 2012, COMIFAC adopted a five-year action plan, the Central Africa Wildlife Trade Enforcement Action Plan (PAPECALF), to strengthen enforcement of national wildlife law in Central African countries[71]. As part of this plan, the project AFRICA TWIX (Africa – Trade in Wildlife Information Exchange) was launched in 2016 in collaboration with TRAFFIC. This project aims to provide an online platform for information sharing to enhance cooperation between countries and reduce illegal wildlife trade in the sub-region[72]. The action plan also includes the creation of a database of corruption cases at national and sub-regional level.

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[67] Its Member States are: Central African Republic, Democratic Republic of Congo, Burundi, Cameroon, Chad, Congo, Equatorial Guinea, Gabon, Rwanda and Sao Tome and Principe.
[69] Ibid.
[70] Available at: [https://comifac.org/images/documents/Plan%20de%20Convergence%202015-2025_Fr.pdf](https://comifac.org/images/documents/Plan%20de%20Convergence%202015-2025_Fr.pdf)
[71] Available at: [https://comifac.org/images/documents/PAPECALF_Version%20FINALE%202017%20F%C3%A9vrier%202012.pdf](https://comifac.org/images/documents/PAPECALF_Version%20FINALE%202017%20F%C3%A9vrier%202012.pdf) (in French only).
African Union Convention on Preventing and Combating Corruption (AUCPCC)

The AUCPCC\textsuperscript{73} was adopted in 2003 by the African Union. Congo ratified the Convention in January 2006 but no information is available on the steps taken to implement it. The Convention constitutes a shared roadmap for States to implement governance and anti-corruption policies at national and regional level. It aims to promote the development of mechanisms to counter corruption; facilitate cooperation among Parties to ensure the effectiveness of measures and actions to prevent, detect, punish and eradicate corruption\textsuperscript{74}. In the same way as in UNCAC, it does not contain specific wildlife crime provisions but the scope of application still includes acts of corruption and related offences that would occur in wildlife crime.

It is difficult to assess the level of implementation of the Convention as there is little available information on it. The African Union Advisory Board on Corruption, responsible for monitoring the progress of countries in implementing the Convention, has only received 13 progress reports so far, which are not available to the public\textsuperscript{75}.

Lusaka Agreement on Co-operative Enforcement Operations Directed at Illegal Trade in Wildlife Fauna and Flora (Lusaka Agreement)

The Lusaka Agreement is an African regional agreement that aims to reduce and eliminate illegal trade in wild fauna and flora and to establish a permanent Task Force for this purpose\textsuperscript{76}. It was adopted in December 1992 and came into force in 1996. The Agreement currently has seven Parties, including Congo who ratified it in 1997\textsuperscript{77}. The Lusaka Task Force, created by the Agreement, facilitates cooperative activities in and among Parties and carries out investigations on violations of national laws pertaining to illegal trade in wild fauna and flora.

The Task Force’s cooperates with international organisations involved in fighting wildlife crime, such as INTERPOL and the CITES Secretariat, to promote information sharing, coordination of activities and to conduct operations outside Africa. The cross-border law enforcement activities of the Task Force led to the arrest and prosecution of over 30 high-profile wildlife criminals in 2017 and 2018\textsuperscript{78}. Nonetheless, the Task Force capacities remain rather limited as it struggles to gather additional accessions from other countries.

According to the hierarchy of norms in Congo, as stated in the 2015 Constitution, international laws have primacy over national laws. The treaties or the agreements, regularly ratified or approved, have, from their publication, an authority above laws, under the reservation, for each agreement or treaty, of its application by the other Party\textsuperscript{79}.

3.1.3 National policy framework

In the last two decades, several national policies, strategies and action plans were adopted by Congo to address environmental issues, especially biodiversity conservation. The following is a selection of those concerns relevant to addressing wildlife crime\textsuperscript{80}:

\textsuperscript{73} Available at: https://au.int/sites/default/files/treaties/36382-treaty-0028_-_african_union_convention_on_preventing_and_combating_corruption_e.pdf

\textsuperscript{74} Article 2 AUCPCC.


\textsuperscript{76} Article 2, Lusaka Agreement on Co-operative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora.

\textsuperscript{77} Lusaka Agreement, InformEA. Available at: https://www.informe.org/en/treaties/lusaka-agreement/

\textsuperscript{78} Deo Gumba, Africa’s unsung wildlife task force, ENACT Africa, 19 August 2018. Available at: https://enactafrica.org/research/trend-reports/africas-unsung-wildlife-task-force


\textsuperscript{80} CBD, Sixth National Report on Biological Diversity in the Republic of Congo, September 2017.
• The National Action Plan for the Environment (PNAE): adopted in 1996, it focuses on reducing ecosystem degradation; improving the living environment; ensuring sustainable and rational use of natural resources; improving human health; and reducing urban and marine pollution;
• The National Forestry Action Plan: adopted in 1994, it aims to improve understanding of forest ecosystems to foster sustainable management; promote the development of hunting tourism; transform local wood production; and prevent illegal logging;
• The National Strategy and Action Plan on bushmeat management: establishes hunting zones specifically for bushmeat, which involves (i) the delimitation of dedicated territories in sites of high intensity hunting, especially the Liouesso-Mokouangonda zone in Sangha, Ipendza zone in Likouala, the periphery of Conkouati-Douli Park in Kouilou and Passi-Passi in Niari and (ii) changes in wildlife management methods through greater involvement of village communities in the creation of village hunting zones;
• The Great Apes Survival Action Plan: validated in 2005, it integrates the Central African sub-regional plan adopted the same year. Its objective is to create the necessary conditions for conserving populations of all species and subspecies of great apes in their natural habitat; and
• The Environment-forest Sectoral Program has the overall objective of sustainably increasing the contribution of forestry, urban and environmental sectors to the Congolese economy. Its specific objectives below highlight the pillars of development, including:
  - Economic objective: increase the contribution of the forestry, urban and environmental sectors to the GDP in a sustainable manner;
  - Environmental objective: maintain Congo’s unique and diverse forest heritage and improve the urban environment;
  - Social objective: reduce poverty and improve living standards for the Congolese population, promote employment by involving local populations in natural resource management and support the emergence of private sector companies.

However, it is important to note that there is very little to no information as to the implementation of these policies and as such, it is almost impossible to assess their effectiveness or the impact they have had on the country as a whole.

3.1.4 National institutional framework

The Congolese Agency for Fauna and Protected Areas (ACFAP) created in 2012 is under the supervision of the MEFDD, the main institution responsible for wildlife management. It is in charge of implementing national policies on management of fauna, protected areas (PAs), as well as anti-poaching surveillance units81. Some of the ACFAP’s responsibilities82 are to:

• Ensure the preservation of habitats and biodiversity conservation throughout the territory;
• Provide technical, scientific and administrative support to protected areas, anti-poaching surveillance units, local councils, and ensure coordination at national level;
  - Contribute to scientific and technical research on conservation and enhancement of biodiversity;
• Support the economic development of protected areas, through ecotourism and hunting tourism;
• Promote, together with all relevant stakeholders, the creation and management of ecological corridors;

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81 Article 4, Law No. 34-2012 of 31 October 2012. All translations by the authors.
82 Ibid.
• Develop sustainable financing mechanisms for protected areas and anti-poaching surveillance and control units;
• Contribute to the validation of impact studies for infrastructure projects in and around protected areas;
• Participate in the promotion of environmental education;
• Contribute to the sustainable development and well-being of communities living in and around protected areas and anti-poaching surveillance and control units;
• Set up an information management system on wildlife, protected areas and anti-poaching surveillance and control units.

There are currently 18 PAs in Congo, which represent approximately 13% of the territory. Many of these PAs are home to rare, threatened and endangered animal species, such as gorillas, elephants, hippopotamuses and chimpanzees.\textsuperscript{83} As poaching is considered the most significant threat to the survival of these species in protected areas, the role and effectiveness of the ACFAP are essential. The latest known evaluation of protected areas took place in 2013 and some of the recommendations were to provide eco-guards with the required training to better implement their law enforcement duties, organise trainings tailored to the needs of park managers, and ensure regular monitoring and evaluation of the effectiveness of PA management.\textsuperscript{84} Implementing these recommendations would go a long way towards improving the ACFAP’s ability to counter wildlife crime.

Institutional and non-institutional partners of wildlife administration in Congo include:

• Institutional partners: Ministries of Defence, Customs, Police and Justice; and
• Non-institutional partners: conservation organisations, donor agencies, civil society and the private sector.

3.2 National legal provisions applicable in cases involving fauna

There are several legal texts\textsuperscript{85} pertaining to the protection of animals in Congo. The main ones are the following:

• Law 37-2008 of 28 November 2008 on wildlife and protected areas;
• Order 3282 of 18 November 1991 on absolute protection of elephants throughout the Republic of Congo;
• Order 6075 of 9 April 2011 determining totally and partially protected animal species;
• Law 1-63 of 13 January 1963 on the criminal procedure code;

3.2.1 Law 37-2008 on fauna and protected areas and Order 6075

More than thirty years after its adoption, Law 48-83 on the Conditions of Conservation and Exploitation of Wild Fauna was repealed by Law 37-2008. Law 37-2008 is the main piece of legislation on the protection of animal species. It defines ‘fauna’ as all wild animals living freely in their natural habitat or kept in captivity, which constitute the nation’s common biological heritage, and the sustainable


\textsuperscript{84} Ibid.

\textsuperscript{85} All the legal provisions in this Chapter were translated from French by the authors.
management thereof is guaranteed by the State\textsuperscript{86}. It also provides a rather broad definition of hunting as the action of chasing, filming, photographing, capturing, injuring or killing any animal in the wild\textsuperscript{87}. The law became fully enforceable after the adoption of Order 6075 of 9 April 2011.

This regulatory framework establishes a classification of animal species in three categories: totally protected (class A), partially protected (class B) and other species (class C)\textsuperscript{88}. The animals listed in each category are specified in Order 6075. The categories are to be reviewed and amended accordingly every five years by order of the MEFDD, depending on the state of the animal populations concerned and the economic opportunities of breeding for class B species\textsuperscript{89}. However, so far, no such review has been undertaken. The decision-making process behind the classification of animal species is also rather unclear and neither the 2008 Law nor Order 6075 provide a specific explanation of the reasoning behind the listings, or which kind of data or studies they should be based on. Article 24 mentions that the lists are drawn up and updated in accordance with the status of the species in situ and the texts in force but without specifying who or what determines the status of the species.

Class A species have the strongest legal protection as they cannot be killed, captured, detained, transported, traded, imported or exported, except for scientific purposes and by recognised research institutions\textsuperscript{90}. These prohibitions apply to their trophies\textsuperscript{91}. Class A species include several aquatic and terrestrial mammals, such as elephants (Loxodonta africana), panthers or leopards (Panthera pardus), lions (Panthera leo) or giant pangolins (Manis gigantea), some whales and dolphins; birds, such as the marabou stork (Leptoptilos crumeniferus) and the spotted eagle-owl (Bubo africanus); and a few reptiles, such as the Nile crocodile (Crocodylus niloticus)\textsuperscript{92}.

Class B species may only be captured, detained, killed, or traded by virtue of a permit delivered by the authority in charge of waters and forests\textsuperscript{93}, with the exception of the young and females followed by their young\textsuperscript{94}. Within class B, there are two kinds of species: those requiring a big game hunting permit, which includes, amongst others, some duikers, monkeys, storks and snakes\textsuperscript{95}; and those requiring a small game hunting permit, such as certain types of rodents, monkeys, duikers, pigeons and quails\textsuperscript{96}.

Class C includes all other species not listed in class A or B. Hunting class C species is unrestricted, as long as it is done as part of traditional hunting customs and to fulfill family needs\textsuperscript{97}. However, trade, transport from the place of harvest to another, and trafficking in hunted class C specimens are strictly forbidden\textsuperscript{98}.

There are two additional exemptions to the interdiction to kill self-defence and cases of wild animals that are dangerous to persons or their property. The self-defence exemption means that no legal proceedings can be brought against any person who hunts a wild animal in self-defence or to defend


\textsuperscript{87} Ibid.

\textsuperscript{88} Article 24, Law 37-2008.

\textsuperscript{89} Article 8, Order 6075 determining totally and partially protected species. Available at: http://extwprlegs1.fao.org/docs/pdf/con105724.pdf

\textsuperscript{90} Ibid. Article 5.

\textsuperscript{91} Trophies are defined as "the whole or part of a wild animal specimen, including skins, hairs, teeth, tusks, bones, horns, scales, claws, hooves, eggs, feathers and any other non-perishable parts of the animal" in Article 5 of Law 37-2008.

\textsuperscript{92} Annex I, Law 37-2008.

\textsuperscript{93} Article 6, Law 37-2008.

\textsuperscript{94} Article 26, Law 37-2008.

\textsuperscript{95} Annex II-A, Law 37-2008.

\textsuperscript{96} Annex II-B, Law 37-2008.

\textsuperscript{97} Annex III, Law 37-2008.

others, their property, livestock or crops. The second exemption means the authority in charge of waters and forests can, if necessary, use methods otherwise forbidden, established in articles 36 and 37, to keep away, capture or kill wild animals that are posing a threat to persons or their property.

Law 37-2008 establishes a number of wildlife-related offences, especially in Articles 112 and 113. Overall, it can be said that Article 112 applies mostly to class B species, and Article 113 to class A species.

However, the wording of some of these provisions is rather unclear. This could lead to relevant actors in the criminal justice chain interpreting them differently, especially since most of these offences do not explicitly indicate whether they apply to class A or B species. In such cases, Order 6075 on the classification of species is useful to better understand the scope of these offences. Law enforcement officials would have to ensure to refer to both pieces of legislation to properly apply the law.

The main offences under these two Articles and the corresponding penalties are presented in Table 2 below. For the sake of clarity, only the offences involving animals or their trophies are included in the table.

| Table 2: Wildlife offences established under Articles 112 and 113 of Law 37-2008 |
|---------------------------------|-----------------|-----------------|
| Offence                         | Class A (totally protected species) | Class B (partially protected species) | Justification and remarks |
| Article 112: In addition to the confiscations, restitutions, loss of hunting permits and licences or legal damages incurred, these offences shall be punished with a fine of 10,000 to 500,000 XAF and imprisonment of 1 to 18 months, or by either of these two penalties: |
| Hunting without permit or required hunting licence |
| Hunting at a restricted time and in an area not open to hunting |
| Killing or capturing animals in numbers exceeding authorised limits |
| Hunting using prohibited means: hunting in a motor vehicle, from an aircraft or from a boat constitutes an aggravating circumstance |
| Hunting between sunset and sunrise |
| Only the hunting of class B species is permitted, and only after obtaining a valid permit or licence. |
| Hunting specimens of class A species is strictly prohibited regardless of the time and area |
| Permit/license obtained to hunt class B species specifies the authorized limit |
| Hunting class A species is strictly prohibited regardless of the means used. The prohibited means are specified in Articles 36 and 37 of Law 37-2008 |
| Hunting class A species is strictly prohibited |

100 According to Article 36 of Law 37-2008, it is strictly forbidden to approach and shoot wild animals from a motor vehicle, boat or aircraft.
101 According to Article 37 of Law 37-2008, it is strictly forbidden to use hunting techniques that can cause unnecessary suffering to animals or harm their habitat, namely with the use of drugs, poisons, synthetic nets, and other methods.
103 Article 6, Order 6075.
<table>
<thead>
<tr>
<th>Activity</th>
<th>X</th>
<th>X</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Collecting or destroying nest eggs without permission</td>
<td>X</td>
<td>X</td>
<td>No mention of the category of species concerned. No corresponding offence for class A species is provided in Article 113. This offence should be punished more severely when the eggs of class A species are concerned</td>
</tr>
<tr>
<td>Trading meat from wild animals without being authorised</td>
<td>X</td>
<td>X</td>
<td>No mention of class of species. This provision could be confused with the offence on circulation and trade in Article 113. There should have been a clear distinction between partially and totally protected species with more severe penalties for trophies from class A species</td>
</tr>
<tr>
<td>Circulating trophies without a corresponding certificate of origin</td>
<td>X</td>
<td>X</td>
<td>Clearly specifies that it does not apply to totally protected species. Detaining of live and/or dead specimens class B and C species is authorised only with the corresponding permit.</td>
</tr>
<tr>
<td>Illegally detaining a wild animal that is not totally protected</td>
<td></td>
<td>X</td>
<td>Hunting within protected areas is prohibited, except in dedicated hunting areas.</td>
</tr>
<tr>
<td>Article 113: In addition to the confiscations, restitutions, loss of hunting permits and licences or legal damages incurred, these offences shall be punished with a fine of 100,000 to 5,000,000 XAF and imprisonment of 2 to 5 years, or by either of these two penalties:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Building unauthorised amenities or hunting without authorisation within a protected area</td>
<td>X</td>
<td>X</td>
<td>Hunting method that has severe consequences on the survival of species regardless of their protection category.</td>
</tr>
<tr>
<td>Killing a female followed by her young, or a nesting bird or reptile</td>
<td>X</td>
<td>X</td>
<td>Method that causes severe damage to the survival of species irrespective of their protection category.</td>
</tr>
<tr>
<td>Killing a specimen of totally protected species</td>
<td>X</td>
<td></td>
<td>Hunting within protected areas is prohibited, except in dedicated hunting areas.</td>
</tr>
<tr>
<td>Discharging or dumping substances or waste harmful to fauna or its habitat</td>
<td>X</td>
<td>X</td>
<td>Hunting method that has severe consequences on the survival of species regardless of their protection category.</td>
</tr>
<tr>
<td>Importing, exporting, trading or transiting through the national territory with wild animals or their trophies in violation of this law or international conventions in force in Congo</td>
<td>X</td>
<td>X</td>
<td>Hunting within protected areas is prohibited, except in dedicated hunting areas.</td>
</tr>
<tr>
<td>Hunting with a state-owned motor vehicle</td>
<td></td>
<td></td>
<td>Method that causes severe damage to the survival of species irrespective of their protection category.</td>
</tr>
<tr>
<td>Illegal possession of a protected animal species</td>
<td>X</td>
<td>X</td>
<td>The wording is rather confusing as it could apply to both categories.</td>
</tr>
</tbody>
</table>

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Hunting with war weapons | X | X | War weapons are usually used to kill large animals which are often totally protected species. Also, it is a method that causes severe damage to the species irrespective of their protection category

Hunting with lighting equipment | X | X | Method that can cause severe damage to animals irrespective of their protection category

Using a scientific permit for commercial purposes | X | X | No mention of the category of species

Failing to declare the shooting in self-defence of a totally protected species | X | | Clearly specifies that it does not apply to partially protected species. The obligation to declare the killing in self-defence of class A and B species to the local service in charge of waters and forests or the local administrative authority within seven days is specified in Article 63 of Law 37-2008.

It is important to note that the following circumstances will be considered as aggravating\(^\text{106}\) and, in those cases, a perpetrator of Article 113 offences will receive the maximum punishment:

- If the offence involves the killing of totally protected species;
- If the perpetrator is a State official or a local public official;
- If the offence is committed during the closed season for hunting;
- If a repeat offender is involved.

### 3.2.2 Criminal Code

Some criminal law provisions, as established in the Criminal Code, are offences directly related to animals, specifically hunting. It is a criminal offence, under the Criminal Code, to forge a hunting licence, falsify one that is originally genuine or use a hunting licence that has been forged or falsified, and whoever shall be found guilty of this offence shall be punished by imprisonment for a duration of a minimum of six months to maximum three years\(^\text{107}\). Additionally, whoever takes a hunting licence under an assumed name or makes use of a hunting licence issued under another name than their own shall be punished by imprisonment for a minimum of three months to a maximum of one year\(^\text{108}\).

### 3.2.3 Legislation on weapons and ammunition

There are also important provisions linked to wildlife crime in weapons and ammunition legislation. Offences relating to the illegal possession of unauthorised weapons and ammunition, such as war weapons, for hunting, by unauthorised persons or in unauthorised places are in some cases linked to wildlife offences. This is particularly relevant in Congo as large numbers of weapons were acquired and circulated between 1993 and 1999, and especially during the period of the civil war between 1997 and 1999\(^\text{109}\). An assessment from 2002 estimated that there were about 41,000 small arms and light

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\(^{107}\) Article 153 of the Criminal Code.

\(^{108}\) Article 154 of the Criminal Code.

weapons in circulation in Congo\textsuperscript{110}. Prosecuting an offender on the basis of illicit weapon possession can be another way to bring wildlife criminals to justice when other pieces of evidence are missing, unusable or non-existent. Weapons and ammunition legislation is available to the authorities to prosecute the more complex cases of wildlife crime that exist today, where killing and illegal trafficking of animals can also involve heavily armed organised criminal networks\textsuperscript{111}.

Offences related to arms and munitions are established under sections 17 and 31 of Order 62/24 of 16 October 1962 setting the legal regime on war equipment, weapons and ammunition. For the purpose of this Order, the concept of ‘war equipment’ is divided into two categories: firearms and their ammunition for use in warfare, whether on land, sea or in the air\textsuperscript{112}; and equipment for carrying or using firearms in combat as well as equipment for armed forces to use for attack and defence\textsuperscript{113}. The possession of war equipment belonging to those two categories by persons other than those belonging to the armed forces, the police, and certain categories of public officials determined by decree, is strictly prohibited\textsuperscript{114}. Furthermore, anyone who acquires, disposes of, transports or possesses war equipment, weapons or ammunition, contrary to Article 15 to 26 of the same Order, shall be punished with:

1. Imprisonment for one month to one year and a fine of 20,000 to 300,000 XAF or one of these two penalties only in cases of defence weapons\textsuperscript{115} and knives\textsuperscript{116};
2. Imprisonment from fifteen days to six months and a fine of 20,000 to 150,000 XAF or one of these two penalties only in cases of rifled shotguns\textsuperscript{117}, smooth-bore hunting weapons\textsuperscript{118}, trafficked\textsuperscript{119} or exhibition weapons\textsuperscript{120}.

In the event of a repeated offence, a residence ban of a period of two to five years will also be pronounced\textsuperscript{121}.

The Criminal Code also defines complicity and establishes sanctions for that offence under sections 59 and 60. Criminal law defines accomplices as those who assisted in committing or gave instructions to commit a criminal act through gifts, promises, threats, abuse of power or authority, scheming or tricks\textsuperscript{122}. This applies to those who knowingly supplied weapons, or any other means or equipment to commit such acts\textsuperscript{123}. Persons who have knowingly aided or abetted another individual in committing a criminal act by facilitating or preparing it are also considered as accomplices\textsuperscript{124}. Accomplices to a crime or misdemeanour shall receive the same sentence as the actual perpetrators of said crime or misdemeanour, except in cases where the law provides otherwise\textsuperscript{125}.

\textsuperscript{110} Ibid.
\textsuperscript{113} Ibid.
\textsuperscript{114} Ibid. Article 17.
\textsuperscript{115} Weapons said to be for defence and ammunition (Article 2.B, Order 62-24).
\textsuperscript{116} Knives (Article 2.B, Order 62-24).
\textsuperscript{117} Rifled shotguns and ammunition (Article 2.B, Order 62-24).
\textsuperscript{118} Smooth-bore hunting weapons and ammunition (Article 2.B, Order 62-24).
\textsuperscript{119} Trafficked weapons and ammunition (Article 2.B, Order 62-24).
\textsuperscript{120} Shooting and exhibition weapons and ammunition (Article 2.B, Order 62-24).
\textsuperscript{121} Article 31, Order 62-24.
\textsuperscript{122} Article 60, Criminal Code.
\textsuperscript{123} Ibid.
\textsuperscript{124} Ibid.
\textsuperscript{125} Article 59, Criminal Code.
Other laws were enacted to reinforce the protection of certain species. These include Order 3282 of 18 November 1991 on the absolute protection of elephants in the Republic of Congo and Order 054 of 22 October 2003 on the prohibition of sale and consumption of primates (specific to the department of Sangha)\textsuperscript{126}.

In practice, the sentences ordered in court cases involving animals are usually based on different legal texts. In almost all judgments analysed within this report, the court refers to the Criminal Code, CPC, and to Law 37-2008 of 28 November 2008 on fauna and protected areas. In addition, other pieces of legislation are occasionally mentioned, especially Order 6075 of 9 April 2011 determining totally and partially protected animal species; Order 62/24 of 16 October 1962 setting the regime on war equipment, weapons and ammunition; Order 25-70 of 1 August 1970 regulating the conditions of residence in the People’s Republic of Congo\textsuperscript{127} of persons of foreign nationality who have been convicted by a court of law; and Law 07-62 of 20 January 1962 regulating the exploitation of wildlife.

Interestingly, the older law on animals, Law 07-62, which was replaced by Law 37-2008, was still mentioned in a few judgments. There is no clear explanation for this in the cases but one could infer that it was used to fill a gap, especially when the specific offences within a case were not covered by the 2008 Law.

The CPC was also referred to on many occasions as it regulates the various stages of the criminal procedure, from the investigation stage to the execution of the judgment. It determines the procedures to prosecute animal-related offences.

### 3.2.4 International law in court decisions

The cases selected for analysis in this report do not refer in general to provisions of international conventions ratified by Congo, even though international law has primacy over national law. This could have reinforced the importance of international conventions in court decisions by the judges. While this does not undermine the fact that provisions of international conventions ratified by Congo are still enforceable, it could lead to the conclusion that judges are lacking enough knowledge and understanding to adequately apply, or refer to, provisions of international law in their judgments.


\textsuperscript{127} The Republic of Congo’s former name.
4 PROSECUTION OF WILDLIFE CRIME CASES IN THE REPUBLIC OF CONGO

While the prosecution of wildlife crime cases usually follows the general rules of criminal procedure, it presents some specificities. The key steps of the judicial procedure in wildlife matters will be presented in this chapter, followed by an overview of key results from case analysis from the Ouesso High Court and Court of Appeal.

4.1 Judicial procedure applicable to wildlife cases: main steps

The judicial procedure in wildlife cases consists of four main steps: the arrest, preliminary investigations, prosecution and trial, as established under Law 37-2008 and the CPC.

![Diagram of judicial procedure]

Figure 7: Prosecution of wildlife offences

4.1.1 Arrest

By definition, an arrest is the act of depriving a person of their freedom of movement on the basis of legal authority. The arrest can only take place once an arrest warrant has been issued. The rules pertaining to arrest warrants are specified in Section 6 of the CPC. An arrest may be made without a
warrant in cases of *in flagrante delicto*\(^\text{128}\), when an individual is caught in the act of committing an offence. In such cases, individuals can be directly placed in custody in a detention centre, upon decision of the Public prosecutor, until the judgment\(^\text{129}\). National park rangers and eco-guards, who operate within protected areas, as well as anti-poaching surveillance units, are essential to the policing of wildlife and hunting and they contribute to the majority of arrests made for wildlife offences\(^\text{130}\).

In wildlife cases, arrests can be made during a routine patrol or a patrol triggered by a tip-off. They can also be the result of investigative efforts on the part of the public authorities, such as the MEFDD, national or specialised trans-border agencies, such as the National Office of the Lusaka Agreement Task Force (LATF) and the Interpol National Crime Bureau\(^\text{131}\).

Following the arrest, the perpetrator may be placed in custody if the offence is punishable by imprisonment\(^\text{132}\). The arrest may be followed by the seizure and confiscation of the products and equipment used to commit the offence\(^\text{133}\).

### 4.1.2 Investigation

An investigation into an offence is conducted by judicial police officers upon instruction by the State Prosecutor or on their own initiative\(^\text{134}\).

During the investigation, the judicial police officer may perform the following acts:

- Custody\(^\text{135}\);
- Seizure and confiscation of evidence that has served to commit the offence\(^\text{136}\). The weapons, ammunition and means used in a hunting offence are seized, as well as the remains of animals killed in illegal hunts\(^\text{137}\). Ammunition, weapons and traps used illegally are to be destroyed\(^\text{138}\). For repeat offenders, the means of transportation used in illegal hunting activities are seized\(^\text{139}\). They can be returned upon payment of a bond of the equivalent of the monetary value of the vehicle at the time of seizure\(^\text{140}\);
- Searches and home visits, which can only be done with the consent of the person whose home is being searched\(^\text{141}\);
- Hearing the statements from individuals who can provide useful information on the facts of the offence or the objects seized\(^\text{142}\).

\(^\text{128}\) Article 328, CPC.
\(^\text{129}\) Article 56, CPC.
\(^\text{130}\) Batchy et al., 2018.
\(^\text{131}\) Ibid.
\(^\text{132}\) Ibid.
\(^\text{133}\) Articles 110 and 111, CPC.
\(^\text{134}\) Article 61, CPC.
\(^\text{135}\) Article 63, CPC.
\(^\text{136}\) Article 62, CPC.
\(^\text{137}\) Article 110, Law 37-2008.
\(^\text{138}\) Ibid.
\(^\text{139}\) Article 111, Law 37-2008.
\(^\text{140}\) Ibid.
\(^\text{141}\) Article 62, CPC.
\(^\text{142}\) Article 46, CPC.
Box 1: Settlement procedure

The settlement is the method of resolving a litigation between the Administration and the offender amicably and avoiding court proceedings. It is an agreement to drop administrative charges against an offender in return for a payment of a sum of money. Settlement conditions for wildlife offences are established under Articles 106 to 109 of Law 37-2008. The objective of the settlement is to reduce costs by quickly settling disputes and, in doing so, relieving congestion in the courts. This settlement procedure only covers administrative fines and not prison sentences. Criminal proceedings in the courts are still possible even in cases where a settlement was paid.

**Cases in which the settlement is forbidden:** settlements are not authorized for repeat offenders (Art. 106)

**Authorities empowered to conclude settlement:** The Minister of Water and Forestry (now the MEFDD), the Director General, the departmental directors of the Ministry of Water and Forestry can settle on behalf of the State.

MEFDD agents responsible for the management of protected areas (park rangers or conservators) can also settle on behalf of the State but only for offences likely to result in a fine of up to XAF 5,000,000 (approx. USD 10,000).

**Settlement conditions:**

- Reports of the settlement drawn up by the departmental directors of water and forests are sent to the Director General of Water and Forests within seven days of being drawn up;
- The amount of the settlement must be paid by the date set in the report, which cannot exceed two months.

All acts performed must be carefully reported by the judicial police officers. These include the offence report form, the offence statement, the hearing, seizure, search, and the investigation closure reports. At the end of an investigation, the alleged perpetrator is referred to the Public prosecutor who decides on how to proceed.

### 4.1.3 Prosecution

The prosecution of suspects is conducted by the Public prosecutor, on behalf of the State Attorney\(^\text{143}\). The State Attorney decides whether the perpetrator will be prosecuted for the offence and bring the case before the courts\(^\text{144}\). From that point onward, there are different possible paths:

- Dismissal: the perpetrator could not be identified or there is insufficient evidence. In this case, the Public prosecutor can decide to release the individual and not take the matter to court;
- Direct summons: in an open-and-shut case, the Public prosecutor can choose to directly summon the alleged perpetrator to a hearing before the High Court. This would allow the alleged offender to stay out of jail until the judgment is pronounced;
- Flagrant offence (*in flagrante delicto*); an individual caught in the act of committing a crime will be placed in custody by the Public prosecutor\(^\text{145}\).

### 4.1.4 Trial

Hearings are presided over by a Judge-president\(^\text{146}\) and are public except when provided otherwise by law\(^\text{147}\). The president verifies the defendant’s identity, informs the court of the facts that led to the proceedings and notes, if necessary, the presence or absence of the plaintiff\(^\text{148}\), who, in wildlife matters, would be a representative of the wildlife administration. In *flagrante delicto* cases, witnesses may be requested to appear by any judicial police officer or law enforcement officer\(^\text{149}\).

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\(^{143}\) In French: Procurer général.

\(^{144}\) Batchy et al., 2018.

\(^{145}\) Ibid.

\(^{146}\) Article 336, CPC.

\(^{147}\) Article 334, CPC.

\(^{148}\) Article 330, CPC.
The provisions of section 353 of the CPC allows the plaintiff to file a civil claim, if they have suffered losses directly caused by the offence, to ask for damages as compensation. The civil claim should be filed before the hearing, or during the hearing by a declaration recorded by the clerk or by the filing of pleadings\textsuperscript{149}.

Once the debates are closed, the judgment can be pronounced either immediately after or at a later date. In the latter case, the president informs the parties of the date of adjournment\textsuperscript{150}.

The legislation offers the possibility to parties not satisfied with a judgment to exercise the following remedies:

- An opposition is filed before the same court by the defendant within ten days if they are a Congolese resident, or a month if they live abroad\textsuperscript{151};
- An appeal is filed by the defendant or the plaintiff, within ten days after the judgment was rendered\textsuperscript{152}.

### 4.2 Presentation of key results

The majority of court decisions collected, 230 out of 250, were from a court of first instance. These decisions were not appealed; thus, they can be considered as final. The remaining 20 decisions were from an appellate court. All these cases were analysed in terms of the types of charges brought against the defendant or defendants, legal texts cited, the evidence, judgment and sentences and penalties.

Once a case is referred to the court for judgment, either by the Public prosecutor or direct summons (Figure 7), the defendant is summoned to appear at the trial. A defendant’s attendance in court can determine the length of the trial and is often looked upon favourably by the judge.

 Appearing at the trial gives defendants a chance to defend themselves, by pleading guilty and by admitting the facts, which happened in many cases, and perhaps even benefit from a lesser sentence. Analysis of the judgments in the collected cases indicates that 96% of defendants appeared in person while for 2% of them, this information was not available (Figure 8).

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{attendance_in_court.png}
\caption{Attendance in court}
\end{figure}

\textsuperscript{149} Article 354, CPC.
\textsuperscript{150} Article 397, CPC.
\textsuperscript{151} Article 426, CPC.
\textsuperscript{152} Article 435, CPC.
4.2.1 Offences/Charges

The analysis of court decisions reveals two main categories of charges brought against defendants: charges related to poaching or to specific wildlife species and animal by-products, and other charges. The first category includes sixteen charges, out of which the following four were present in the majority of cases (Figure 9):

- Illegal killing of protected animal species, which is the most frequently committed wildlife offence, all species combined (32%);
- Complicity in illegal killing of protected animal species (22%);
- Illegal trafficking of protected species (15%);
- Illegal circulation of protected species (14%).

These four main offences are followed by a group of three charges, altogether representing 14% of this category of charges:

- Complicity in illegal circulation of protected species;
- Illegal possession of protected species;
- Complicity in illegal trafficking of protected species.

The last group of nine charges are present in less than 10% of the cases.

![Figure 9: Charges specific to wildlife species and animal by-products](image-url)
The other offences include a variety of charges connected to poaching aspects. The majority is related to illegal possession and hunting with war weapons and ammunition as well as complicity, which altogether account for more than 80% of the charges. The remaining group of ten charges represents offences that can be seen as incidental to poaching, such as evasion, illegal immigration and, to a lesser extent, involuntary homicide.

Figure 10: Other charges

During the proceedings, the suspect is invited to plead guilty or not guilty. A guilty plea shortens the proceedings and reduces the prosecution’s workload. If a defendant pleads guilty, the judge may be more favourable to leniency and pronounce mitigating circumstances in favour of the defendant for ‘spontaneous confession’. However, if the defendant pleads not guilty, the principle of presumption of innocence requires the prosecution to present all the evidence, which can extend considerably the duration of the trial.

If the defendant is nevertheless found guilty, pleading not guilty also reduces their chances of obtaining mitigating circumstances. Analysis of the judgments collected shows that 70% of defendants pleaded guilty while only 10% pleaded not guilty (Figure 11). For 20% of them, this information was not available. This is directly linked to the fact that court decisions are not consistently recorded in writing, which is unfortunate as this data, along with other important information (age of suspects, nationality, whether they appeared or not, etc.) in the judgments, is now lost.
4.2.2 Legal citation

In all court decisions collected and analysed there was at least one specific legal text mentioned, which provides the legal basis for the offence that the alleged perpetrator was apprehended for. In the decisions analysed, Law 37-2008 on wildlife and protected areas, Law 1-63 on the CPC and the Criminal Code were cited the most.

Other pieces of legislation mentioned occasionally include: Order 62-24 of 16 October 1962 setting the regime for war material, weapons and ammunition; Order 6075 of 9 April 2011 determining totally and partially protected animal species; Order 25-70 of 1 August 1970 regulating the conditions of residence in the People’s Republic of Congo of persons of foreign nationality who have been convicted by a court of law; and, in very few cases, Law 07-62 of 20 January 1962 regulating wildlife exploitation.

4.2.3 Evidence

In this context, evidence refers to products, equipment and items seized during the investigation and produced before the court in order to prove the defendant’s guilt. An item submitted to court as evidence is an exhibit.

In the cases analysed, exhibits presented to the court included mostly trophies and animal products such as raw ivory tusks, pangolin scales, leopard skins, wild gorilla, chimpanzee, duiker and monkey meat. Hunting equipment, such as war weapons and ammunition, was also presented in many cases.

However, some pieces of evidence like vehicles, live animals such as African grey parrots and primates, large quantities of products or particularly sensitive products that may be toxic for example, cannot be presented to the court for practical reasons. In those cases, the seizure report or the document confirming that they have been placed in a zoo, in quarantine or impounded, will be shown to the court in lieu of physical evidence.

4.2.4 Judgment

The majority of the cases analysed (88%) led to conviction. This can be explained by the fact that most offenders are caught, either in the act of, or right after committing the offence. In many cases, the defendant also confessed to the offence, which facilitates convictions. An acquittal was reached in about 5% of the cases analysed. In 7% of the cases, only the civil liability of the defendant was established (Figure 12).
### 4.2.5 Sentences / Penalties

This section provides a detailed analysis of the three types of sentences decided by the court in the analysed cases, which are prison sentences, fines and damages. The number of suspended sentences\(^{153}\) and firm sentences\(^{154}\) is almost equal (Figure 13).

**Firm and suspended prison sentences**

Out of the 416 defendants convicted to a prison sentence for a wildlife-related offence between 2009 and 2020 by the Ouesso High Court, 205 were convicted to firm sentences and 211 to suspended sentences (Figure 13).

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\(^{153}\) A prison sentence that is served only if the person is convicted again within the suspended period.

\(^{154}\) The prison sentence is served directly after the judgment.
Table 3 provides the proportion of firm and suspended sentences according to their duration: from 1 to 18 months, in line with Article 112 of Law 37-2008, and from 24 to 60 months as established under Article 113 of that same law.

<table>
<thead>
<tr>
<th>Duration</th>
<th>Firm (%)</th>
<th>Suspended (%)</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-18 months</td>
<td>38 (28%)</td>
<td>98 (72%)</td>
<td>136 (33%)</td>
</tr>
<tr>
<td>24-60 months</td>
<td>167 (60%)</td>
<td>113 (40%)</td>
<td>280 (67%)</td>
</tr>
<tr>
<td>Total</td>
<td>205 (49%)</td>
<td>211 (51%)</td>
<td>416 (100%)</td>
</tr>
</tbody>
</table>

This shows that a majority of defendants received longer prison sentences with more than half of them being firm. Overall, there are still more defendants convicted to suspended than to firm sentences. This can possibly be explained by the fact that a large proportion of the defendants were first-time offenders and that most of them confessed to the offence.

**Fines**

The court ordered 421 of the defendants to pay a fine. The amount of these fines ranges from 20,000 XAF (approximately USD 40\(^{155}\)) to 5,000,000 XAF (approximately USD 9,000). While in the majority of cases (89%), the fine was less than 1,000,000 XAF (USD 2,000), 12 defendants were ordered to pay the maximum amount for fines, which is 10,000,000 XAF (USD 19,000).

**Damages**

Civil damages were awarded in 167 cases, with amounts ranging from 100,000 XAF (USD 200) to 10,000,000 XAF.

The total amount of civil damages awarded to the Wildlife Administration in the judgments collected is 224,796,998 XAF (USD 420,000). Unfortunately, little effort is made to recover those damages which could constitute additional funds for endangered wildlife species protection. It was also not possible to obtain data on whether these fines and damages were actually paid, and if so, how many. This could be due to the fact that the Wildlife Administration does not keep records of actual payment of damages, or that they are not available to the public.

**4.3 Appellate Court**

Less than 1% of the court decisions were collected from the Court of Appeal (see Figure 4 above), which is too low to make a conclusive assessment on the nature of the offences or the success rate. It is also insufficient to assess whether justice is usually administered correctly in appeal cases.

\(^{155}\) The exchange rate used is that of June 2021: 1 USD = 548.853 XAF.
4.4 Characteristics of defendants

Average age

It is difficult to estimate the average age of the defendants since for 38% (190 out of 500) of them this information was not included in the judgments. However, in cases where this information is available, the defendants’ age ranges from 17 to 87 years old, with the most represented (20%) age group being 30 to 39, as shown in Figure 14.

![Figure 14: Distribution of defendants by age group](image)

Most defendants were Congolese nationals (78%) and only 2% of them were women, as shown in Figures 15 and 16 respectively.

![Figure 15: Distribution of defendants by nationality](image)

Foreign defendants came from eight different countries (Figure 15), out of which four share a border with Congo: Cameroon, Central African Republic, Democratic Republic of Congo and Gabon, the other four being Chad, Mali, Senegal, and China. It is important to note that the nationality of some
defendants was not available as they did not have an identification document at the time of their arrest and prosecution.

The variety of nationalities of the defendants in wildlife-related cases illustrates the increasingly transboundary nature of wildlife crime. This is substantiated in recent reports that the most serious forms of wildlife crime are committed by organised crime groups with sophisticated transportation and finance networks\(^\text{156}\). While organised crime was not the focus of this analysis, it is still important to note that convicting the poacher is not sufficient to counter the large-scale illegal wildlife trafficking that exists today.

**Figure 16: Distribution of defendants by gender**

### 4.5 Species

A total of 946 specimens of animal species were involved in the cases analysed within this report. They represent 14 different species, as presented in Table 4. Unsurprisingly, the African forest elephant is by far the most targeted species as it is involved in 125 (77%) out of the 163 cases where an animal species is targeted.

**Table 4: Species represented in analysed cases**

<table>
<thead>
<tr>
<th>List of all species</th>
<th>Class</th>
<th>Number of cases</th>
<th>Number of individuals</th>
</tr>
</thead>
<tbody>
<tr>
<td>African forest buffalo (Syncerus caffer nanus)</td>
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<td>Western lowland gorilla (Gorilla gorilla gorilla)</td>
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Out of those 14 species, half are totally protected class A species, representing 96% of the species involved in the cases, while the other seven species belonging to class B were involved in only 4% of the cases (Figure 17).

![Figure 17: Distribution of cases by class of protected species](image)

### 4.6 Financial aspects

In general, the financial dimension of wildlife crime seems to be rarely considered by law enforcement. For example, the trophy value is only discussed in eight out of the 157 cases where this information could have been collected. Moreover, investigations are not extended to establish potential links with illicit financial flows even for cases of trafficking in high value products, such as elephant tusks and pangolin scales.
5 DISCUSSION OF KEY FINDINGS

After the presentation of data collected and collated, this chapter will focus on identifying the main challenges and trends related to wildlife crime prosecution that stood out from the analysis of the cases.

As noted above, the assessment was initially meant to cover multiple courts, both in urban and remote areas, and at various levels across the country. In spite of this, it was still extremely challenging to gain access to the court decisions in wildlife matters, probably because of inadequate judicial file archiving at court level. In Ouessou, and in other courts around the country, case files are stored manually in each court registry. Discussions with court authorities revealed that there is no centralised judicial database either at departmental or national level. Although the Ouessou High Court was recently provided with a computer and a printer, no electronic archiving system has been developed yet. The computer serves only to formalise the judgments and replaced the typewriter that was still used by court registry. It appears that the only existing electronic judicial databases are those developed and managed by NGOs in partnership with the wildlife administration to support the monitoring of wildlife-related court cases. The absence of a national database and information sharing system amongst existing databases, electronic or not is an obstacle to the effectiveness of the judicial system. The creation of an interconnected database would enable case tracking, from arrest all the way to sentencing, better identifying repeat offenders and assessing the effectiveness of the law enforcement system as a whole.\(^{157}\)

With regard to the actual content of the judgments, several observations could be made.

**Judicial collegiality**

Although not specifically provided for in Law 022-92 of 20 August 1992 on the Organisation of the Judiciary in the Republic of Congo, there was a collegial composition of the court during trial in all the collected court cases, with usually three sitting judges, a President and two vice-presidents. The advantage of collegiality is that it helps decision-making in complex cases. Three judges can approach a case from different perspectives, resulting in different outcomes, and "collegiality" is what helps bring about the resolution needed in such a situation. Interviews carried out with magistrates revealed that collegiality is a general practice in the Congolese judicial system and occurs in all matters (criminal, civil and administrative) so this is not specific to wildlife cases.

**Defendants’ profiles**

The main fault in the judicial system, that hinders its ability to curb poaching and illegal trade, is the fact that legal proceedings are mostly brought against offenders at the bottom of criminal networks involved in wildlife crime. Although statistics are not available to support this observation, the analysis of case facts revealed two main profiles among those prosecuted. Hunters and accomplices represent the majority of prosecuted and convicted offenders in wildlife cases by the Ouessou High Court and Court of Appeal. The various profiles and modus operandi of ‘typical’ hunters can be deduced from the analysis of case facts. Hunters live mostly in villages located on the edge of forests and protected areas, as members of indigenous or local communities, such as Baka communities. In some cases, they are non-natives or immigrants who have settled in these villages and engage in minor hunting, fishing and farming activities to ensure their daily subsistence. Small-scale hunters act mostly on their own, either by setting traps or using small hunting weapons. Small-scale hunting is most often done for subsistence purposes. However, in cases where hunters manage to kill high value animals, for example leopards or pangolins, they can get the idea of trading their trophies. Large-scale hunters who practice big-game hunting usually operate in groups with clear division of powers and responsibilities among the group members, including transport of rations, killing, removal of body parts

\(^{157}\) Batchy et al., 2018.
for trophies, hiding and transporting products and equipment to be used during the hunting expedition. Hunting groups are usually composed of family members or close friends; in some cases, however, group members did not know each other and had simply been associated by an intermediary for poaching. As for big-game hunters, they usually set up camp to do the deed as they often have to spend several days tracking animals in the wilderness.

Middlemen appear mostly in cases of large-scale hunting expeditions associated with trade in animal products or trophies harvested during the hunt. Their role, as it emerged from the evidence available for this study, includes: (i) contacting, recruiting or managing hunters and providing them with necessities for hunting (food, cash, weapons and ammunition, etc.); (ii) recovering the weapons and collecting the wildlife products at the end of a hunting expedition; (iii) in some cases buying animal products from other hunters directly; and (iv) looking for potential buyers in neighbouring areas and large cities (Brazzaville, Pointe-Noire) or across national borders. The origin of the weapons used for hunting was also noteworthy. In fact, arising from the case analysis, it appeared that weapons had most often been acquired from uniformed individuals, in service or retired, who had either sold them, or simply made them available to the hunters belonging to the same criminal network. In some cases, weapons were also purchased from civilians, which could be a consequence of the general proliferation of weapons occurring in Congo since the end of the civil war in the 1990s, although this was only mentioned in a few cases. Generally, middlemen live in villages and small towns located at the edge of forests and in places close to urban areas, like Ouesso. Some profiles of middlemen identified during the analysis include, but are not limited to, drivers, farmers, traditional authorities, motorbike and car drivers, loggers, businessmen, local agents from various administrative services (wildlife, customs, police, gendarmerie, mayors, etc.).

Analysing the prosecuted profiles revealed that most of them are hunters, and sometimes middlemen as well, that come from poor rural backgrounds as they are at the bottom of the trafficking chain and receive little to no monetary benefits from crimes they helped commit. This could be related to the fact that the analysed cases came exclusively from the Ouesso area, which is closer to locations where poaching takes place rather than to urban centres, where trade and trafficking occurs. However, this may also confirm a trend where law enforcement focuses their efforts primarily on prosecuting low-level offenders in the criminal network, mostly hunters and to some extent middlemen as well, rather than the most powerful high-level traffickers at the top of the chain. This is also directly linked to the fact that in large cities, such as Brazzaville and Pointe Noire, where arrests are more likely to be made for trafficking, or transit of protected animals, rather than poaching, the number of convictions resulting in prison offences is lower\textsuperscript{158}. In conclusion, the current trend seems to be that the higher in the trafficking chain, the smaller the sentence\textsuperscript{159}. Possible explanations for this could be corruption, ineffective or even non-existent legal representation for lower level defendants, or lack of substantial evidence to convict, which could derive from inadequate investigative work by law enforcement officials.

**Inadequate legal representation for the parties**

There are also some blatant inequalities faced by the individuals on trial in the 250 cases collected for this study. Legal representation was provided to the defendants in only two of these cases. In Congo, there is no official national legal aid system to provide legal assistance and representation for individuals who may not be able to afford it. This is not compatible with the right to a fair trial guaranteed by international human rights law, specifically the African Charter on Human and Peoples’ Rights, ratified by Congo in 1982. The right to a fair trial\textsuperscript{160}, guaranteed by the Charter, also includes the right to a defence and the right to be assigned a lawyer, free of charge where necessary\textsuperscript{161}.

\textsuperscript{158} Batchy et al., 2018.

\textsuperscript{159} Ibid.

\textsuperscript{160} Article 7, African Charter on Human and Peoples’ Rights.

According to the African Commission on Human and Peoples’ Rights, of which Congo is a member, the “essential elements of a fair hearing” include the adequate opportunity to prepare a case and to challenge or respond to opposing arguments or evidence as well as the entitlement to consult and be represented by a legal representative or other qualified persons chosen by the party at all stages of the proceedings. The Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa and its Plan of Action is the latest statement on criminal aid in Africa. It recognises the right to legal aid in criminal justice and broadens legal aid to include legal advice, assistance, representation, education, and to include a broad range of stakeholders, such as non-governmental organisations, community-based organisations, religious and non-religious charitable organisations, professional bodies and associations and academic institutions. The right to a fair trial is also a constitutional right in Congo, as established in Article 9 of the 2015 Constitution: “Any accused is presumed innocent until his culpability has been established following a just and equitable process guaranteeing the rights of defence”. This is essential to ensure that the interests of each party are defended in court and to guarantee fair proceedings. It is also crucial to improve legal training on wildlife matters for students in law school or in magistrate school.

Insufficient investigative work

In the majority of cases, charges were brought against the suspects, based on witness testimonies and evidence, which were recovered thanks to investigative work by law enforcement officials. The preliminary investigation usually takes place on the day the offence occurs but further investigation is not systematically conducted by the judicial police or the prosecutor. In fact, from the cases analysed, it appeared that some leads were not followed, such as phone and financial records, which could have helped identify other members of a criminal network. In some cases where other individuals were cited by defendants as being part of the same network, no further investigation was conducted to determine their role as potential accomplices. For example, in one particular case, a uniformed officer was identified by a defendant as having provided weapons and ammunition to commit the offence, but no further investigation was undertaken.

Lack of transparency of the legal reasoning behind convictions

In a majority of the cases collected, the defendant was convicted on the basis of having been caught in the act of committing the offence, or admitting to the facts. In these cases, this formed the basis for conviction. However, in the other cases, where the defendant denied the facts, the judge’s reasoning that led to conviction was unclear. The case transcripts did not reflect the reason, or legal basis, for conviction. This is difficult to explain, as it could be due to a mistake in recording the judgment, which were usually handwritten by clerks, or it could be evidence of judicial misconduct. Since there is, generally, no follow up on the outcome of court cases, situations like this go unnoticed.

Legal loopholes, inconsistencies and disparities in Law 37-2008

Several loopholes, inconsistencies and disparities were found in the interpretation of Law 37-2008 during the case analysis. Articles 112 and 113 of Law 37-2008 establish a series of offences and corresponding penalties, the wording for some of which is not precise enough. They do not specify to which class of animals, totally or partially protected, the offences apply. It is usually necessary to refer to other provisions of the law to adequately interpret them.

Offences, such as unauthorised trade in meat from wild animals and circulation of trophies without a corresponding certificate of origin, provided in Article 112, do not specify whether they apply to class A or B protected species. They can therefore be confused with the serious offence on transit through the national territory and trade established in Article 113. There should have been a distinction between

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partially and totally protected species with more severe penalties for offences committed on class A species. This relates to the obvious inconsistencies in the penalties established by Law 37-2008. Article 112 creates less serious offences with fines ranging between 10,000 and 500,000 XAF, while Article 113 establishes more serious offences, with corresponding penalties ranging from 100,000 to 5,000,000 XAF. Therefore, in accordance with the law, the minimum fine for a serious offence (100,000 XAF) is lower than the maximum penalty for a minor offence (500,000 XAF)\(^{164}\), which appears to be rather illogical.

In addition, some offences are established without penalties. For example, Article 27 punishes the possession of totally protected species but that offence is not clearly listed in Article 113 and has therefore no corresponding penalty. Judicial authorities are obliged to rely on other offences, either on import, export, trade in or transit through the national territory with wild animals or their trophies\(^{165}\), or illegally holding a protected animal, to be able to prosecute offenders caught in possession of totally protected species.

Another noteworthy discrepancy in the legislation is that the same offence is punished in two distinct provisions with different wording and sentences. The ban on hunting during a prohibited period and in an area not covered by the law is punished by Article 112 with up to 18 months imprisonment while the penalty for hunting in a protected area, provided in Article 113, is two to five years imprisonment. This means that in two cases with similar facts, for example an individual caught hunting inside a protected area without authorisation, two different verdicts with different penalties could be decided depending on the way in which the judges choose to interpret the law\(^{166}\).

In that sense, there are some inconsistencies as to which legislation should be applied by judges in wildlife-related matters. Law 37-2008 is the most recent legal text and the most cited by judges in wildlife-related matters. According to Article 119, all previous provisions contrary to Law 37-2008 are repealed, “especially those of Law 48-83 of 21 April 1983 defining the conditions of conservation and exploitation of wildlife”. Theoretically, this can be interpreted by judges as allowing the application of older legislation, such as Law 48-83, in order to fill loopholes in the new law, as long as the provisions are not contrary to those of Law 37-2008. Nevertheless, interpretations of this Article differ amongst judges. For instance, in the case Public prosecutor’s Office and the Sangha Departmental Directorate of Water and Forests vs Benga Roger, Ngué Grégoire, Ngba Freddy\(^{167}\), the court based its decision on both Law 37-2008 and Law 7-62 of 20 January 1962 although the offences for which the accused were prosecuted, attempting to hunt with war weapons and complicity in attempting to hunt with a war weapon, were already punished in Article 113 of Law 37-2008. In that sense, there was no legal loophole in the 2008 wildlife law justifying the use of the former law.

As mentioned above, the assessment of the CITES Standing Committee is that national legislation in Congo does not fulfil the requirements of the Convention. This is significant as it could lead to sanctions, including a recommendation to suspend all trade in CITES-listed species with Congo. Inconsistency with CITES is especially noticeable in the case of the African grey parrot \textit{(Psittacus erithacus)}. African grey parrots are a CITES Appendix I species and classified by the IUCN Red List as endangered, with a decreasing population. However, this species is listed as a partially protected species in the national legislation. In other words, although African grey parrots are recognized by the international community as endangered, hunting, capturing and trading specimens of this species will only be prosecuted as lower-ranking offences in Congolese courts. In the case Public prosecutor’s Office and the Sangha Departmental Directorate of Water and Forests vs Bouba Bonaventure, Nga

\(^{164}\) Batchy et al., 2018.

\(^{165}\) Article 113, Law 37-2008.

\(^{166}\) Batchy et al., 2018.

Sylvestre, the two defendants were given a one-year suspended prison sentence and a 150,000 XAF fine for illegally capturing African grey parrots and complicity.

**Poor presentation of case facts**

In many cases, it was noted that facts were not presented correctly, either because they were too condensed or some key elements of the case were missing, which made it difficult to understand the case and the legal elements the court decision was based on. This indicates a significant lack of transparency on the courts’ side, but also probably a lack of logistical, technical and financial resources. In 2018, it was reported that the Ouesso courts were still, at times, without electricity, which could absolutely affect the quality of court case reports. According to the magistrates that assisted the team in case collection, facts in the court decisions were taken from reports drawn up by the wildlife administration and sent to the court. As they were not written by the court clerk or any judicial authority, this could be problematic in terms of factual accuracy.

**Inconsistencies in the penalties**

One of the key findings of this assessment is that sentences were not consistently handed down by judges. The trend observed was that for similar offences, low-level offenders, such as hunters, were punished more severely than middlemen, who were sometimes foreigners. For example, in two cases of illicit possession and circulation of ivory tusks, one against a Congolese hunter and another against a Chinese individual, the defendants received drastically different sentences for the same offence. Both defendants had admitted to the crime but the former was condemned to eighteen months imprisonment, a 200,000 XAF fine and 300,000 XAF for damages and court fees, while the latter was sentenced to six months imprisonment, a 25,000 XAF fine and 500,000 XAF for damages and court fees. It appears that Xu Gen Dang was convicted on the basis of the older law (Law 7-62 of 20 January 1962) which provided for shorter prison sentences and lower fines. There is however no logical explanation as to why the court referred to that law, which was repealed in the most part by Law 37-2008. However, Ndegue Stephane, the Congolese hunter, was convicted on the basis of the 2008 Law which led him to receive a longer prison sentence and steeper fine. This is a major issue in the way justice is rendered in wildlife crime cases, as inconsistencies are rife, which dramatically undermines the effectiveness of the law and judicial system. It would be essential to guarantee a better understanding of the law in effect by judges in order to ensure its consistent application. This should be coupled with capacity building for other enforcement stakeholders, such as the police, so they are able to identify wildlife offences and gather the evidence necessary to prosecute.

**Corruption**

Corruption was not particularly investigated in the course of this assessment. However, it is important to note that while there is a specific law that criminalises acts of corruption (Law 05-2009 of 22 September 2009, on corruption, extortion, fraud and similar offences) none of the cases analysed involved prosecution on that basis. This is even more significant given that corruption is known to be a major enabler of wildlife crime, as briefly discussed in Chapter 3. Corruption could also be seen as

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169 Batchy et al., 2018.


one of the reasons behind some of the main findings, particularly with regard to the inconsistencies in penalties ordered by the court and inadequate investigations into criminal networks involved in wildlife crimes. This is linked to the fact that corruption is known to be a widespread issue in Congo and in all sectors, which is directly linked to the shortcomings of the judicial system.\textsuperscript{173}

\textsuperscript{173} Republic of Congo, Contribution Nationale Volontaire à la mise en œuvre des ODD, 2019.
6 CONCLUSION

The analysis of wildlife crime cases, initially planned across different courts in Congo, was reduced to the Ouesso High Court and Court of Appeal due to challenges in receiving feedback from the judicial authorities of other courts in the country and travel restrictions due to the COVID-19 pandemic. Nonetheless, the analysis of the 250 judgments collected in Ouesso, the largest city near key protected areas, still provides a comprehensive overview of the adjudication of poaching and illegal wildlife trade offences. This assessment enabled the identification of sample statistics and trends on wildlife offences, including how the relevant laws are applied by courts, characteristics of prosecuted offenders, conviction rates, sentences pronounced, and species targeted.

While the analysis corroborates the fact that wildlife offences are a recurring issue in Congo, involving many different species and especially elephants that are most vulnerable to poachers and traffickers, it also revealed some significant weaknesses in the judicial and prosecution processes in wildlife offences. In terms of logistics, the lack of an adequate data management system in Congolese courts made it extremely challenging to access, collect, and assess the cases, especially in Ouesso, where the court got its first computer and printer in 2020. This is why very few reviews of the Congolese judicial proceedings in wildlife offences have been undertaken.

An in-depth analysis of the main wildlife legislation (Law 37-2008 and Order 6075) shows several shortcomings and loopholes, which severely hinder the effectiveness of the enforcement process. While the law establishes illegal trade in wildlife and poaching as serious offences174, no significant amendments were adopted, so far, to address the ever-changing nature of these crimes. The general trend that emerged from the analysis is that Congolese law enforcement has been more inclined to prosecute and convict low-ranking poachers, who stand at the bottom of the criminal chain and are easily replaceable, than major traffickers who lead large-scale operations. The lack of national operational resources and cooperation agreements with other countries impedes Congo’s ability to thoroughly investigate and follow the money trail to dismantle criminal networks that are increasingly involved in wildlife offences. Moreover, while the potential role of corruption in each and every step of the law enforcement and judicial processes is difficult to ascertain, it cannot be overlooked.

Overall, although Congo has taken some steps in the right direction to prosecute and punish wildlife offences, a lot more needs to be done to protect vulnerable species from extinction and effectively curb the upward trend in poaching and trafficking.

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174 See above: UNTOC definition of a ‘serious offence’.
7 RECOMMENDATIONS

- Foster a review of the legislative and regulatory framework in order to both fill legal loopholes, especially in Law 37-2008, and harmonise penalties for certain offences, in particular those relating to totally protected species, which should be considered as crimes, across range countries of the Congo Basin. Law 37-2008 should be amended to better reflect the increasingly transboundary, organised and sophisticated nature of wildlife crime. Order 6075 on classification of species should be amended regularly in line with CITES Appendices;
- Set up a centralised online national judicial database and strengthen information exchange among the various courts. This would increase transparency of judicial proceedings in wildlife offences and enable case tracking from arrest all the way to sentencing to better identify repeat offenders. Setting up a national judicial database would require additional technical and logistical resources to improve the archiving and court transcript formalising systems;
- Establish a legal aid system to ensure access to legal assistance and representation for defendants and respondents, including in the process a wide range of stakeholders such as local organisations, NGOs, community organisations, academic institutions and professional bodies;
- Enhance the institutional and operational capacity of law enforcement officials to undertake thorough investigations into trafficking chains to dismantle organised criminal networks. This could be primarily by ratifying UNTOC and providing additional support to national agencies, such as the Lusaka Agreement Task Force. Adopt a ‘follow the money’ approach to establish potential links with illicit financial flows and secure the prosecution of high-level actors in the criminal chain;
- Strengthen the anti-corruption framework and provide adequate funding to the High Authority to Combat Corruption to ensure its independence and legitimacy and improve the transparency of its actions;
- Develop training modules on wildlife-related laws and procedures, and subsequently provide both initial and in-service training to all actors and stakeholders in the legal system (judicial police officers, prosecutors, judges, lawyers) to ensure a consistent application and enforcement of the legislation.
- Promote the creation of specific academic programmes, in universities and law schools, on environmental law, and particularly on wildlife law. This would ensure that future lawyers, magistrates and judges have a deeper understanding of the national and international law that applies in wildlife crime cases and that defendants can receive adequate representation.
BIBLIOGRAPHY OF LEGAL TEXTS

At international level
Convention on International Trade in Endangered Species of Wild Flora and Fauna
Convention on Biological Diversity
United Nations Convention against Transnational Organised Crime
United Nations Convention against Corruption

At regional level
African Union Convention on Preventing and Combating Corruption
Lusaka Agreement on Co-operative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora

At national level
Constitution of the Republic of Congo of 2015

Decrees:
Decree 82/987 of 6 November 1982 ratifying CITES
Decree 85-879 of 6 July 1985 implementing Law 48-83 of 21 April 1983
Decree 2002-433 of 31 December 2002 on the organization and functions of water and forestry officers

Laws:
Criminal Code of 1836
Law 7-62 of 20 January 1962 regulating the exploitation of wildlife
Law 1-63 of 13 January 1963 on the Criminal Procedure Code
Law 34-82 of 7 July 1982 authorising the ratification of CITES
Law 48-83 of 21 April 1983 defining conditions for conservation and exploitation of wild fauna
Law 003-91 of 23 April 1991 on protection of the environment
Law 022-92 of 20 August 1992 on the organisation of the judiciary in the Republic of Congo
Law 29-96 of 25 June 1996 authorizing accession to the CBD
Law 32-96 of 22 August 1996 on the Lusaka Agreement on co-operative enforcement operations directed at illegal trade in wild fauna and flora
Law 13-2005 of 14 September 2005 authorising the ratification of UNCAC
Law 37-2008 of 28 November 2008 on wildlife and protected areas
Law 05-2009 of 22 September 2009 on corruption, extortion, fraud and similar offences
Orders:
Order 62-24 of 16 October 1962 setting the regime for war material, weapons and ammunition
Order 25-70 of 1 August 1970 of 1 August 1970 regulating the conditions of residence in the People's Republic of Congo
Order 3772 of 2 August 1972 on hunting and hunting closure periods in the People's Republic of Congo
Order 0103 of 30 January 1984 establishing provisions for the export of wildlife products
Order 3863 of 18 May 1984 determining entirely and partially protected animals
Order 3282 of 18 November 1991 on absolute protection of elephants throughout the Republic of Congo
Order 6075 of 9 April 2011 determining totally and partially protected animal species
## ANNEX I  WILDLLEX CASE LAW MATRIX

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<td>Charge:</td>
<td></td>
</tr>
<tr>
<td>Processed/Not processed:</td>
<td></td>
</tr>
</tbody>
</table>
|   | YES  
|   | NO  
| Appealed: |  
| Please, indicate whether the case provided has been appealed or not. |  
|   | YES  
|   | NO  
| Facts: |  
| Please, provide some brief facts about the case (max 150 words) |  
| Abstract: |  
| Please, provide a brief summary (max 250 words) |  

### DECISION/JUDGMENT

| Decision/Judgment: |  
| Please, provide a brief summary of the ruling/judgment of the court (max 100 words) |  
| Basis of the decision: |  
| Penalty: |
Legal issues raised in decision: 

REFERENCES

Reference(s) to Court Decision (title, reference number, date):

*Please, provide a list of precedents mentioned in the case.*

Reference(s) to National Legislation (title, reference number, date, hyperlink):

*Please, provide a list of all principal and ancillary national legislations mentioned in the case. (Copies of the legislations should also be sent separately as an attachment). Provide links to the legislations if they are available online as well.*

Reference(s) to International Agreement (title, date):

*Please, provide a list of international agreements mentioned in the case.*

Text:

*Please, provide a copy of full text(s) of the decision (pdf) as an attachment!*

Link to the full text(s) online:

*Please, provide hyperlink(s) if case is available online!*
# ANNEX II  REPUBLIC OF CONGO LEGISLATION MATRIX

## BACKGROUND INFORMATION

| Is the country involved in demand or supply of wildlife crime products? If both, please specify how each operate? | ☑ Demand  
☐ Supply  
Comments: |
|---|---|

| What species are most threatened by wildlife crime in the country (poaching and/or trade)? | ☑ Elephants  
☐ Rhinos  
☑ Pangolins  
☑ Great apes  
☑ Big cats  
Others: African Grey Parrots, marine turtles |
|---|---|

<table>
<thead>
<tr>
<th>In which regions are wildlife related offences committed?</th>
<th>Congo has twelve departments (formerly called regions) and almost all of them are affected by wildlife crime (either poaching or IWT or both). However, the regions mostly affected are the Sangha, Cuvette, Cuvette Ouest, Likouala, Niari, Lekounou, Plateaux.</th>
</tr>
</thead>
</table>

## INTERNATIONAL LAW

<table>
<thead>
<tr>
<th>Is the State a party to any of these conventions?</th>
<th>Year of ratification</th>
<th>Implementing legislation</th>
</tr>
</thead>
</table>
| **CITES** 1983 | • Order 0103/MEF30/SGEF/DCPP of 30 January 1984 laying down provisions relating to the export of wildlife products;  
• Law 48/83 of 21 April 1983 defining the conditions for the conservation and exploitation of wild fauna  
• Decree 85/879 of 6 July 1985 Implementing Law No. 48/83 of 21 April 1983;  
• Law 003-91 of 23 April 1991 on the protection of the environment;  
• Order 3282 of 18 November 1991 on the absolute protection of the elephant throughout the Republic of Congo;  
• Decree 2002-433 of 31 December 2002 on the Organization and functioning of water and forestry offices;  
• Law 37-2008 of 28 November 2008 on wildlife and protected areas;  
• Order 6075 of 9 April 2011 determining totally and partially protected animal species;  
• Law 34-82 of 7 July 1982 authorizing the ratification of CITES; and  
• Decree 82-987 of 6 November 1982 ratifying CITES. |
| **CMS** 2000 | • Law 003-91 of 23 April 1991 on the protection of the environment;  
• Law 14-99 of 3 March 1999 authorizing the ratification of CMS;  
• Law 37-2008 of 28 November 2008 on wildlife and protected areas; and  
• Order 6075 of 9 April 2011 determining totally and partially protected animal species; |
| **CBD** 1998 | • Law 29-96 of 25 June 1996 authorizing accession to the Convention on Biological Diversity;  
• Law 003-91 of 23 April 1991 on the protection of the environment; and  
• Law 37-2008 of 28 November 2008 on wildlife and protected areas. |
| **UNCAC** 2006 | The main anti-corruption laws are:  
• Law 5-2009 of 22 September 2009 on Corruption, Bribery, Fraud and similar offences; |
| Are there regional conventions regarding wildlife? If so, is the State a party to any of them? | Regional conventions regarding wildlife include:  
- The TRIDOM (Tri-National Dja-Odzala-Minkebe) Accord, 2005;  
- The TNS (Sangha Tri-National) Accord, 2000;  
- The Yaoundé Declaration, 1999; and  
- The Lusaka Agreement on Concerted Enforcement Operations directed at Illegal Trade in Wild Fauna and Flora (Law No. 32/96 of 22 August 1996); |

<table>
<thead>
<tr>
<th>CONSTITUTIONAL PROVISIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Is there any constitutional provision relevant to wildlife protection?</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>POLICY FRAMEWORK</th>
</tr>
</thead>
<tbody>
<tr>
<td>What are the national policies / strategies addressing wildlife crime?</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>INSTITUTIONAL PROCESSES</th>
</tr>
</thead>
<tbody>
<tr>
<td>At what level are decisions made (local, regional, and national) and how does the decision-making process operate for activities related to wildlife management?</td>
</tr>
</tbody>
</table>

| Is access to information, access to justice and public participation recognized by the law? What are the mechanisms for participation during decision-making? (E.g., opportunities for participation in drafting of legislation; adoption of regulations; decision-making on permits; etc.) | Yes. There is a consultation of experts and resource persons on well-defined themes, but there are no clear mechanisms for the participation of the general public in the decision-making process. |

| What are the institutions which have authority over wildlife management? | The Ministry of Forestry Economy and Sustainable Development – MEFDD (Directorate General of Forest Economy) and the Congolese Agency on Wildlife and Protected Areas (ACFAP). MEFDD and ACFAP have several institutional and non-institutional partners:  
- Institutional partners include: ministries in charge of Defense, Customs, Police and Justice; and  
- Non-institutional partners include: conservation organisations, donor agencies, civil society and the private sector. |

| Are there mechanisms for coordination and cooperation between different institutions and entities responsible for wildlife management? | An anti-poaching committee was established at the national level and regional anti-poaching committees established in each of the twelve departments of the country. Those committees are composed of representatives of each of the institutions and some of the partners listed above. |

<table>
<thead>
<tr>
<th>ENVIRONMENTAL AND CRIMINAL LEGAL FRAMEWORK</th>
</tr>
</thead>
<tbody>
<tr>
<td>How has wildlife law evolved since its inception?</td>
</tr>
</tbody>
</table>
- Order3772 of 2 August 1972 fixing hunting and hunting closure periods in the People’s Republic of Congo  
- Law52/83 of 21 April 1983 relating to the federal and land code in the People’s Republic of Congo;  
- Law 48/83 of 21/04/1983 defining the conditions for wildlife conservation and exploitation;  
- Law 003-91 of 23 April 1991 on the protection of the environment;  
- Order 3282 of 18 November 1991 on the absolute protection of the elephant throughout the Republic of Congo; |
<table>
<thead>
<tr>
<th>CONSERVATION LAW</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Is there an overarching law or strategy addressing wildlife crime?</strong></td>
</tr>
<tr>
<td><strong>Is there a list of protected species? If so, are there different levels of protection? How is this list updated?</strong></td>
</tr>
<tr>
<td><strong>Is hunting regulated? If yes, is there legislation addressing hunting in protected areas?</strong></td>
</tr>
<tr>
<td><strong>Is there legislation against animal abuse?</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CRIMINAL LAW</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Is wildlife crime recognised under criminal law?</strong></td>
</tr>
<tr>
<td><strong>How are wildlife-related offences classified (e.g. misdemeanor, crime, etc...)?</strong></td>
</tr>
<tr>
<td><strong>What mitigating and aggravating circumstances can be considered?</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>PRIMARY OFFENCES</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Please provide the provisions, if any, and penalties associated to the following offences:</strong></td>
</tr>
<tr>
<td><strong>Killing of species</strong></td>
</tr>
<tr>
<td><strong>Possession of species</strong></td>
</tr>
<tr>
<td><strong>Acquisition or possession of species trophies</strong></td>
</tr>
<tr>
<td>Offence</td>
</tr>
<tr>
<td>---------------------------------------------</td>
</tr>
<tr>
<td>Acquisition or possession of species meat</td>
</tr>
<tr>
<td>Trade of species</td>
</tr>
<tr>
<td>Import or export of species</td>
</tr>
</tbody>
</table>

**RELATED OFFENCES**

<table>
<thead>
<tr>
<th>Offence</th>
<th>Relevant provisions</th>
<th>Associated penalties</th>
</tr>
</thead>
<tbody>
<tr>
<td>Document fraud</td>
<td>Article 153 and 154 of the Penal code (falsification and forgery of hunting permit and certificate)</td>
<td>Art. 153: imprisonment of minimum six months and maximum three years; AND Art. 154: imprisonment for a term of three months to one year.</td>
</tr>
<tr>
<td>Money-laundering</td>
<td>Article 8 of Regulation 1 CEMAC/UMAC/CM on the Prevention and Suppression of Money Laundering and the Financing of Terrorism and Proliferation in Central Africa</td>
<td>Articles 114 to 119 of Regulation 1 CEMAC/UMAC/CM on the Prevention and Suppression of Money Laundering and the Financing of Terrorism and Proliferation in Central Africa; For natural persons found guilty of money laundering: 5 to 10 years imprisonment and a fine ranging from 5 to 10 times the value of the goods or funds without being less than 10,000,000 XAF; 6 months to 2 years imprisonment and a fine of 1,000,000 to 5,000,000 XAF.</td>
</tr>
<tr>
<td>Bribery and corruption</td>
<td>Article 2 of Law 05-2009 of 22 September 2009 on corruption, extortion, fraud and similar offences</td>
<td>-2 to 10 years imprisonment, a fine of twice the value of the agreed promises or goods received or requested, but not less than 1,000,000 XAF; -1 to 3 years imprisonment and a fine of 600,000 to 6,000,000 XAF; -1 to 3 years imprisonment and a fine of 400,000 to 10,000,000 XAF; and -6 months to 2 years imprisonment and a fine of 200,000 to 4,000,000 XAF (Penalties applicable to certain acts related to money laundering).</td>
</tr>
<tr>
<td>Criminal association</td>
<td>Article 2 of the United Nations Convention against Transnational Organized Crime &quot;Organized criminal group&quot; means a structured group of three or more persons, existing for a period of time and acting in concertation with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit.&quot;</td>
<td>No sanction is provided by the Convention, relies on the sovereign competence of the State.</td>
</tr>
<tr>
<td>Illegal hunting</td>
<td>Article 39 of Law 37-2008 of 28 November 2008 on Wildlife and Protected areas</td>
<td>Article 112 (1): &quot;(...) a fine of 10,000 to 500,000 XAF and imprisonment for 1 to 18 months or only one of these two penalties (...)&quot;.</td>
</tr>
<tr>
<td>Possession of arms and ammunition</td>
<td>Article 2(d) of Decree 1218 of 6 December 2018 ratifying the Central African Convention for the Control of Small Arms and Light Weapons, their ammunitions, and all parts and components that may be used in their manufacture, repairs and assembly.</td>
<td>Sovereign competence of the State</td>
</tr>
<tr>
<td>Possession of war arms</td>
<td>Article 31 of Ordinance 62/24 of 16 October 1962 fixing the regime of war materials, arms and ammunitions.</td>
<td>1. Imprisonment for one month to a year and a fine of 20,000 to 300,000 XAF or one of these two penalties, only in the case of war equipment, weapons or ammunition of the 4th or 7th category; and 2. Imprisonment from fifteen days to six months and a fine of 20,000 to 150,000 XAF or one of these two penalties, only in the case of weapons or ammunition of the 3rd, 5th, 6th or 8th category.</td>
</tr>
</tbody>
</table>

**LAW ENFORCEMENT**

<p>| What law enforcement agencies are in charge of wildlife legislation? | The law enforcement agency primarily in charge of enforcing legislation on the protection of fauna is the Ministry of forestry and wildlife and ACFAP. Other law enforcement agencies include: General Directorate of the National Police, the National Gendarmerie, the Congolese Customs and Armed Forces. |
| At what level are they operating (e.g. national, provincial, local)? | At the national level: The Directorate General for the Forest Economy, ACFAP; At the divisional level: The Divisional Directorate of Forest Economy, the surveillance and anti-poaching units, conservation projects; and At the local (district) level: the forest economy brigades, the control posts. |
| Within law enforcement agencies, are there any departments dedicated to wildlife legislation? | The General Directorate of the Ministry of Forest Economy and the Congolese Agency for Wildlife and Protected Areas (ACFAP). |
| Are there community-based initiatives to enforce wildlife legislation? If so, is it regulated by law or ad hoc agreements? | The Government services are the only ones competent to enforce wildlife legislation. However, the 2008 wildlife law has provided for the establishment of community hunting zones (CHZ), CHZ are regulated by the wildlife law while APVCOs (anti-poaching vigilance committees) are established through ad hoc agreements. The other institutional actors include: The forces of law and order (Police and Gendarmerie), the Congolese Customs, the Military Forces, Justice and the penitentiary administration. Police, gendarmerie and customs are involved in the establishment of offences (either on their own initiative or in support of actions initiated by the wildlife administration), the seizure of products and materials involved in the commission of offences, while the judiciary and penitentiary administration ensure the compliance with laws and the enforcement of court rulings. |
| Are there other actors involved in wildlife legislation enforcement? If so, please specify who is involved and how. | In general, the Public prosecutor, who is at the top of the judicial hierarchy for all law enforcement agencies (Wildlife, police, gendarmerie, customs), is the one in charge of coordinating investigations. In case of a transboundary offence, the state counsel before whom the case is brought might decide to extend investigations if some elements of the facts have been committed in another country and therefore contact the competent state counsel in that country. According to the 2004 CEMAC (Central Africa Economic and Monetary Commission) judiciary cooperation agreement, the Public prosecutor might also decide to extradite the suspect(s) to another country when the circumstances of the case requires it (e.g. the offence has been committed in Cameroon and the suspect arrested in Congo; the state counsel seized in Congo might decide to extradite the suspect to Cameroon to be prosecuted there). Police services also have their internal information exchange and collaboration system through the Interpol national central bureau (NCB) established in each country. In that sense, if the transboundary offence is investigated by the police, information exchange and collaboration between countries involved can be done through the NCBs. |</p>
<table>
<thead>
<tr>
<th><strong>CRIMINAL PROCEDURES</strong></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>What is the law system in the country (e.g. civil law, common law, etc...)?</td>
<td>The Republic of Congo has a civil law system.</td>
</tr>
<tr>
<td>Which administration/institution is in charge of prosecuting against wildlife offences? What is the process?</td>
<td>The Divisional Directorate of Forest Economy is the technical institution responsible for prosecuting wildlife offenders. Water and Forestry agents have the status of judicial police officers (Judicial police officers of special competence). They put together the offence report which is transmitted to the Public prosecutor together with the suspect and a constitution letter of the civil party signed by the Divisional Directorate of Forest Economy. A Water and Forestry agent takes part in the court proceedings to follow up and defend the interests of the civil party. The Public prosecutor may refer the case to the judicial police for further investigation; close the case and inform the complainant of the decision (in this case, a copy of the decision to close the case is forwarded to the Public prosecutor at the court of appeal within one month); provide written reports on simple offences for which flat-rate fines have been paid to the archives; or initiate criminal proceedings against the suspect.</td>
</tr>
<tr>
<td>How is the judicial system organised (e.g. courts of first instance, appellate courts, higher courts, etc...)?</td>
<td>The judicial system is composed of ordinary law courts and is divided as follows:</td>
</tr>
<tr>
<td></td>
<td>- Courts of First instance: District Courts, High Courts, Administrative Courts, Military Tribunals, Labour Courts</td>
</tr>
<tr>
<td></td>
<td>- Appellate courts: Court of Appeal, Court of Audit</td>
</tr>
<tr>
<td></td>
<td>- Supreme Court.</td>
</tr>
<tr>
<td></td>
<td>- Constitutional Court</td>
</tr>
<tr>
<td>Which types of Court are competent to prosecute wildlife-related offences?</td>
<td>Wildlife offences are mostly heard by Districts Courts (as most wildlife offences are misdemeanours). The High Court in its criminal division is also competent to hear related cases.</td>
</tr>
<tr>
<td>Is legal representation provided to the defendant?</td>
<td>Yes, the law provides representation of the accused by legal counsel.</td>
</tr>
<tr>
<td>Can damages be awarded by the criminal judge?</td>
<td>Yes, the judge can award civil damages to the victim.</td>
</tr>
<tr>
<td>How are damages determined? Is the trophy value considered in determining the damages?</td>
<td>Civil damages are determined upon discretion of the presiding judge taking into consideration the request presented by the civil party (Wildlife Administration). The value of the trophy is considered on a case-by-case basis, particularly when an enormous quantity of wildlife products is involved. There is no clear legal framework.</td>
</tr>
</tbody>
</table>