

ANALYSIS OF JUDICIAL PROCEEDINGS RELATING TO WILDLIFE OFFENSES IN THE COURTS OF THE REPUBLIC OF THE CONGO (2008-2017)



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The study was conducted by the Wildlife Conservation Society Congo Program (WCS Congo) in cooperation with, and under the instruction of, the Ministry of Justice, Human Rights and the Promotion of Indigenous Peoples (MJDH) and the Ministry of Forest Economy (MEF).

Two jurists from WCS Congo, Elodie Moulin (IWT and Policy Officer) and Evral Galin Missengue Makele (Wildlife Crime Lawyer), and two focal points nominated by each of MEF and MJDH, Mr Jean de Dieu Batchy (Administrative and Legal Adviser of the Ministry of Justice, Human Rights and the Promotion of Indigenous Peoples) and Mr Aime Jean Blanchard Goulou (National Focal Point of the National Action Plan for Ivory for the Ministry of the Forest Economy), comprised the team.

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I. EXECUTIVE SUMMARY

About this report

This report presents the first analysis of wildlife crime cases brought before the Courts in the Republic of Congo between 2008 (date of adoption of Law 37/2008 on wildlife and protected areas) and 2017. It highlights key issues, identifies potential leverage points, and provides key recommendations for the judicial system to improve handling of wildlife offenses and deter wildlife trafficking.

Key background facts

In the last 10-15 years, Central Africa has experienced an unprecedented increase in poaching of forest elephants for their ivory, leading to a significant decrease in their population. The Republic of Congo, harboring approximately one quarter of the remaining forest elephants, has not escaped this poaching crisis, and has seen a growing involvement of organized crime in elephant poaching. Faced with these challenges, and in the context of legislation that has rapidly become obsolete, in 2008 the Republic of Congo initiated a series of legislative and institutional reforms.

Congo's Law 37/2008 on wildlife and protected areas identifies more than 24 wildlife offenses ranging from poaching to illegal trade of wildlife. Depending on their severity, these criminal offenses are liable to fines of between 10,000 and 5,000,000 CFA francs (between ~USD20 and USD9,500) and/or imprisonment (ranging from one month to 5 years). These maximum sentences are fairly high for the region (cf maximum sentence of imprisonment of only 6 months in Gabon).

Methodology

The study was conducted by the Wildlife Conservation Society Congo Program (WCS Congo) in cooperation with, and under the

instruction of, the Ministry of Justice, Human Rights and the Promotion of Indigenous Peoples (MJDH) and the Ministry of Forest Economy, (MEF). Two jurists from WCS Congo, and two focal points nominated by each of MEF and MJDH, comprised the team.

Between April 2016 and May 2017, the team visited a total of nine Regional Courts in nine cities in 8 (out of 12) Administrative Departments across the country. Within each city the team met with and interviewed local public authorities and stakeholders to understand implementation and interpretation of the Wildlife Law. The team also inventoried all available court archives on wildlife cases processed between 2008-2017. A new database was created to manage the case data and provide the basis for the analyses presented here. Details of cases that had been supported by technical partners (i.e. NGOs) were cross-referenced with individual NGO databases. The resulting database represents the most complete dataset available on judicial outcomes of wildlife crime cases in the country.

Main findings

- Between 2008 and July 2017, 692 people accused of wildlife offenses were referred to the Regional Courts of the Republic of Congo. Of these 692 cases referred, the majority of cases (73%) reached a judgment.
- The total number of people referred to the court for wildlife offenses has increased over the years, concomitant with an increase in NGO support. Between 2008 and 2016, 71% of all the cases reaching a judgment received some form of technical or legal support from NGOs.
- Similarly, the proportion of convictions handing down maximum sentences (5 years in prison or 5,000,000 CFA francs) for the same type of offense, including prison sentences without parole (55% of cases) has increased

over the same time period, reflecting increased efforts made by Government and NGO partners.

- Most wildlife offenses handled by the courts have focused on fully protected species, with elephants implicated in 70% of cases. Other key species include primates (9%), leopard (6%), pangolin (2%) and African gray parrot (4%).

- 70% of wildlife offenses are related to the illegal killing of protected species (poaching). Illegal transport of protected species represents 21% of the cases, whereas the illegal possession, trafficking or international transits of protected species represent only a very small number of cases entering the judicial process.

- In large urban centers (e.g. Brazzaville and Pointe Noire) where arrests are more likely to be made for trafficking in, or transit of, protected species, rather than poaching, the proportion of convictions resulting in prison sentences is lower, with the general result that the higher in the trafficking chain, the smaller the sentence. Some of the most severe offences were found to be acquitted and cases of corruption are blatant.

- The study shows important legislative shortcomings, ten years after the adoption of Law 37/2008, including litigation procedures poorly adapted to the current context of increasingly organized criminal groups implicated in wildlife offences.

- Although the maximum sentences (5,000,000 CFA francs and/or 5 years imprisonment) should be upheld for repeat offenders, the courts did not apply these provisions in 87% of cases. This is in part impeded by the lack of a data management system that keeps records on convicted wildlife offenders.

- Despite progress in handing down maximum sentences, a major problem remains in the enforcement of sentences, be it the payment of fines, or the execution of prison sentences. Numerous escapes have been documented in recent years. To address this issue, the transfer of prisoners between prisons is a common practice in wildlife cases, but remains a short-term solution knowing that almost all prisons in the country are saturated. Since 2008, the status of 320 prisoners remains completely unknown and undocumented.

Preliminary recommendations

Specific recommendations have been developed to enhance the efficiency of the judicial system regarding wildlife offenses, as follows:

- Establish a mechanism for a specialized environmental chamber within the judiciary to respond to the magnitude of wildlife related cases that pass through the courts;

- Reform the law to close legal loopholes and adapt proceedings to the modern wildlife trafficking context, and specifically to the context of serious organized crime;

- Establish a secure national data management system to track court cases relating to wildlife, from arrest to enforcement of sentences, to track convicted offenders, and to track and regulate seized military weapons;

- Promote and expand partnership models between NGOs and the government to support the legal process and promote independent courtroom monitoring, in order to strengthen implementation of the judicial process, and fight against corruption

- Strengthen the institutional and operational capacity to dismantle organized criminal networks by providing embedded support to specialized national agencies (e.g, Lusaka Agreement TaskForce etc.) and promoting legal

tools such as cooperation agreements between countries

- Create or revitalize sustainable consultation platforms among public environmental, judicial, and military authorities in some communities;
- Encourage reform and refurbishment of the prisons service, including the recognition of International Human Rights conventions
- Develop environmental training modules for students at the ENAM (National School for the Administration and Judiciary) and University Law Schools.

II. INTRODUCTION

The forests of Central Africa are one of the largest tropical rainforests in the world, second only to Amazonia. The Republic of the Congo ('Congo') harbours still-intact forest landscapes that are home to large populations of iconic species such as gorillas and forest elephants, as well as African gray parrots (*Psittacus erithacus*) and three species of pangolin.

During the last ten years, wildlife in Central Africa, including the Congo, has suffered significant pressure from poaching. Between 2002 and 2011, more than 62% of forest elephants were slaughtered in Central Africa.¹

Due to a global demand for ivory and other wildlife products, the country has experienced an increase in illegal trade perpetuated by organized criminal networks. In addition to its impact on wildlife populations this also risks undermining local livelihoods and national security.²

Significant efforts have been deployed at source to strengthen anti-poaching and to stop the illegal killing of wildlife. However, persistent weaknesses in the judicial system serve to undermine these efforts and diminish the law's deterrent effect in reducing wildlife crime. Between 2014 and 2015, more than 80 people were arrested by the authorities of the Nouabalé-Ndoki National Park for wildlife offenses. Despite this significant number, not one case was brought to trial, and no one was ever convicted by the Court of Ouessou. This can lead to a decline in the motivation of eco-guards and law enforcement authorities to enforce the law and only enhances the sense of impunity of poachers and traffickers. Corruption, and an inability to track cases through the courts, also compromises the efficiency of the country's judicial system and undermines the work done upstream by public authorities and partners.

Box 1: "The Role of NGOs (Non-Governmental Organizations) in Supporting Governments in Countering Wildlife Crime: A New Model for Central Africa."

In 2010, PALF (Wildlife Law Enforcement Support Project), a collaboration between WCS, the John Aspinall Foundation and the Ministry of the Forest Economy), was formally established in the Congo, with the aim of supporting the Government in identifying and arresting wildlife offenders and in the overall fight against corruption within the judicial system.

The project encompasses a four-pronged model focusing on:

- Field investigations to identify smuggling networks.
- Law enforcement operations associated with arrests.
- Judicial follow-up of proceedings.
- Awareness raising by broadcasting arrests and convictions via social networks and other media.

This initiative has become one of the most important programs of the EAGLE³ network with the arrest of major traffickers and repeat offenders in recent years. Since 2016, this four-pronged approach has been adopted in the Congo by several NGOs, including WCS and WWF, in the northern part of the country, where the last strongholds of forest elephants remain. Conservation NGOs have enlisted specialized lawyers able to ensure the judicial follow-up of cases, from arrests to convictions, even including the enforcement of court decisions (through regular jail visits and follow-up on prisoners).

The Wildlife Crime Unit, established by WCS

in January 2016, under the supervision of the Nouabalé-Ndoki National Park is such an example and operates according to the same 4-pronged approach pioneered by PALF. The aim is to build a close and permanent collaboration between the public authorities (MEF) and the judicial authorities (Public Prosecutor) at each stage of the proceedings, to ensure that the operations result in a fair and equitable judicial outcome, in order to dissipate any attempt at corruption.

This study is specifically designed to analyze the impact of these support projects implemented by partners to improve judicial outcomes for wildlife offenses.

III. STUDY OBJECTIVES

Strengthening the judicial system and implementation of a monitoring mechanism for wildlife crime cases are priorities for the Republic of the Congo's National Ivory Action Plan, drafted in March 2015, and subsequently approved by the CITES Secretariat.⁴ In this context, in 2016 WCS launched a nationwide study in Congo in 2016 with the goal of evaluating the status of judicial process with respect to wildlife crime, identifying systemic weaknesses in the justice system's handling of wildlife offenses and identifying potential leverage points for its improvement.

Several specific objectives were targeted, namely:

- Collate data on all cases concerning wildlife offenses dealt with between 2008 (date of adoption of Law 37/2008 on wildlife and protected areas) and 2017 by the country's courts.
- Develop a database that lists all these cases and provides a case-tracking and monitoring mechanism from arrest to conviction and sentencing on a national scale.

- Analyze the outcomes of these cases to evaluate the impact of the actions carried out by NGO partners (See Text Box 1).

- Raise awareness among the public and judicial authorities concerning the laws dealing with protected species.

- Provide specific recommendations to the Ministries of Justice and Forest Economy for improvements to the criminal justice system with respect to wildlife.

IV. METHODOLOGY

The study was conducted by WCS (a national jurist accompanied by an international expert in law) in cooperation with the Ministry of Justice, Human Rights and the Promotion of Indigenous Peoples and the Ministry of Forest Economy, (MEF). Two government representatives were mandated to participate in its rollout, including the Adviser to the Minister of Justice for Criminal Policy and the Focal Point for Ivory Management in the Republic of the Congo.

The team first conducted a document review of the legal and institutional framework for handling wildlife offenses (competent courts, applicable legislation and judicial procedures).

Joint field missions were conducted with nine of the country's courts (Map 1, page 6), whose selection was based on their proximity to national parks or large trading centers such as Brazzaville and Pointe Noire. The courts selected are in the cities of Ouessou and Impfondo near the Nouabalé-Ndoki Park in the northern part of the country, Ewo and Owando near the Odzala-Kokoua National Park in the central part and Brazzaville, Pointe Noire, Dolisie, Mossenjo and Sibiti, further to the south.

Even though all the of the country's courts were not included in this study, the courts selected for analysis likely encompass the majority of wildlife cases handled across the country and, therefore the results presented here should be

considered as representative of the country as a whole.

Semi-structured stakeholder interviews with public authorities (Directorate of Waters and Forests, Police, Gendarmerie) judicial authorities (presiding judges of the courts, public prosecutors) and military authorities in these localities significantly improved the identification of weaknesses in the judicial system and the issues encountered in countering wildlife crime.

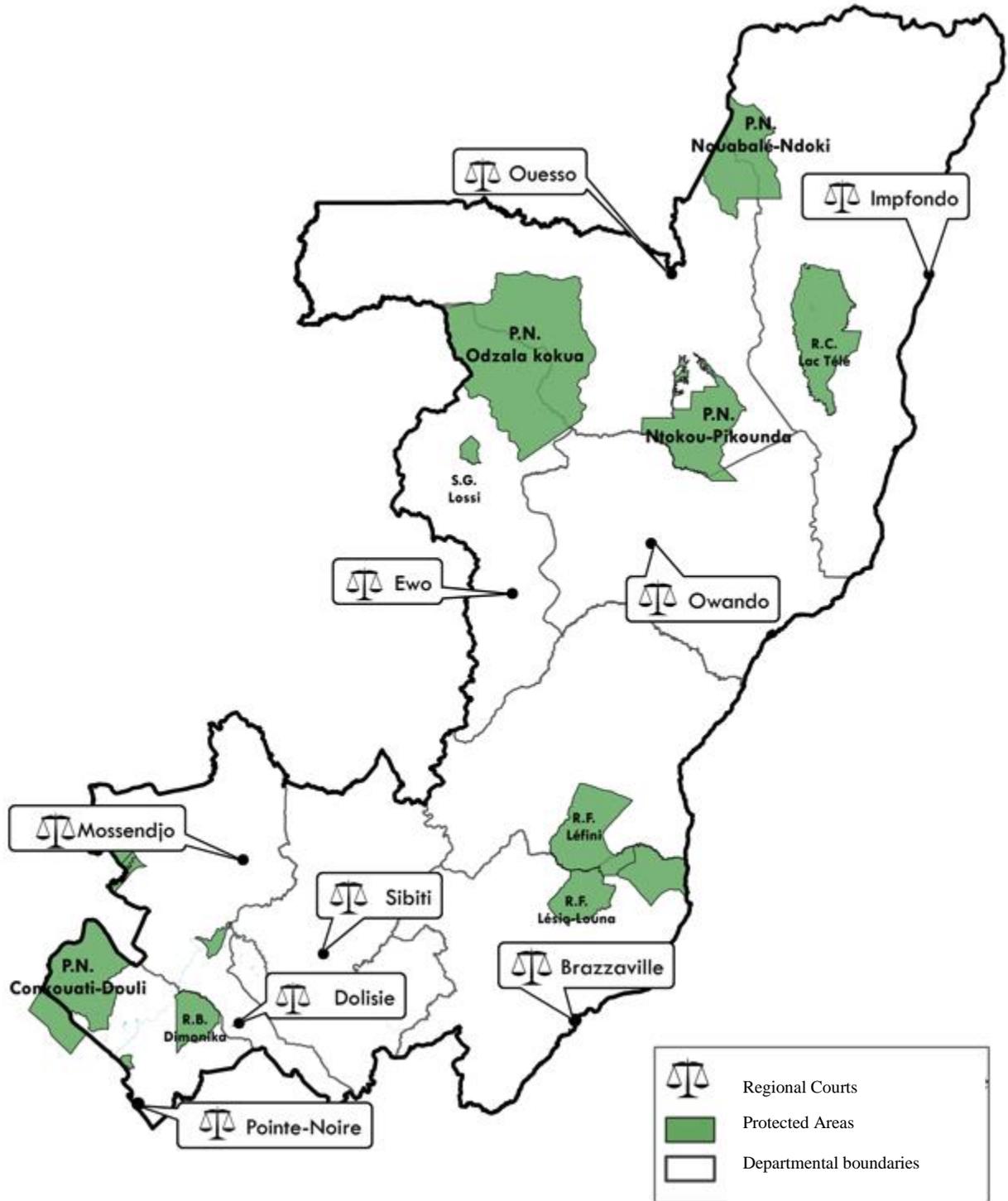
We identified more than 692 cases handled by these courts since 2008 with the assistance of court clerks and the cooperation of NGOs. Databases managed by WCS, WWF, African Parks and PALF were combined with those of the courts into a global database.

This database enabled case-tracking from arrest to conviction and sentencing, as well as subsequent enforcement of those sentences.

Whenever possible, the type of data collected for each case contains information concerning:

- Name and nationality of the person convicted: which can be used to identify repeat offenders.
- Dates and locations of arrests.
- Types of offense (poaching with or without a military weapon, possession or trading in parts/products of protected species, etc.), the species or type of products concerned (ivory, skins, teeth, etc.).
- Any bail granted.
- The court concerned, dates of hearings and type of sentences handed down (number of years in prison, amount of the fine and any additional costs paid).
- The place of detention, as well as the case's current situation (whether convicted persons are serving out their sentences followed by the reasons for release when these are known (escapes, early release for health reasons, etc.).

Map 1: Location of the Courts Visited by the Study



IV. JUDICIAL SYSTEM FRAMEWORK WITH RESPECT TO WILDLIFE OFFENSES IN THE REPUBLIC OF THE CONGO

1. Wildlife Legislation in the Republic of the Congo

Wildlife in the Republic of Congo is effectively governed by Law No. 37-2008 from November 28, 2008 on wildlife and protected areas⁵ and supplemented by Order No. 6075/MDDEFE from April 9, 2011, that determines the wildlife species that are fully and partially protected.⁶

Articles 112 and 113 of Law 37/2008 identify more than 24 wildlife offenses ranging from poaching to illegal trade in protected species. These are criminal offenses and, depending on their severity, are liable to fines (of between 10,000 and 5,000,000 CFA francs) and/or imprisonment (ranging from one month to 5 years).

Therefore, the most serious offenses, such as the killing of a fully-protected animal or the international transport of species without the appropriate permit, can cost offenders a fine of up to a 5,000,000 CFA francs and 5 years imprisonment.

In contrast, the act of illegally entering a protected area or possession of a partially-protected animal without the appropriate permit is considered a lesser offense punishable by a fine of between 10,000 and 500,000 CFA francs and/or a maximum prison sentence of 18 months.

Several enactments also specify and strengthen the status of certain species, namely elephants (Act No. 114/91/CNS/P/S of June 24, 1991, prohibiting the killing of elephants in the Republic of the Congo⁷) and primates (Order No. 054/MATD/DS/P/SG/DDS.P of October 22, 2003 prohibiting the sale and consumption of primates⁸).

It should be noted that Order No. 3772, MAEF, DEFRN, BC17 from August 12, 1972 defines the opening and closing of hunting seasons in the Republic of Congo⁹ and that Law No. 48/83 of April 21, 19 defining the conditions for the conservation and exploitation of wildlife,¹⁰ provides additional elements for wildlife management.

The killing and illegal trade of species have acquired a whole new dimension in recent years involving organized criminal networks, who are frequently transnational in their operations, sometimes from neighboring countries, and heavily armed. There exist transboundary laws, although old, which are available to the authorities to deal with the complexity of wildlife cases.

As an example, Order 62-24 of 1962 relating to military equipment and firearms in the Congo¹¹ provides for severe punishments for trafficking of military weapons with up to 5 years in prison or their incarceration for up to 3 years and a fine of 300,000 CFA francs, all corroborated by a local banishment order for a period of up to 10 years (Article 31).

Order No. 25/70 of August 1, 1970 regulating residence conditions in the Republic of the Congo for foreign nationals who have been subject to a judicial conviction,¹² establishes strict terms and conditions for foreign nationals who enter the country illegally and have been subject to convictions. The Courts of Impfondo and Pointe Noire made use of these provisions on nine occasions during 2014.

International trade in wildlife and wild flora species threatened with extinction (CITES Regulations) is regulated by Law 7-94 of June 1, 1994 regulating imports, exports and re-exports in the Republic of the Congo.¹³

2. Jurisdiction of the Courts for Wildlife Cases

The Regional Court (*Tribunal de Grand Instance' or TGI*) has jurisdiction in the first instance to hear violations concerning wildlife in the Republic of the Congo, which are criminal offenses (subject to imprisonment ranging from 1 month to 5 years).¹⁵

The Regional Court has jurisdiction depending on the perpetrator of the offense, whether civilian or military. Indeed, if military courts were established by Law No. 022-92 of August 20, 1992 on the Organization of the Judiciary in the Republic of the Congo,¹⁶ they are not in session due to the lack of institutional and human resources.

The Court of Appeals has jurisdiction to review a case already judged by the Regional Court when one of the parties to the proceedings is not satisfied with the decision. For wildlife offenses, no appeal has ever been filed in the Court of Appeals in Congo. The offenders' misunderstanding of legal proceedings, their cost, as well as their slow pace largely explains this finding. Thus, this study focused on the decisions issued by the country's Regional Courts only.

3. Judicial Procedures Applicable to Wildlife Cases

i. Arrest

Arrests are the result of investigative efforts on the part of the public authorities (Ministry of Forest Economy or MEF, also referred to as Water and Forests Agents), national or specialized trans-border agencies (National Office of the Lusaka Agreement TaskForce (LATF), Interpol's National Crime Bureau. These investigative efforts can also supported in part by NGOs.

MEF agents, who comprise some judicial police officers, are authorized to carry out preliminary

investigations (hearings, seizures, and searches) and to draft official reports (documents that transcribe the circumstances and the reasons for the arrest). MEF agents may also seek the assistance of the Police or Gendarmerie officers to support them during these operations.



Picture 1: Seizure of 35kg of ivory in 2016 in the north of the Republic of Congo (photo credit: PALF)

National park wardens and eco-guards (MEF agents operating within the protected areas), as well as MEF agents working in brigades outside of protected areas (e.g. Anti-poaching surveillance units in logging concessions or USLABS) contribute to the majority of the policing of wildlife and hunting, patrolling, making of arrests, and preparation of legal documents.

Following the arrest, the offender may be placed in custody if the offense is punishable by imprisonment. The Public Prosecutor (= Magistrate of the State's Attorney within the Regional or District Court) controls its enforcement and decides the outcome of the measure (release or extension of custody).

ii. Prosecutions

At the end of the investigation, the alleged perpetrator of the offense is referred to the Public Prosecutor to decide how to proceed with the case. The State Attorney (represented by the Public Prosecutor) will then determine if

the perpetrator will be prosecuted for the offense (and under what conditions), and thus to bring the matter before the courts.

Several options are then possible:

- **Dismissal:** when the perpetrator of the offense is not identified, or the evidence is insufficient, the public prosecutor may decide not to bring proceedings before the Court and to release the arrested person.
- **Release on the detainee's own recognizance:** when the case isn't complex, the Prosecutor may directly summon the alleged perpetrator of the acts to a hearing before the Regional Court. With this proceeding, the individual remains free until the judgment is pronounced, without being held in jail.
- **Flagrant offense:** (*In flagrante delicto*) when an individual is caught in the act of committing a crime and there is no doubt as to his guilt, the Prosecutor will place him in custody (= the offender will be transferred to a detention center until judgment is pronounced).

iii. Investigation

The case is referred to an investigating judge by the Public Prosecutor when the matter requires additional investigation due to its gravity or complexity.

iv. Decision

The Regional Court shall decide the case, by judgment, pronouncing a conviction when the person is found guilty, or acquittal when he/she is found not guilty.

The Regional Court can then sentence the offender to a term of imprisonment from 1 month to 5 years and/or a fine between 10,000 and 5,000,000 CFA francs, as well as a sentence to pay damages to the victim (= the State represented by the MEF) to compensate for any

injury suffered (the loss of a protected species, etc.).

v. Alternatives to Prosecution

A **settlement** is a legal means of amicably resolving the litigation between the Administration (MEF) and the offender. The Administration can offer to drop the charges against the offender, in return for the payment of a sum of money. Thus, an agreement is entered into by the victim and the offender to settle the case without going through the court.

The settlement only covers fines and not prison sentences - an action in the courts is still possible even if there has been a settlement.

This measure is a prerogative given to the environmental public authorities by Law 37/2008, to quickly settle disputes and relieve congestion in the courts.

Article 106 of Law 37/2008 authorizes the MEF, its Director General and the Departmental Directors to *settle* on behalf of the State. The Park Wardens or Conservateurs (MEF agents responsible for the management of a protected area are authorized to settle a case to lead to a maximum fine of 5,000,000 CFA francs.

Note: The following analysis refers to both the cases referred to the court, as well as the cases judged.

A case is deemed 'transferred' to the court when the Public Prosecutor decides to prosecute the alleged offender before the court, which will pronounce a judgment against him/her (the person will then be judged by this court). It sometimes happens that, although a case is indeed referred to the court, it is never tried for various reasons.

The following analysis takes this eventuality into account and is sometimes limited to only the results of the cases actually judged (= those which were completed) and are more reliable in terms of results.

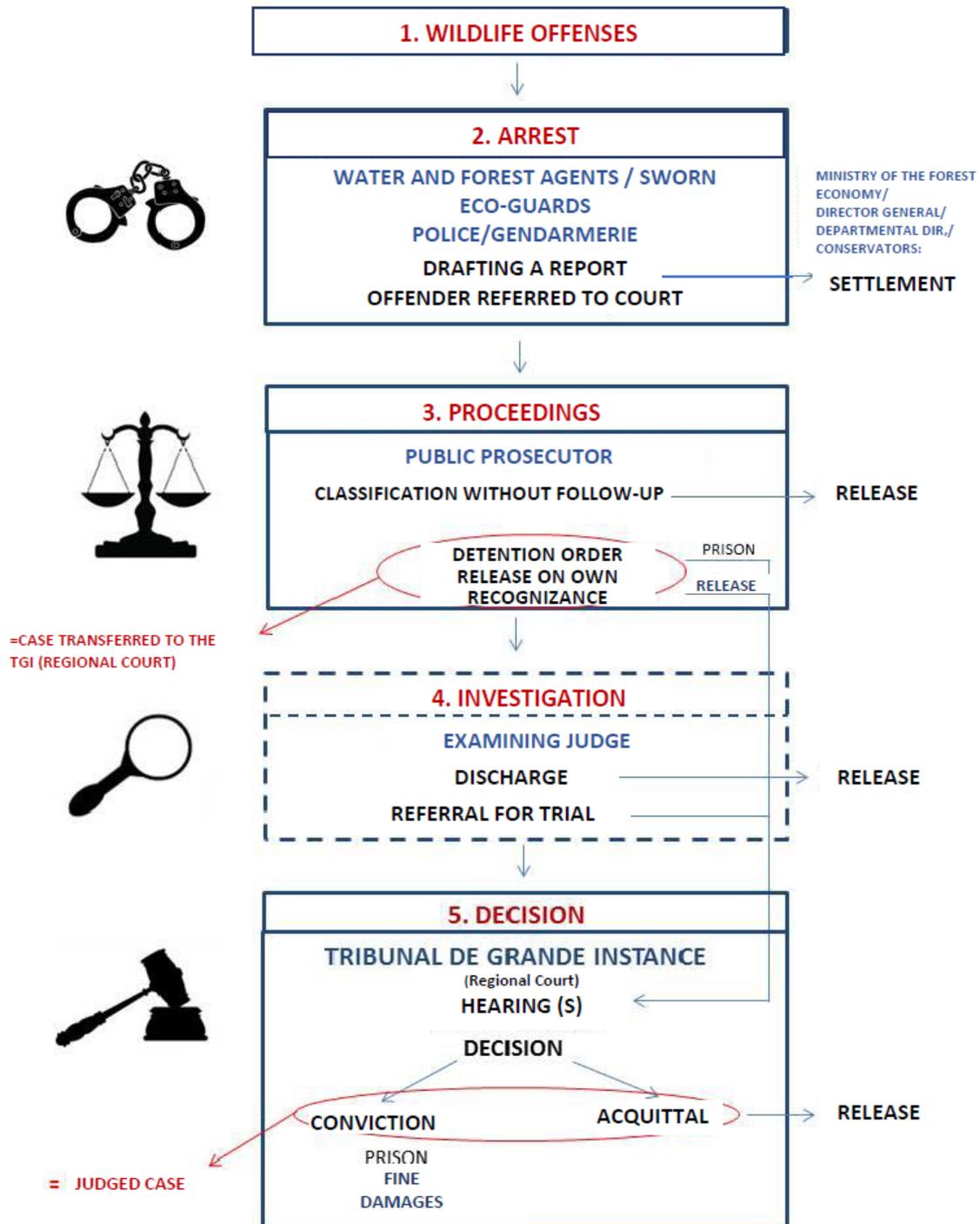


Chart 1: Representation of Court Proceedings in the Republic of the Congo's in Wildlife Case

V. RESULTS

1. Overall Results

- Between 2008 and July 2017, more than 692 people accused of wildlife offenses were referred to the Regional Courts of the Republic of Congo.

- Of these 692 cases referred, **512 (73%) reached a judgment** (i.e. a conviction with prison sentences and/or a fine, or an acquittal). There may be several reasons why not all cases reached a final judgment even when a person was referred to the Court:

- The case is still underway and requires further investigation. The case is then stalled at the level of the investigating judge, sometimes for several years and the judgment is delayed. This was the case for 7% of the cases referred to the court.

- The lack of any case management system for organizing the case records makes the court clerks' job very difficult when it comes to retrieving the results of a conviction. For example we found records of cases being registered, but the resulting conviction or outcome could not be found (this was true of both court and NGO records)

This is the case notably when hearings are postponed over several months or even several years. It may be very difficult, at that time, for NGOs to monitor ongoing cases, to know the hearing dates and to attend these in order to monitor outcomes.

- Corruption can cause files to disappear along with any trace of a conviction.

Together these three factors accounted for 18% of cases that were registered but for which a conviction could not be determined.

- During the proceedings, the law allows the court to grant the accused (person being prosecuted) **bail** (i.e. freedom that a defendant may enjoy pending trial when the investigation of the case does not require his detention) if the detainee provides guarantees of his availability and appearance at all legal proceedings and keeps the authorities informed of his movements (Article 122 of the Criminal Procedure Code).

The problem of almost systematically granting **bail** and the consequences that follow in this type of case were raised by all public authorities and conservation NGOs surveyed.

A defendant, who benefits from bail, remains under the authority of the court and is required to attend the hearings. In most cases, the bail effectively becomes permanent in that the accused disappears, making it impossible to enforce the sentences, and thereby undermining all prior efforts made to bring the case to court.

2. Impact of the Support of NGOs on the Outcome of Cases Involving Wildlife Offenses

In general, the number of wildlife offense-related cases that were referred to the court and resulted in a judgment (conviction or acquittal) considerably increased between 2008 and 2016, particularly since the launch of the NGO-government model described in Box 1, initiated in 2010 and since replicated by several NGOs in Congo (**Figure 1**).

NGO support has been decisive in this trend, whether at the investigative level, judicial follow-up (with lawyers assisting in the writing of formal legal documents, and ensuring an independent monitoring presence at the hearings), and enforcement of sentences (e.g: jail visits and prisoner monitoring).

Thus, between 2008 and 2016, **71% of all the cases reaching a judgment received technical, legal and financial support from NGOs.**

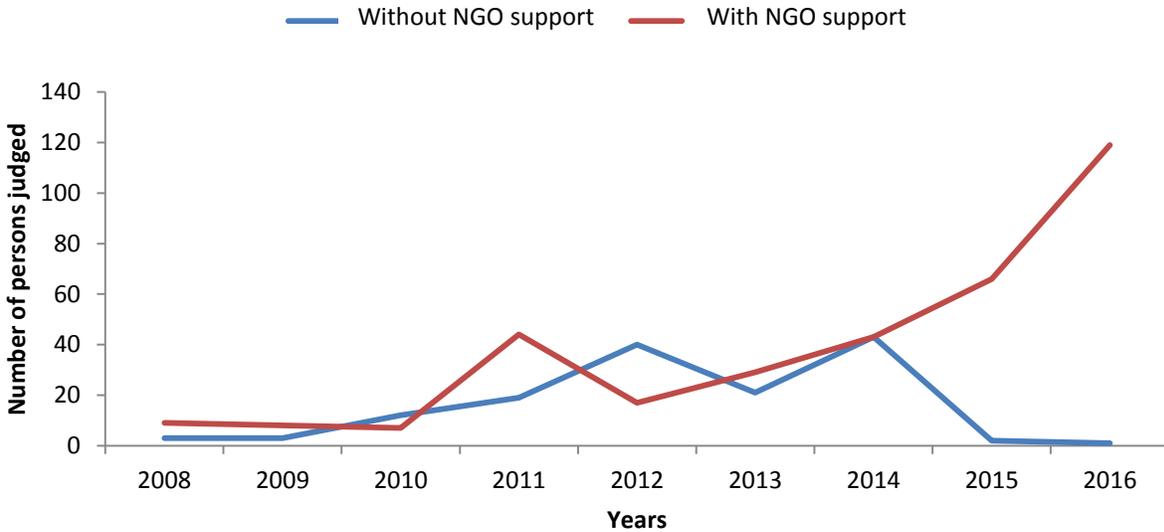


Figure 1 : Trend in the number of cases reaching judgment between 2008 and 2016 with and without Support from NGOs

Across the different provincial courts, NGO support has been a determining factor particularly in the north of the country in **Ouesso, where 96% of the cases referred to the court received support for their judicial follow-up (Figure 2)**. This trend is proportional to the very large number of cases referred to the Ouesso court, given its proximity to the remaining forest elephant strongholds and thus the targeting of this area by poachers.

The trend is somewhat different in the cities of Ewo and Impfondo. Although NGO support is certainly significant (especially in Ewo), the large number of cases handled without their support already shows a certain autonomy of the courts in correct and successful handling of wildlife offenses, and the judicial authorities' interest in these cases.

Out of 224 persons referred to the court in Ewo, half of the cases did not receive any technical support and still resulted in significant sentences on a regular basis over the years (imprisonment or prison sentence of 5 years). This trend was in large part due to the personal involvement of the presiding judge of the court (serving at Ewo for 8 years) .

Of the 106 persons referred to the Court in Impfondo, only six received legal support from NGOs (in this instance PALF), and yet more than 87% of them reached a court judgment.

3. Wildlife Species

Between 2008 and 2016, most wildlife offenses handled by the courts have focused on fully protected species, and specifically elephant that represents around 70% of cases (**Figure 3**).

This is intuitive given the elephant poaching crisis in the region and the focus on countering elephant poaching and ivory trafficking by both NGOs, governments and international donors alike. As a result, both public and judicial authorities are more likely to pursue such cases rather than those involving other fully-protected species (ex: pangolins) even if these have the same level of legal protection as elephants.



Picture 2: Pangolins for sale at the Pointe Noire market (© E. Moulin)

Seized elephant products consist mainly of raw whole tusks (63%), carved ivory (14%), and cut pieces of raw ivory (13% of cases). Elephant meat and tails represent a very small percentage of cases.



Picture 3: Seizure of ivory pieces at Brazzaville airport in 2015 (photo credit: Z. Labuschagne)

The focus on whole tusks is to be expected given the majority of seizures and arrests occur

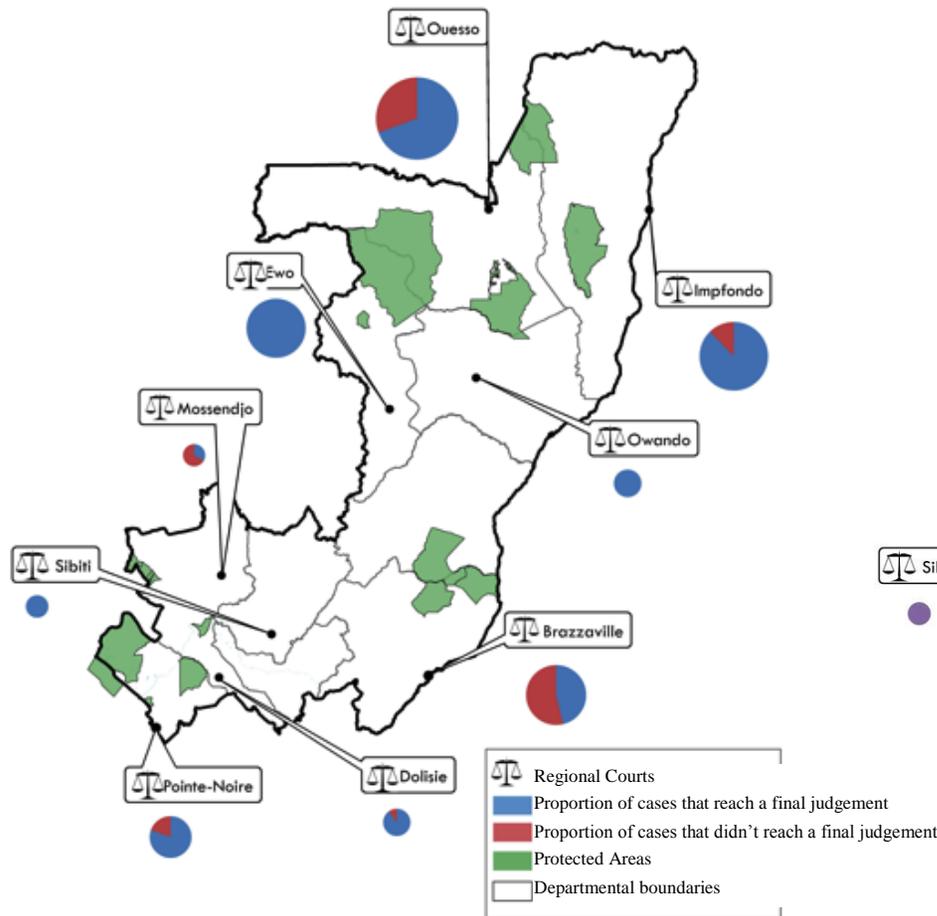
in proximity to protected areas and the source of illegal killing.

Since 2015, increasingly smaller pieces of ivory have been recorded as evidence in court cases, especially on the outskirts of large cities. This is supported by an observed international trend in which traffickers seek to disperse the goods and minimize losses in case of seizure.¹⁷

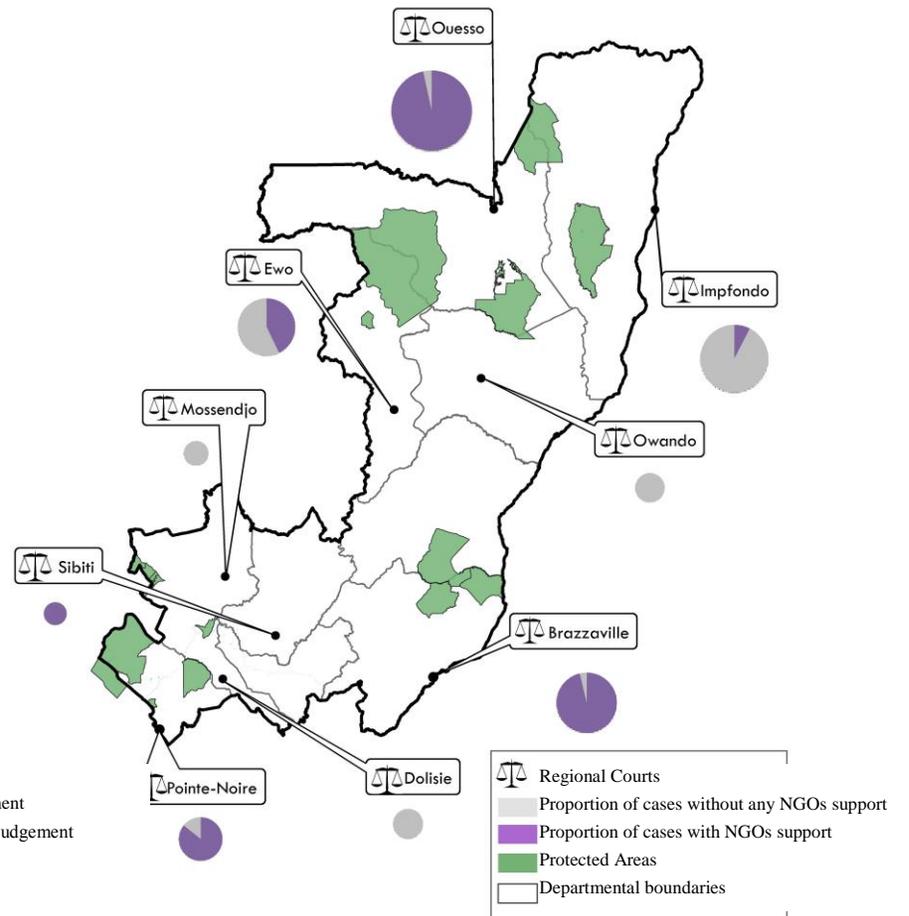
Several reports attest to the existence of underground ivory workshops that operate in the Republic of the Congo (and in Kinshasa, the neighboring capital¹⁷), as demonstrated by the amount of carved ivory materials and objects seized. The majority of these products are seized in large cities (Brazzaville, Pointe Noire and Dolisie), particularly at border checkpoints (ports or airports). In October 2016, two traffickers were arrested in Pointe Noire with 300 pieces of carved ivory, equivalent to 9 kg in total.¹⁸

Figure 2: A) Proportion of cases that reached a final judgment amongst all the cases referred to the courts, aggregated by city, and B) Proportion of cases that received support from NGOs, among all the cases transferred to the courts, aggregated by city. For A and B, the size of the circles for each city reflects the total number of cases referred from a minimum of 2 to a maximum of 353 cases).

A) Proportion of cases that reached a final judgment (and did not reach a judgment) among all the cases referred to the courts, by city



B) Proportion of cases that received support from NGOs (or did not) among all the cases referred to the courts by city



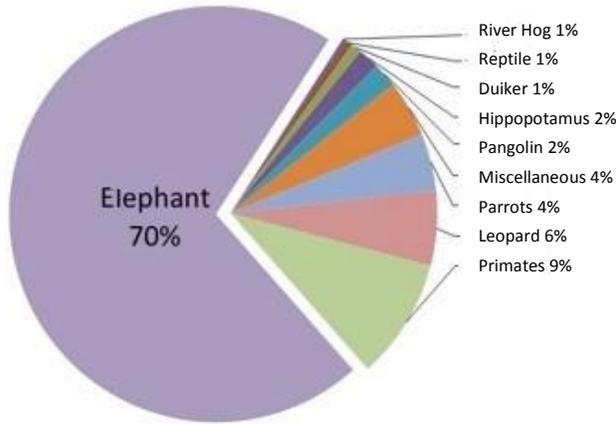


Figure 3: Wildlife Species Involved in Offenses Tried by the Courts between 2008 and July 2017

Leopards, along with primates, are among other key species involved in judicial processes, representing 6% and 9% respectively of the cases that reached a judgment between 2008 and 2016.

Live animals (baby gorillas, chimpanzees and African Grey Parrots (AGP) for the most part) represent only a small portion of the cases dealt with by the country's courts. However, in the instance of AGP, a single seizure (or 'case' as defined here) can represent hundreds of parrots. Indeed, within 2 months (between December 2016 and January 2017) 577 Gabon grey parrots were seized by the authorities in the northern part of the country.



Picture 4: Parrots in quarantine after being seized by the public authorities in the north of

the Republic of Congo in 2016 (photo credit: Z. Labuschagne)

These recent seizures reflect increasing attention given to African Grey Parrots at the Conference of the Parties to the CITES in September 2016, which reclassified the species on Appendix I,¹⁹ and thus attracting international interest in its protection.

4. Types of Offenses

Definitions

Articles 112 and 113 of Law 37/2008 on wildlife and protected areas, identify more than 24 wildlife offenses from illegal killing (poaching) to international trade in protected species. These are criminal offenses which, depending on their severity, are subject to fines (between 10,000 and 5,000,000 CFA francs) and/or imprisonment (from 1 month to 5 years).

Article 112 lists violations that are subject to fines of between 10,000 and 500,000 CFA francs and/or 1 to 18 months in prison. For example, the act of hunting without a hunting permit in a prohibited area or during restricted periods, or hunting between sunset and sunrise, or illegal possession of a partially protected animal.

Article 113 lists violations that are considered more serious, and which are subject to fines of between 100,000 and 5,000,000 CFA francs and/or 2 to 5 years in prison, such as killing a fully-protected animal, hunting with a military weapon, importing, exporting, trading or smuggling animals and their parts in violation of international conventions (i.e. CITES).

Thus, the identified offenses each constitute a very specific step of the supply chain from illegal poaching at its source, to transport of the wildlife product to its final destination, often beyond the country's borders.

Recurring wildlife offenses identified during this analysis are as follows:

- Illegal killing (poaching): illegal hunting and fishing due to a species' protected status, in a prohibited hunting area or during a restricted hunting period, carried out without a permit, or by unauthorized means.

- Possession of a protected species or its products: in most cases, this involves arrest *in flagrante delicto* where the individual is illegally in possession of the species or their products, on his person or in his place of residence.

- Trading: any commercial transaction in the broader sense, ranging from the action of illegally selling to buying protected species or their products.

- Trafficking: the act of illegally trafficking or transporting protected species or their products within the country.

- Transit: characterized as an international transaction (import, export): this often involves arrests or seizures at the country's borders, ports or airports.

Overall Analysis

All species combined, **70% of the wildlife offenses handled by the courts in the Republic of the Congo are related to the illegal killing of protected species.** Illegal trade in protected species represents 21% of the cases. Other offenses include the illegal possession of protected species or their products (5% of cases), their trafficking within Congo (2% of cases), or their international transit (possession for import/export).

Least common are offenses associated with corruption or intrusion into a protected area without authorization (1% of cases).



Figure 4: Type of Wildlife Offenses Tried by the Courts between 2008 and July 2017

All species combined, the courts' handling of 'illegal killing' offenses is typical of the northern and central parts of the country, the stronghold of forest elephants and other iconic species, whereas illegal trading takes place on the outskirts of the major southern cities like Brazzaville and Pointe Noire.

Although acts of illegal killing of protected species were noted by the media in the Departments of Pool and Kouilou, these cases are not found in the data records collected from the courts in the south of the country.

The number of cases related to trafficking offenses brought before the courts remains low. This can be explained partly by the fact that there are more poachers than there are smugglers at the base of the pyramid, and so there will always be fewer cases overall brought before the courts for such offenses. Furthermore, the support of partners in the south of the country remains patchy and opportunistic and does not paint a fully representative picture of the situation. Finally, wildlife trafficking violations are more difficult to bring to trial because they are typically carried out by 'higher-level' traffickers who wield more power and wealth and who can exert more influence on authorities than the poachers can.

The offense of trafficking in protected species or their products is typical of large cities, which have international airports as well as porous borders with countries that are politically unstable (DRC), and these large cities are often the point of export of goods from the country.

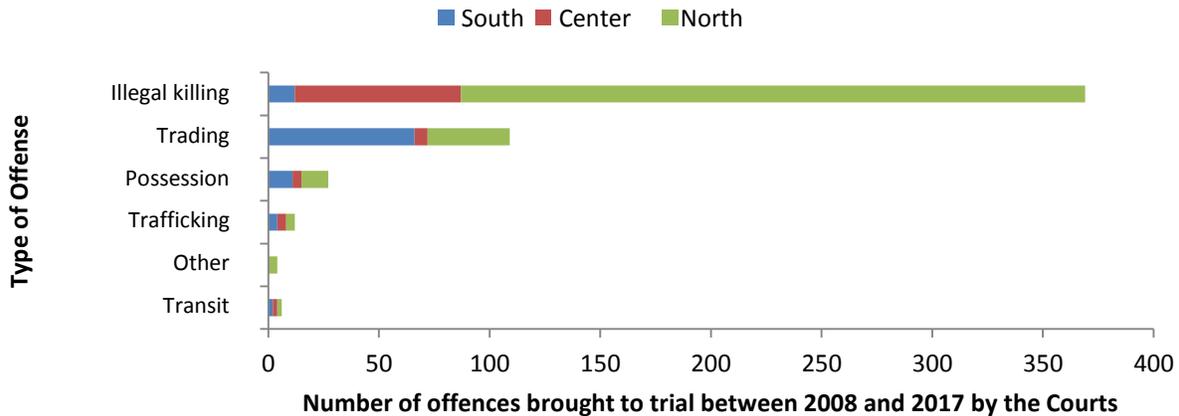


Figure 5: Type of Offenses Tried between 2008 and July 2017 by Geographical Areas

The offence of illegal possession of protected species or their products is found across the country, given it is often related to other offences, given that those selling, transporting or illegally trafficking species or their products, also by definition are found to be in illegal possession.

5. Profile of Wildlife Offenders

Nationality

- The nationality of wildlife offenders was found to not always be recorded in the case notes. Among all the offenders tried between 2008 and 2016, information on their nationality could only be found in 59% of the cases. Several reasons explain this lack of information, namely mismanagement of the data, or a lack of evidence at the time of the arrest, or when the offender is illegal, without identity papers, or provides a false identity.

For those cases where information is available between 2008 and 2016, 53% were from the Republic of the Congo and 48% were citizens of

neighboring countries such as Cameroon, the Central African Republic and the Democratic Republic of the Congo (DRC). Other countries, such as China, Mali or Angola comprise a small proportion of the data.

For Chinese nationals, in the rare cases where proceedings brought against them (2 cases in 2015), these comprised pangolin and elephant products and led to an acquittal in the first case (i.e. the court declared the accused not guilty) and bail in the second case, without any further information on the follow-up.



Picture 5: Seizure of 10kg of pangolin scales in 2017 in the north of the Republic of Congo (photo credit PROGEPP Ngombe)

- African Grey Parrots (AGP) represent only 4% of the cases tried but comprise mostly citizens of neighboring countries such as DRC and Cameroon.

Since October 2016, AGP has been listed on Appendix I of CITES, thus prohibiting and international commercial trade. Cameroon and DRC have long benefited from significant export quotas and have a long history of commercial trade and export in this species. Cameroon benefited from a quota of 100,000 gray parrots up until 2016. Since 2000, the DRC has received a quota of 105,000 wild AGPs for export²¹. This has been greatly exceeded throughout the years, earning the country a suspension of its international trade in AGP at the CITES 66th Standing Committee January 2016²²).

6. Convictions

Articles 112 and 113 of Law 37/2008 on wildlife and protected areas identify more than 24 wildlife offenses ranging from illegal killing to illegal international trafficking in protected species. These offenses are **crimes** and, depending on their severity, are subject to **finances (including between 10,000 and 5,000,000 CFA francs)** and/or **imprisonment (from 1 month to 5 years)**.

It should be noted that, according to Law 37/2008, maximum sentences must be pronounced when:

- The offense concerns the illegal killing of a fully-protected species
- The perpetrator of the offense is an agent of the State
- The offence is committed when hunting season is closed.
- The offender is a repeat offender (Article 113).

Note : There are several types of sentences.

If judges believe that the person is guilty of the allegations, a fine - accompanied or not by imprisonment - may be imposed.

*Depending on the seriousness of the offenses, prison sentences can be **firm or definite** (the convicted person serves his sentence in prison directly after the judgment is pronounced) or **conditional** (the sentence is served only if the person is convicted again within 5 years).*

*If the judges believe that the person is not guilty, they will then pronounce his/her **acquittal** and release.*

Overall Analysis

- Overall, out of 512 persons convicted of wildlife offenses between 2008 and September 2017, **55% were sentenced to a prison term** **17% to a suspended prison sentence**, **10% were only sentenced to pay fines**, and **12% were acquitted** (i.e., found not guilty).

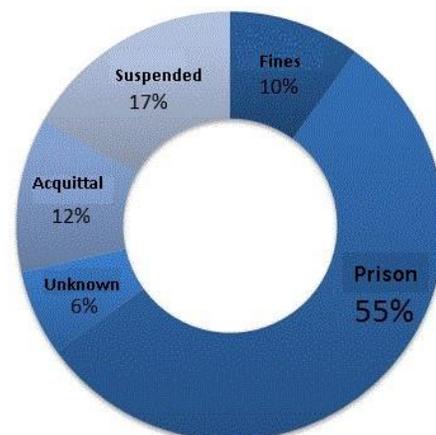


Figure 6: Type of Sentences Handed Down by the Courts for Wildlife Offenses between 2008 and 2016

- Out of all the cases that led to a conviction, 93% involved offenses listed in Article 113 and

therefore subject to a fine from 100,000 to 5,000,000 CFA francs and/or prison terms of 2 to 5 years. Only 7% of the cases involve offenses under Article 112 that are subject to lesser penalties (fines of 10,000 to 500,000 CFA francs or one to 18 months in prison).

Enforcement of the Law by the Courts

- Concerning the less serious offenses (Article 112), the Law was applied correctly in all cases, i.e., those on trial (not acquitted) actually received fines ranging from 10,000 to 500,000 CFA francs and prison sentences of between one and 18 months, or one of those penalties only.

It should be noted that the maximum sentences (i.e. 500,000 CFA francs and/or 18 months in prison) were pronounced in 22% of cases.

- For the most serious offenses (Article 113), in 24% of cases (excluding acquittal), the individuals did not receive penalties corresponding to the seriousness of the offenses committed. In other words, they were sentenced to a fine of less than 100,000 CFA francs and/or imprisonment for less than 2 years. People were declared not guilty (acquitted) in 10% of the cases.

Extenuating circumstances may sometimes explain the judges' leniency and thus a sentence that is more measured or proportionate to the offender's circumstances (ex: extreme poverty, adolescent, single parent with dependent children, etc.).

The maximum sentences under Article 113 (5,000,000 CFA francs and/or 5 years imprisonment) were pronounced in 12% of the cases.

Repeat Offenders

The breakdown of the data identified 24 repeat offenders or recidivists (=person who has already been convicted and who committed a

new offense) and 2 multiple repeat offenders of wildlife crimes between 2008 and 2017.

Article 113 of Law 37/2008 indicates that the maximum penalties should be pronounced when the offender is a repeat offender. In other words, according to the Law, a repeat offender should be sentenced to a fine of 5,000,000 CFA francs and/or a 5-year prison sentence.

Out of the total number of repeat offenders, these provisions were not complied with in 87% of cases, so that repeat offenders or sometimes even multiple repeat offenders (convicted more than twice) escape the higher sentences. Most of the time, fines or suspended prison sentences are pronounced, but acquittals or the outright dropping of charges were also noted.

State Agents

The maximum sentences must be pronounced when the perpetrator is an agent of the State (Art. 113 Law 37/2008).

Despite this, it is rare for such cases to be brought before the courts or for meaningful sentences to be pronounced. Between 2008 and 2016, 31 people, including eco-guards, gendarmes, police officers and military personnel, were referred to the courts.

When agents of the State are involved in wildlife crimes, the courts often grant bail. The outcome of the trial and therefore obtaining a court decision is particularly uncertain. Indeed, the result of the court decisions confirming the outcome of the cases could not be found in one third of the cases.

Out of all the cases recorded, the law was applied correctly in only two cases. An agent of the State (police officer) was sentenced by the court of Ewo to 5 years in prison and 5,000,000 CFA francs for the illegal killing of an elephant and the possession of military weapons and ammunition.

The other police officers arrested for such offenses all received an acquittal (found not guilty) or sentences without imprisonment.

The military personnel arrested for such offenses all received provisional releases, which led to default judgments (2 years imprisonment, a fine of 200,000 CFA francs). A default judgment is rendered when the provisionally released person does not show up at the hearing when the judge pronounces the decision. This can compromise its enforcement, knowing that it is often difficult to locate the convicted persons once he is released.

Most of the eco-guards arrested for the illegal slaughter of protected species or the theft of seized trophies, were sentenced to prison sentences ranging from 3 to 4 years and heavy fines.

In addition to the non-application of the law, the statistics reported a glaring difference in treatment, based on the professional rank of the State agents.

Expulsions

Among all the case records, nine expulsions from the territory were issued in 2014 of illegal foreigners from the DRC and the Central African Republic by the courts of Impfondo (in the north) and Pointe Noire (in the south). This penalty is provided by Ordinance No. 25/70 01/8/1970 to regulate the conditions for foreign nationals who have been subject to judicial conviction to remain in the Republic of the Congo.

Upon a foreigner's conviction to a prison sentence, the courts must, at the Public Prosecutor's request, pronounce an expulsion from national territory (Article 1 Order 25/70).

When a suspended prison sentence is imposed, the courts have the choice to decide whether to issue such expulsion, again at the Public Prosecutor's request.

Fines

Depending on the severity of the wildlife offenses, fines can be pronounced ranging from 10,000 to 5,000,000 CFA francs.

The amount of the fines has changed substantially since the introduction of the new 2008 Wildlife Law, and may vary depending on the circumstances of the case, and the judges' discretion.

In 2008, the Pointe Noire Court sentenced a poacher to a fine of 25,000 CFA francs for the illegal killing of an elephant, whereas today the amount can range from 100,000 to 5,000,000 CFA francs, depending also on the quantity of illegal products seized.

Damages

In addition to a prison sentence and/or a fine, the court may also award damages to the civil party (MEF), which is a sum of money that is intended to compensate for the injury suffered due to the loss of a species that is protected as part of the nation's heritage.

Although the amounts are hard to quantify, it has evolved over the years. In 2005 only one 'symbolic CFA franc' was granted to the civil party (MEF) to compensate for the loss and the illegal killing of an elephant. Nowadays, the amount granted is often between 200,000 and 5,000,000 CFA francs.

Since 2008, more than 300,000,000 CFA francs (approximately 500,000 USD) in damages was granted to the State to repair the damage suffered due to the loss of protected species. Despite the courts taking the damage and its repair into account, it is very rare for damages to either be paid by those convicted or recovered by the State due to the lack of monitoring procedures on the part of the MEF. (see VI. Discussions, paragraph 5).

NGO Support and Changes in Sentencing over Time

The total number of people referred to the court for wildlife offenses has increased over the years, concomitant with an increase in NGO support (**Fig 1**).

Although the rate of prison sentencing remains constant regardless of NGO support, this result should be qualified for two reasons. On one hand, it depends on the cities, and, on the other hand, on the type of influence that the arrested person may have on judicial authorities, and therefore on their sentences.

- The NGO support since 2008 in Ouesso has had an impact on the judiciary's awareness of wildlife issues, and has been felt all the way up to the pronouncement of sentences. Previously, for the same type of offenses (e.g. illegal killing of a fully-protected species), the judges were more likely to pronounce suspended prison sentences or fines only. In recent years, sentences have tended to be proportionate to the seriousness of the offenses committed, pursuant to the law.

- In large cities (e.g. Brazzaville and Pointe Noire in the south of the country), where arrests are more likely to be made for trading or trafficking in protected species), the rate of prison sentencing is lower. This is largely due to the type of person arrested and their influence on judicial authorities.

This does not necessarily mean that the NGOs have been less effective in their legal follow-up work, but it demonstrates the fact that more and more higher-ranking traffickers (who thus have greater influence) are being arrested.

Out of 56 persons tried by the Pointe Noire Court for the offences of illegal possession and trafficking of protected species or their products (thereby subject to a fine of between 100,000 and 5,000,000 and/or 2 to 5 years in prison):

- No-one was given the maximum prison sentence
- Only three persons were sentenced to two years in prison.
- 17 were given a suspended prison sentence,
- 18 received fines only.
- Seven were declared not guilty (acquitted).

Therefore, in the major cities, the biggest traffickers receive the smallest sentences or are even acquitted, and there are obvious cases of corruption, as illustrated by a case from 2016, where two individuals (including a repeat offender) were sentenced by the Pointe Noire Court to two years in prison with suspended sentences and 200,000 CFA francs for illegal possession, trafficking, and trading of more than 300 pieces of ivory (including jewelry and other fashion accessories).



Picture 6: Seizure of 300 ivory objects in Pointe Noire in 2016 (photo credit: PALF)

- Between 2008 and 2017, and for all cases combined, the proportion of maximum sentences (5 years in prison or 5,000,000 CFA francs) for the same type of offense, has increased significantly.

Prior to 2011, the courts were reluctant to hand down these kinds of sentences, but ongoing, NGO support and monitoring has been a determining factor in the law being fully implemented.

In 2016, out of 120 persons convicted by the courts of Ouesso and Ewo, 22 received five years in prison and all these cases received some form of NGO support in terms of legal advice and court room monitoring.

7. Enforcement of Sentences

Despite significant sentences being handed down, it is rare for those convicted to actually pay the fines imposed, or fully serve their prison sentence, particularly because of the high number of escapes and random releases from jails due to corruption or presidential pardons.

In Ouessou, for example, between 2016 and 2017, out of 19 prisoners sentenced to prison terms, 12 are still in prison, but three of them received a presidential pardon and four escaped. These convictions are still recent, and there is no guarantee that those convicted will remain in prison serving their sentences in the years to come.

We also noted that some convicts, although they should be serving their sentence in prison for a first conviction, re-enter the judicial system (are arrested and tried a second time) a few months or a few years later, without any concern about their status as multiple-offenders or escapees.

Although the enforcement of sentences remains random due to the factors mentioned above, their follow-up is even more precarious. Indeed, lawyers for the NGOs have started to habitually conduct regular prison visits to ensure that the prisoners are still incarcerated, but the investment in terms of time and money is significant. **Since 2008, the situation of 320 prisoners remains completely unknown, and whether the prison sentences imposed by the courts are actually being served cannot be confirmed.**

8. Proliferation of Military Weapons in Wildlife Cases

- The illegal use of military weapons for the illegal killing of protected species has increased significantly over the years. In 2016, 32% of offenses were conducted with the assistance of SKS or Kalashnikov (AK-47) type automatic

weapons, compared to 22% in 2010. Between January 2015 and April 2016, 75 AK-47s, 41 SKS and more than 5046 rounds of ammunition were seized by the military authorities, solely from the town of Ouessou in the Department of the Sangha in the northern part of the country. This trend reveals a clear contrast between subsistence hunting that involves traditional hunting techniques, and organized crime.

The successive armed conflicts of the 1990s in the Republic of Congo, its porous borders with unstable countries and inadequate control systems have promoted this abundant flow and circulation of military arms within the country.

In 2008, the legislature took this new context into account by inserting in the Wildlife Act a prohibition on hunting with a military weapon (Article 113). This offence can now lead to a sentence of 2 to 5 years in prison and/or a fine of up to 5,000,000 CFA francs.



Picture 7: Seizure of ivory tusks and military ammunitions around the Nouabalé-Ndoki National Park in 2016 (photo credit: Z. Labuschagne)

- Moreover, it seems that the offense of the illegal killing of protected species with a military weapon, is now deemed an aggravating circumstance, prompting the judges to order prison sentences in the majority of cases (64%).

As a reminder, pursuant to Order 62-24 of 1962 (Articles 17 and 31), it is prohibited for any

person (other than the armed forces and certain agencies, such as the Customs, Finance or Water and Forest Departments) to possess military weapons under penalty of one month to one year in prison and a fine of between 20,000 and 300,000 CFA francs, all associated with a ban on entering the country for two to five years for cases of repeat offences.

- During this study, the public authorities repeatedly referred to the scourge of the proliferation of military weapons and its consequences, in terms of national security for both the local population and the eco-guards. On the positive side, this issue has constructively involved military authorities as an important stakeholder in countering wildlife crime.

Lack of security at military weapon stockpiles, corruption, and the lack of a marking system and multiplies cases of theft make it difficult to control these weapons. The same weapons are indeed seized several times, which shows that they reenter the black-market networks at one time or another.

This issue is hotly debated within the international community, which has been denouncing the proliferation of organized criminal networks involved in the illicit trafficking of protected species going hand in hand with the trafficking of military. The same finding is raising alarms in neighboring countries such as Cameroon and DRC.²³

The report on the disarmament process in the Republic of the Congo (small arms) since 2007, referred to major difficulties in terms of national cooperation and coordination, and of resources allocated to the magnitude of the task.²⁴

VI. DISCUSSIONS

1. Lack of data management system related to wildlife offenses

This study gathers together more than eight years of judicial proceedings connected to wildlife offenses in the Republic of the Congo since 2008 (date on which the new Wildlife Act was enacted).

This task was made difficult because of the absence of an electronic archiving system at most of the Courts (with a few notable exceptions like the Ewo Court).

The lack of a national archiving system or interconnected database that compiles information about the detainees and tracks cases (from arrests up until conviction and sentencing) compromises the effectiveness of the judicial system from both an operational and performance perspective, given such a system would allow the authorities to identify repeat offenders and to track the results of arrests over time.

It should be noted that it was necessary to go to some localities several times to finalize data collection. Thus far, some courts have still not reported their data either for lack of staff or cooperation (Court of Owando).

Currently, each NGO partner has their own database available for judicial follow-up of cases, which is managed independently and in most cases is in Microsoft Excel format. In spite of a generally positive collaborative environment for data sharing, these databases neither facilitate nor promote efficient real-time and operational information sharing on past and ongoing cases.

The lack of a standardized national database also directly hampers the timely identification of repeat offenders and thus full application of the law.

Although the maximum sentences (5,000,000 CFA francs and/or 5 years imprisonment) should be pronounced when the offender is a recidivist (Art 113), the courts did not apply these provisions in 87% of cases.

Whilst not all of these instances were directly due to the lack of a case-monitoring system, the absence of a system most certainly precludes this. In addition, it can be difficult to identify repeat offenders, when those arrested lie about their identity and verifying it turns out to be very complicated (this is often the case with illegal foreign nationals).

2. Legal Loopholes and Legal Procedures poorly adapted for Wildlife Offenses

Despite encouraging results in terms of prosecutions, Law 37/2008 on Wildlife and Protected Areas reveals significant legal loopholes and remains insufficient to effectively combat wildlife offenses. Specifically they are poorly adapted to respond to the fairly recent phenomenon of transnational organized criminal networks associated with large-volume trafficking of wildlife and their parts.

• Weakness of the Law in terms of Penalties and Proceedings to Combat Organized Crime

- Theoretically, Law 37/2008 follows the recommendations of the Resolution of the United Nations General Assembly (UNGA Resolution 69/314 on Tackling the Illicit Trafficking in Wildlife²⁵), which recommends establishing such crimes as the illegal trade in wildlife threatened with extinction as serious offenses, particularly when organized criminal groups are involved.

In fact, within the meaning of Article 2, b) of the United Nations Convention against Transnational Organized Crime,²⁶ a 'serious offense' means an act constituting an offense punishable by a sentence of deprivation of liberty for a maximum of no less than four years.

Despite this, the law does not differentiate between a poacher who is a citizen of the Congo (who for example poaches an elephant for an often small financial reward) and a higher-ranking international wildlife trafficker (who trades in large volumes of ivory and exports across borders, often for substantial sums of money and at the expense of large numbers of elephants).

In both cases the law provides for the same fines (100,000 to 5,000,000 CFA francs) and the same number of years in prison (2 to 5 years).

These provisions do not enable distinction between these players of disparate 'rankings' and do not offer appropriate punishment or deterrent to the major sponsors of the criminal networks operating within the country. It is indeed more common for low-ranking poachers (at the bottom rung of the criminal chain) to be sentenced to prison terms, rather than major traffickers who have the means to exert influence on the public and judicial authorities.

The Regional Court currently has jurisdiction to try all these offenses, unlike the Criminal Court, which has jurisdiction to try felonies (serious offenses subject to 10 years imprisonment).

As long as organized crimes connected to wildlife offenses are not taken seriously in a legal context from the outset, the law will not have any deterrent effect and other national and international Institutions involved in dismantling major criminal networks will be limited or even compromised.

In 2015, Gabon submitted a draft law to the Government taking into account the dimension of organized crime's involvement in wildlife offenses. According to this law, the illegal killing of an elephant is punishable by a minimum of 3 years' imprisonment, whereas the same offense associated with organized crime is punishable by life in prison. As of the date of this report, the Government has not yet adopted the law.²¹

- Lack of a mutual legal assistance treaty (MLAT) allowing information sharing between different countries during criminal proceedings compromises the success of investigations and therefore the outcomes of trials. These mutual assistance treaties are a major issue in combating transnational organized crime, which involves citizens of many countries. Two recent cases illustrate these difficulties. In 2015, Thailand and Viet Nam seized record-breaking quantities of ivory originating from the Democratic Republic of Congo (DRC), which transited via the port of Pointe Noire, in Republic of Congo.³⁵



Picture 8: Seizure of 1493 kg of ivory in Vietnam originating from Pointe Noire in April 2016 (photo credit: Freeland)

Despite the involvement of the Lusaka Agreement Task Force's (LATF) national office in the Republic of the Congo, the investigations were severely compromised because the DRC had not signed the *Lusaka Agreement on Cooperative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora* of September 8, 1994, and the fact that no equivalent office is present there. The Interpol National Central Bureau, which assisted the National Office of the LATF in Congo failed to conduct sufficient investigations because of the lack of a mutual cooperation protocol in judicial matters with the countries involved (DRC, Viet Nam, Thailand). At the time of this report, a

letter of judicial cooperation to facilitate investigations between these countries submitted by the Interpol National Central Bureau is in the process of being signed at the Ministry of Justice.

Legal Loopholes and Inconsistencies within Law 37/2008

Several issues involving legal loopholes and ambiguities have been found in Law 37/2008. Perhaps most importantly, no implementing regulations were ever published to support this law.

- **Law 37/2008, for example, provides for a number of prohibitions without associating them with any penalties.** As criminal law is to be strictly interpreted, judges cannot pronounce penalties if these are not stated in the law. This is the case for possession of trophies of fully-protected species, which although included in the list of offenses (Article 27 and 30), has no corresponding criminal penalty. In order to even try those in possession of trophies who are at fault, the judges can resort to other charges (such as the prohibition on trading or transporting trophies within the country under Article 113).

Sometimes, the same offense can lead to two different types of sentences. For example, the ban on hunting in a protected area is punished by Article 113 (two to five years in prison) while the ban on hunting in an area not covered by the law is punished by Article 112 (one to 18 months imprisonment). This can lead to differences in the way poachers are treated depending on the cities and the way judges interpret the law.

- There are glaring inconsistencies in the penalties. Article 112, which punishes less serious offenses, provides for corresponding fines ranging between 10,000 and 500,000 CFA francs, while Article 113, which lists more serious offenses provides for fines ranging from 100,000 to 5,000,000 CFA francs. Thus, the

minimum penalties for a serious offense (100,000 CFA francs) are lower than the maximum fines for lower-ranking offenses (500,000 CFA francs).

- **Differing interpretations** of Article 119 by public authorities have led to differences in how cases are handled in some cities. Article 119 states that "all previous provisions that are contrary to the new law are repealed." Some public authorities therefore believe that the former law is repealed. Since Law 37/2008 is incomplete (provisions concerning penalties for example), it is permissible to refer to the old law (Law 48-83 of April 21, 1983) in order to complete the provisions "insofar as they are not contrary to Law 37/2008."

Proceedings Poorly Adapted to Wildlife Litigation Cases

- The possibility of reaching **settlements** for wildlife offenses can compromise the effectiveness of the judicial system in curbing and deterring the illegal killing and trafficking of protected species.

A settlement is a method for amicably resolving a dispute at both parties' initiative. Instead of going before the judge, an agreement, called a settlement, may be reached between the two parties.

Thus, Article 106 allows the Minister of Waters and Forest, the Director General and the Departmental Directors responsible for Water and Forest to negotiate on the State's behalf. The conservators are authorized to negotiate violations liable to result in a maximum fine of 5,000,000 CFA francs, in other words, for all crimes, even the most serious. A settlement only covers fines and not prison sentences (an action before the courts is therefore always possible even if a settlement has been reached).

Article 106 provides that the settlement amounts are established by the law. Unfortunately, no amount has been defined

thus far, but the practice of reaching random settlements continues.

It should be noted that no case involving wildlife offenses has been identified at the Sibiti Court due to the large number of settlements.

If repeat offenders cannot claim any settlement, this possibility remains a discretionary tool that it would be useful to regulate, for example, by limiting settlements to only partially-protected species.

- The lack of clarity concerning the **management of evidence taken into custody and under official seal**, compromises the effectiveness of the judicial system.

During the trial, the evidence must be presented, i.e. all the objects that were used to commit the offense that may have been seized during the arrest or subsequently (hunting weapons or military weapons, ammunition, trophies, traps, etc.).

In theory, it is up to the court clerk to place the objects under seal (in custody) in a secure warehouse or storeroom that is within the court. Numerous disappearances and thefts of evidence has revealed divergent practices depending on the court and authorities involved. For example, in Ouesso, before any trial, the military weapons are handed over to the military, and the hunting firearms to the DDEF (Departmental Directorate of Forest Economy). The random distribution of seized goods under official seal among the authorities and the lack of clear procedures results in these seized materials almost never being produced during the hearings. Without evidence at the hearings, the opposing party can request the outright annulment of the proceedings for non-production of the evidence seized and wipe out all prior efforts.

Confusion in the management of seized items under seal and the disposal of seized items, between the public and the military authorities

partially results from the fact that Law 37/2008 on Wildlife and Protected Areas, provides for the disposal of the weapons seized, without distinguishing between hunting arms and military weapons. Article 110 states that weapons and ammunition that were used to commit a hunting offense are seized and handed over to the competent authority (paragraph 1). They are destroyed by the Department of Water and Forests in the presence of administrative authorities of the jurisdiction (paragraph 2).

The 2008 Law regulating hunting activities indirectly assumes that these are carried out with hunting weapons, not military weapons. Due to this fact, the military authorities consider that Waters and Forests agents (who have jurisdiction over hunting activities) have no responsibility for the disposal of military weapons. Order 62-24 October 16, 1962, establishing the regime for war materials, weapons and ammunition partially contributes to this confusion by specifying that seized military weapons are to be delivered to the nearest military authority (Article 36).

- The high occurrence of **bail granted** significantly jeopardizes all prior efforts made by the public authorities and NGO partners in the investigations and arrests of poachers and traffickers, and is an obstacle to the effectiveness of the judicial system in the handling of wildlife offenses.

In fact, when a defendant is released on an interim basis, in most cases, he does not appear at the hearing and a default judgment is then rendered against the accused. In these cases, bail actually becomes permanent release, knowing that it will be difficult to find a person sentenced by the courts (for example, to a term in prison) in order to make him/her serve their sentence.

- **Lack of Transposition of International Conventions into National Law**

The example of the African Grey Parrot (AGP) perfectly illustrates this finding. Despite the provisions at the international level established by the Convention on International Trade in Endangered Species of Wild Fauna and Flora - CITES (Appendix 1) and the IUCN classification as an endangered species, the AGP remains only partially-protected legally in the Republic of the Congo. This status means that it is being sidelined by public and judicial authorities who are still hesitant to pursue poachers and traffickers, who are mostly foreigners (mainly from the DRC and Cameroon), and bring them to justice.

To date, only fines or suspended prison sentences (of 1 year) have been imposed for offenses related to the illegal capture of AGP. Law 37/2008 on Wildlife and Protected Areas still allows those who don't comply with the regulations on international trade (reference to the CITES; Article 113) to be sentenced to fines ranging from 100,000 to 5,000,000 CFA francs and/or sentences of two to five years imprisonment. However, as the Republic of Congo has not fully transposed the CITES Convention at the national level, it remains difficult to fully implement those provisions.

This negligence has already earned the Republic of the Congo a category two classification by CITES, meaning that the national legislation does not fulfill all the minimum requirements required to transpose the CITES Convention. A delay in transposing the Convention could lead to sanctions, namely a recommendation for parties to the CITES to suspend any trade whatsoever with the Republic of the Congo, concerning the species of fauna or flora listed in the CITES.²⁸

3. Lack of Training and Logistical, Technical and Financial Resources

- The lack of logistical, technical and financial resources was expressed by all the public, judicial and military authorities interviewed, without exception.

Some Courts remain without electricity (e.g. Ouesso), and most public authorities (Gendarmerie and Police) lack sufficient vehicles or computer equipment to effectively carry out their work.

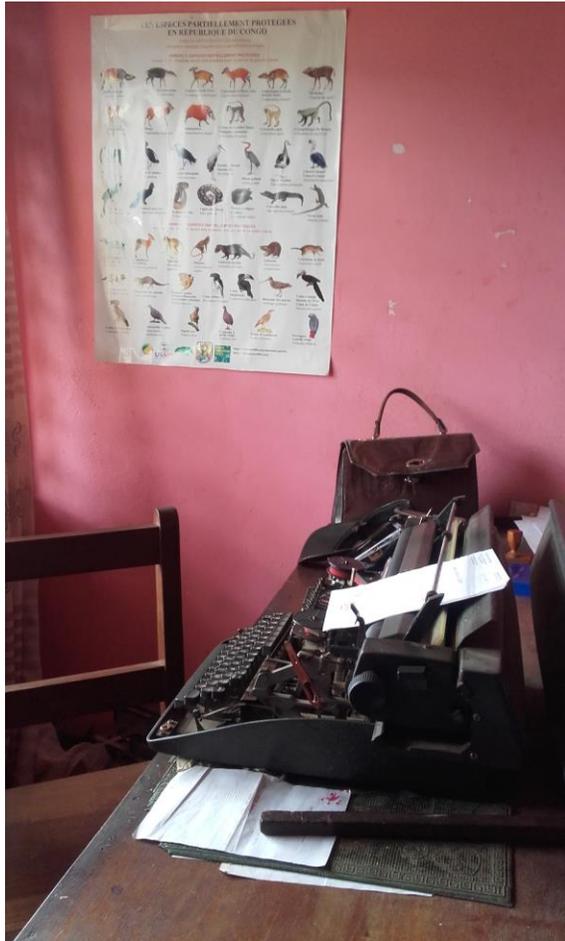


Photo 9: Tribunal's furnitures in the Ouesso Hight Court, 2016 (photo credit: E. Moulin)

Needs in terms of training and awareness on wildlife legislation was widely noted during the study. This training is particularly important since the outcome of a trial may depend on the actual drafting of reports at the very beginning of proceedings. An incorrect legal qualification of the offense may lead to the nullification of the legal proceedings and have a significant impact on the trial's outcome.

4. Weak Representation of the Parties at the Proceedings

The lack of a lawyer to defend the interests of the civil party, the Ministry of the Forest Economy, Sustainable Development and the Environment (MEF) at the hearings can lead to expedited or botched trials in wildlife cases.

Out of all the cases identified, only eight cases benefited from a lawyer's representation, paid for in part by the conservation NGOs.

The environment, particularly wildlife, remains an area that is largely sidelined by the legal profession. The Congo has only a handful of skilled lawyers mainly based in Brazzaville. Some lawyers are also reluctant to defend the interests of the State, due to non-payment for the services provided, as this problem has occurred several times in the past.

In 2016, WWF, via the ETIC project (Espace TRIDOM Inter-zone Congo) signed a contract with a law firm to cover all the costs of keeping track of wildlife crime cases, and representing the MEF before the country's courts. The PALF pays up to 25% of the lawyers' fees, the rest being covered by the MEF.

5. Inconsistent Enforcement of Sentences

Enforcement of the sentences handed down is random, both for the payment of fines or damages and the enforcement of prison sentences.

Prison Sentences

Those sentenced to prison terms rarely serve their entire sentences for several reasons:

- The dilapidated state of the prison infrastructure built for the most part during in the 1950s, and poor conditions of the prisons, linked to inadequate security measures and corruption have led to significant **prisoner escapes** in recent years.

In 2015, 50 detainees, the majority of whom were poachers, escaped from the Ouessou Prison by destroying the wall of a cell.²⁹ More recently, in 2016, some ten poachers escaped from the Djambala Prison.³⁰ Among them were two notorious poachers who had been sentenced to five years in prison for poaching elephants and for the illegal possession of military weapons. Between 2016 and 2017, out of the 56 persons sentenced and transferred to the Ouessou Prison, five are on the run, two of whom had been sentenced to five years in prison for the poaching of fully-protected species and the illegal possession of military or assault weapons.

Precarious prison conditions and overcrowding sometimes require the authorities to prematurely release prisoners for health reasons before they have served their entire sentences. The Ouessou Prison, which has a capacity for 50 prisoners, housed up to 150 prisoners during 2016.

Moreover, **corruption** results in many random prisoner releases, which is difficult to control when those involved are *a priori* independent medical experts. It sometimes happens, for example, that prisoners are released without any medical basis or evidence.

In addition, several defendants have been released before their hearings without a record of any release authorization and/or parole being mentioned in the official prison record. Proceedings are rarely brought against the State or prison authorities in these cases, or are stifled before a decision is pronounced. A case involving a police officer, who allegedly facilitated a detainee's escape in 2017, is still awaiting trial in the Ouessou Court.

On one hand, recurring escapes and random releases undermine the efforts that were made prior to arrest, and, on the other hand, they undermine the legal follow through that

detainees are judged accordingly and actually serve their sentence.

- The enforcement of sentences may also be compromised by obtaining **presidential pardons**,³⁰ which appear to be a reduction or an elimination of the criminal penalty. Thus, each year on average (usually in December), a decree of the President of the Republic authorizes any offender to be let out of prison if he has already served half of his sentence. The last decree issued on December 31, 2016 applied to all first-time offenders serving a prison sentence of less than or equal to five years, without giving any further details. Despite the efforts of NGO partners to raise the awareness of prison and judicial authorities about the importance of keeping major poachers incarcerated, three of them received this reduction in sentence (originally sentenced to two and three years in prison).

- The **transfer of prisoners** is a common practice in wildlife cases. The goal is to supervise the prisoners as much as possible and keep them away from their networks to reduce the risk of escape. In 2016, fifteen convicts were transferred to other prisons, mainly in Brazzaville. However, this solution has already shown its limits because of prison overcrowding and the lack of communication between the authorities in the various departments, which sometimes compromises the success of the transfer.

The last transfer from the Ouessou Prison to Brazzaville in August 2017 involving two notorious traffickers failed because of administrative negligence on the part of prison authorities. Due to the transfer documents not being transmitted from one prison to the other, one of the prisoners had to be returned to Ouessou the day after the transfer. Unfortunately, such difficulties are not isolated and undermine all the technical and financial efforts expended upstream.

Expulsions

Despite prison sentences that include expulsions, related procedures are still unclear, and the lack of coordination between the countries undermines the effectiveness of the judicial system in the Republic of the Congo. Expulsion, understood to involve escort to the border, rarely involves the authorities of the country of origin, which jeopardizes any chance of enforcing the sentences. In most cases, foreign nationals, who are the subject of an expulsion, only serve part of their sentence in the Republic of the Congo, and remain free thereafter in their country of origin, without concern by the national authorities.

Damages

Since 2008, the State has been awarded more than 300,000,000 CFA francs (about US \$500,000) in damages to repair the injury suffered by the loss of a protected species, without these amounts ever being collected. Due to the frequent insolvency of those sentenced, but above all, the lack of knowledge of the procedures for recovering damages on the part of the MEF, this represents a loss of revenue for the State (civil party at the trial). This is often the case when no lawyer has been retained to represent the State's interests at the hearings. Even in these cases, the lawyers may be reluctant to follow through on the damage-recovery process after conviction, because the State has rarely paid them for previous services provided.

In other words, although many significant sentences have been handed down, the likelihood that wildlife offenders serve their entire sentence remains very low. Since the resale price for ivory tusks is still higher than the average fines imposed, it remains very lucrative for an individual to remain in this illegal sector. Although the law opts for significant measures (five years and 5,000,000 CFA francs), the negligence in enforcing

judgments has not made it an effective deterrent.

6. Corruption

Although the Republic of the Congo ranks 159 on the 2016 Corruption Perception Index established by Transparency International,³¹ the link between corruption and the illicit wildlife trade has been established for a long time.

Corruption affects the entire criminal chain, whether at the level of arrests or the enforcement of sentences, where it enables the premature release of prisoners.

- Offenses are sometimes facilitated by the public and judicial authorities, border guards and the falsification of documents. The legislative provisions and the framework for actions to combat corruption are therefore just as important as other measures taken to directly address the illegal killing and trade of wildlife.

- Although additional laws provide more severe punishment, in this case, for serious acts associated with the illegal killing or trade in protected species, these laws are rarely applied. Law number 5-2009 of September 22, 2009 on corruption, bribery, fraud and related offenses,³² for example, provides the possibility of punishing acts of corruption by imprisonment ranging from two to ten years and fines of up to 6,000,000 CFA francs.

Out of all the cases identified, only one case, which involved a Chinese pangolin trafficker, was brought before the Court of Ouessou for corruption. After bail was granted, no trace of the case record or any decision could be found at the court.

South Africa has already adopted this approach and has become an expert in pursuing wildlife criminals under the guise of legislation on money laundering, organized crime, the illegal use of firearms and customs regulations.³³

The complaints filed with the Anti-Corruption Observatory of the Republic of the Congo by the lawyers interviewed for this study have so far remained unanswered.

- Insufficient rotation of judges across the country fosters corruption. The independence and impartiality of the judges may be weakened in cases that occur in small communities and often involve people close to the authorities. The rotation of judges is based on a decision of the High Judiciary Council (*Conseil Supérieur de la Magistrature*), chaired by the President of the Republic himself. The latter took place in 2013, but since then most of the judges have not received new assignments and have remained in place for more than four years in the same communities, apart from the presiding judges of the courts of Ewo and Owando, who have been in place in these same communities for eight years.

7. Impunity of Foreigners and Organized Crime Networks

- Most arrests only involve poachers and smugglers at the bottom of the criminal network.

The small number of cases handled relating to the offenses of trading in protected species products at the courts of major urban centers compared to the high number of cases handled for poaching in the northern part of the country, attest to the need to target the higher-level traffickers operating near borders and other exit points from the country.

- The problem of impunity of certain citizens of other nations (i.e. Chinese) was repeatedly raised by State authorities during interviews.

Since Chinese citizens allegedly benefit from external influence in such cases, bail is always granted, which quickly removes them from the criminal process. At best, release is pronounced

when the proceedings come to an end, i.e., they are acquitted, i.e. found not guilty and no charges are brought against them. The conviction of Chinese citizens for wildlife-related offences elsewhere in Africa are known from a few isolated high-profile cases. For example in Tanzania, where in 2016 two individuals were sentenced to 30 years in prison for possession of 706 pieces of ivory which would correspond to the massacre of 226 elephants.³⁵

8. Lack of Cooperation Between the Public, Judicial and Military Authorities

Countering poaching and illegal trafficking of protected species requires inter-agency-cooperation, involving the Ministries of the Environment, Justice and the Interior. However, the lack of involvement of certain complementary authorities was often noted in interviews.

Although stakeholder platforms have emerged, particularly since 2014 in the city of Ouesso, they remain far from the ideal of a regular and concerted approach among concerned authorities to effectively combat poaching and the illegal trafficking of protected species.

The Departmental Directorates of Waters and Forests, faced with the proliferation of military weapons for the illegal killing of protected species, have expressed the wish that the military authorities be more involved in the process of arrests and seizures when military equipment is used to commit wildlife crimes.

9. Significant Role of NGOs in Bringing Cases to Court

NGO support throughout the judicial process plays a clear positive role in determining the outcomes of wildlife cases, on significant decisions being handed down (maximum penalty applied) and their enforcement (monitoring and transfers of prisoners between jails).

The presence of independent lawyers alongside public and judicial authorities ensures technical support and the proper handling of wildlife case records, which also contributes to the fight against corruption.

V. RECOMMENDATIONS

1. Establish a Mechanism for a Specialized Environmental Chamber within the Judiciary

Over the past three decades, several initiatives have attempted to find innovative responses to new environmental challenges in court litigation. For example, Kenya, Thailand, Belgium and Sweden have established courts specializing in environmental issues, whereas Australia, New Zealand, Gambia and Sudan have opted for environmental chambers within existing courts. Altogether, more than 1200 judicial agencies specializing in environmental issues now exist throughout 44 countries.³⁵

The Criminal Chambers of Regional Courts (TGI) of the Republic of the Congo have a general law jurisdiction, i.e. they rule on all matters and on all types of disputes that do not fall within a special jurisdiction (for example the Commercial Court). They can handle cases from thefts or neighborhood conflicts between individuals to the dumping of toxic chemicals into the environment. Even murders can sometimes be tried by the TGI, thus playing the role of a surrogate of the Criminal Court (which is rarely in session due to the lack of technical and financial resources).

Wildlife litigation has become so widespread in recent years that some of the country's judicial authorities, including those in the city of Ouessou, state without hesitation that "nearly 80% of the cases dealt with by the TGI are wildlife offenses."

This fact appears to justify the call for qualified judges, dedicated to this field to handle the upsurge of cases.

In 2015, the evaluation report of the ICCWC (International Consortium on Combating Wildlife Crime) for the Republic of Congo confirms this approach by recommending the creation of a specialized group of judges in charge of wildlife cases within the courts.

The specialization of judges can be achieved by training but also by creating an environmental court or environmental chambers dedicated to handling cases involving wildlife, flora (illegal deforestation) and all other environmental threats (toxic spills in nature due to oil extraction and mining development, etc.).

The choice between creating an environmental court or environmental chambers may be arbitrated by a ministerial consultation involving all the stakeholders.

2. Need to Reform the Law to Close Legal Loopholes and Readapt Proceedings to the Wildlife Context

- The various deficiencies and loopholes noted in this study tend to justify a reform of Law 37/2008 on Wildlife and Protected Areas in the Republic of the Congo.

A workshop which took place in Ouessou in September 2016 on *Conservation, Justice and Security in the Sangha Department*, brought together the public, judicial and military authorities as well as strategic partners focusing on the central issues of combating the slaughter and trafficking of protected species. The workshop's major recommendations advocated a full reform of Law 37/2008.

In the year 2017, the MEF did establish a Technical Commission to draft the implementation texts for Law 37/2008, more

than 10 years after its adoption. The purpose of these legislations is not to correct the current law but to specify its content by regulatory means. In other words, the existing legal loopholes (including the lack of penalties relating to possessing trophies, etc.) cannot be filled by this means.

Revision of the Criminal Code undertaken as part of the Project of Actions to Strengthen the Rule of Law and Associations (PAREDA) in 2016 partly addressed these legal loopholes. The reform project, awaiting adoption by the Government, does include the punitive aspects of the Wildlife Law by supplementing some of the penalties relating to wildlife offenses.

- An order by the Ministry of Justice would meanwhile clarify and harmonize the procedure for management of the seized items under seal relating to wildlife products and military weapons.

3. Establish Exceptional Procedures to Ensure Enforcement of Court Decisions and to Fight Corruption in Wildlife Cases

The cross-cutting and multidimensional nature of corruption requires the implementation of specific mechanisms tailored to wildlife offenses.

More specifically, the implementation of an exceptional legal procedure to restrict the possibility of bail in the most serious cases (i.e. illegal poaching associated with the use of a military weapon) would, based on the Zimbabwe model,³⁶ limit the escape of defendants during criminal proceedings until the court reaches a decision.

4. Establish a Secure National Data Management System to Track Court

Cases Relating to Wildlife, from Arrest to Enforcement of Sentences

Implementation of a secure national data management system would allow real-time tracking of judicial proceedings, the cross-checking of information to identify repeat offenders, and the tracking of convictions from arrest to the enforcement of sentences.

Standardization of the existing databases and the search for a secure data management system tailored to the Republic of the Congo are necessary prerequisites for the implementation of such a system at the national level.

5. Establish a National Database to Track and Regulate Seized Military Weapons

The creation of a database for monitoring seized arms would initially provide a concrete assessment of the magnitude of their proliferation. There is currently no database that connects military weapons to wildlife offenses, or analyses their proliferation. The lack of any monitoring system for weapons also poses a threat to national security.

Interactive online tools provide a standardized way of describing firearms in order to verify certain characteristics of the weapon such as the make, model, caliber and serial number. This process could also establish the origin of the weapons.

Identification of firearms and their markings is an integral part of this inventory process to ensure their traceability. Although technical and financial resources have already been made available to public authorities of the Republic of the Congo in 2007, this process has not led to any conclusive results³⁷.

Revisiting old laws (Ordinance 62-24 of 1962 establishing the regime for military equipment, weapons and ammunition) that are contradictory to Law 37/2008, would clarify the process for managing the seized items under seal and the disposal of the weapons and ammunition seized.

6. Promote and Expand Partnership Models at Key Sites Between the NGOs and the Government to Support the Implementation of the Law and to Fight Against Corruption

An NGO-government partnership model for the implementation of the law based on 4 pillars (investigations, arrests, judicial monitoring and media coverage) has shown significant progress in combating corruption and obtaining significant sentences, whether in the Congo (started by the PALF, and replicated by WCS and WWF) or elsewhere in the region, with the example of the EAGLE network.

It is crucial to have independent researchers and lawyers within these structures, whether for the identification of trafficking networks, the technical support provided to the authorities immediately after arrest (clarification of procedures relating to wildlife and to human rights), or the judicial follow-up provided from the first hearing until the pronouncement of the decision, as well as its effective enforcement (from visits to prisons to the transfer of prisoners, if necessary). Independent monitoring of the cases also allows the difficulties encountered during the proceedings to be reported at the highest political levels.

Although international political decisions have a definite influence on the activities implemented at the national level (example illustrated by the recent decision on AGPs by the CITES), NGO support helps to maintain special attention on certain species, build government capacity and assist government authorities in implementing

commitments made in various international and national conventions with respect to countering wildlife crime.

7. Provide embedded support to Specialized National Agencies (Interpol, etc.) and Promote Legal and Institutional Tools such as Cooperation Agreements between Countries to Dismantle Organized Crime Networks

The need to target high-level traffickers goes hand in hand with the strengthening of operational capacities and control systems at the ports and airports - objectives that are already among the priorities listed in the National Action Plan for Ivory (NIAP) developed in 2015. Targeted and ongoing action in these areas provides the authorities with an upstream filter for the flow of undetected illicit goods.

The latest seizure of 28 pieces of ivory (41kg) originating from Brazzaville, and carried out at the Bangkok Airport on September 25, 2017, reveals the ease with which large amounts of ivory can still pass through the national airport.

- The Interpol National Central Bureau is designed to house agents who are qualified to deal with transnational investigations and operations, and has the mandate to access these transit and exit points. Technical support through partnership agreements with NGOs or the provision of embedded expertise within these specialized agencies would foster capacity building and greatly strengthen the efficacy of operations.

In Conakry, Guinea, the systematic intervention of the Interpol National Central Bureau in operations coordinated by the GALF (Guinea-Application of the Wildlife Law - a branch of the EAGLE network), gives additional weight to the arrest of major traffickers and gives cases international exposure (by the dissemination of

Ecomessages and press articles), in order to further combat corruption and block any influence that high-ranking traffickers may bring to bear on the public and judicial authorities.

- Likewise, in this context, additional tools could be used to track organized criminal networks and the cash flows associated with them. The United Nations General Assembly recommended pursuing investigations into wildlife offenses as potential money laundering crimes.³⁸ This legal basis allows law enforcement officers to use specific investigative resources against the traffickers, such as the seizure of assets (movable property and real estate that has value), or the monitoring of international financial transactions and suspicious accounts.

In this way, suspicious transactions and their clients can be reported and compared to the lists of alleged traffickers that intelligence agencies have worldwide (for example via Interpol's I/24-7 system with key information for identifying traffickers and their operating methods).

- The promotion of judicial cooperation agreements between the Republic of the Congo and key countries [transit countries (DRC) or destination countries (China/Thailand/Viet Nam) for illicit products] would significantly speed up investigative procedures between countries. The clarification of extradition and expulsion procedures via legislative or regulatory reforms would provide real consistency for judicial decisions handed down in the Republic of the Congo.

- In legal terms, it is important to incorporate the recommendations of the resolution of the United Nations General Assembly (UNGA Resolution 69/314 on Tackling the Illicit Trafficking in Wildlife²⁵), which advocates making trafficking in species of wild flora and fauna threatened with extinction a serious offense, particularly when organized criminal groups are involved. This initiative would allow

other Government Ministries and Departments outside of the MEF to become involved (e.g. Ministry of the Interior, Customs Services, Intelligence, etc.).

8. Reform and refurbish the Prisons by Initiating Talks with the Ministry of the Interior and Human Rights Organizations

The enforcement of prison sentences depends in part on the condition of the prison infrastructure (to prevent escapes) and detention conditions (to compensate for the releases for health reasons). Prisons are the last link in the judicial process and it is essential to strengthen their capacity and infrastructure.

Therefore, we recommend undertaking discussions with the Ministry of the Interior and organizations dedicated to protection of human rights in the Republic of the Congo to survey the actions undertaken in the past and currently, in order to mobilize technical and financial resources to this end.

9. Develop Training Modules to Support a Training Program for Public and Judicial Authorities at the National and Regional Level

- Development of specific modules and organization of regular seminars to raise public awareness about the laws in force and maintain ongoing updates and procedural developments is a critical recommendation to come out of this study.

For example, training judicial police officers in the specific stages of the judicial process is essential to properly characterize violations at the outset of the proceedings, while uniformly completing police reports on the findings pertaining to offenses.

A clerical error at this stage can compromise the outcome of the criminal trial. According to the rule of law, no citizen can be subject to criminal prosecution if the offense and the punishment have not been specifically described previously in legal texts. If the behavior described in the report does not fall within the scope of any criminal qualification, the court may decide to acquit.

- Organizing seminars at the sub-regional level provides regular feedback among the judicial authorities. The USAID's West Africa Biodiversity and Climate Change Project is already developing training modules for judicial authorities and invites judges from the Republic of the Congo to participate in seminars now and then. A collaboration between the two USAID Central Africa and West Africa Projects would capitalize on this experience and develop it in West Africa.

10. Create or Revitalize Sustainable Consultation Platforms Among Public Environmental, Judicial, and Military Authorities in some Communities

The fight against wildlife crime has a multidisciplinary dimension that requires the integration and the mobilization of all the environmental (DDEF and strategic partners), public (meaning, judicial and military) and economic players (private sector).

This recommendation was unanimously put forward by all the authorities interviewed during this study. The workshop, which took place in Ouessou on *Conservation, Justice and Security in the Sangha Department* in September 2016, enabled a dialogue between the public, judicial and military authorities around a common topic and identified the weaknesses in current procedures affecting the settlement of disputes. Regular meetings of these players and their involvement in high-

profile workshops helps strengthen the cohesive work relationship among authorities and partners, and can have beneficial effects on the fight against corruption.

With the support of the NGOs or civil society as facilitators, we recommend revitalizing the dialogue platforms on the illegal killing and trafficking of protected species, or creating new ones based on the localities, in order to clarify certain procedures (e.g. Management of seized items under seal) and implementing new concerted anti-poaching / anti-trafficking strategies.

11. Develop Environmental Training Modules for Students at the ENAM (National School for the Administration and Judiciary) and University Law Schools

Raising awareness of the law among the population is a priority..

For example, by regularly broadcasting traffickers' arrests via print media, social networks, or television, the EAGLE networks' Media Department plays a leading role in raising public awareness of the law, sending a strong deterrent, and, likewise, helping fight corruption in the judiciary by raising local awareness of ongoing cases. The promotion of information billboards on protected species along highways and in airports and the educational projects developed by conservation NGOs (Jane Goodall Institute, WCS, WWF, African Parks, ESI, RENATURA, etc.) in specific areas contributes to raising public awareness in the broader sense.

Overall public awareness of the legislation among Congolese citizens is an integral part of the action plans or strategies developed at the regional level (Sub-Regional Action Plan for Countries within the COMIFAC Area to strengthen the application of the laws

(PAPECALF), African Strategy for the Fight Against the Illegal Exploitation and Illicit Trade in Wild Flora and Fauna, etc.) or national laws (National Action Plan for Ivory), but remains sidelined among the activities implemented by the Government. In this regard, the MEF has a communications department that has very few financial resources to function sustainably.

Finally, raising awareness and encouraging the next generation of Congolese environmental judges, lawyers and jurists presents a key need for the country. To this end we encourage partnerships, study tours, training programs and exchange trips between international legal professionals in environmental law and both ENAM (National School for the Administration and Judiciary) and university law schools.

ANNEXES

ANNEX 1: LEGAL DEFINITIONS

Criminal Chamber: This is an entity of the Regional Court (TGI) responsible for judging crimes. Depending on its size, a regional court may include several criminal *chambers*.

Extradition: Procedure by which a State (requested or refuge State) delivers to another State (requesting State) a person prosecuted or convicted in the latter's courts, so the accused can be tried and serve their sentences in this country. The extradition procedure is an agreement between States, established according to the rules of international public law.

Flagrant offence or *in flagrante delicto*: Refers to a situation where an individual is caught in the act of committing an offense or a crime. The term *in flagrante delicto* is also used when the offense charged occurred recently and convincing evidence demonstrates the perpetrator's guilt.

Police custody: Short-term detention before potential charges.

Court Clerk: Court officer who assists prosecutors in their missions. He/she draws up and authenticates instruments throughout the proceedings, records the cases, informs the parties of the hearing and closing dates, draws up the minutes, drafts instruments, puts the decisions in due form, and assists the judge during hearings.

Investigating Judge: Judge who is responsible for investigating the facts in the most serious or most complex criminal cases.

Provisional Release or Bail: Release that a defendant may receive pending his judgment and when the investigation of his case does not require detention.

Accused or Defendant: The accused person appearing before a court.

Suspended Sentence: Suspension of a sentence imposed during a probationary period.

Prison Term: The person sentenced to the prison term is sent directly to a prison after the judgment is pronounced.

Recovery Procedure: Using all existing means to force a debtor to repay a debt owed to a creditor. These means can be amicable and/or court-ordered.

Public Prosecutor: (French *Procureur de la République*) Magistrate of the State's Attorney in charge of public action within the jurisdiction of a High Court (TGI). As the public ministry's representative, he receives complaints or accusations, he institutes public proceedings, directs investigations and decides on any prosecution of an offender.

Seals: Stamp or official tape affixed by a judicial authority to forbid the opening of a piece of furniture/an item and/or premises.

Implementing Regulations: Text specifying the terms and conditions for applying a law.

Regional Court: (French *Tribunal de grande instance* or TGI) This court has general jurisdiction (as opposed to courts of specialized jurisdiction) in the first instance: it hears disputes that are not specifically assigned to another court (ex: the Commercial Court). Depending on its size, a High Court may include several chambers, which may in turn be divided into sections. There is at least one civil chamber and one criminal chamber, but also commercial chambers. Criminal chambers have jurisdiction to try wildlife offenses.

Report: Procedural document established by a public official and relating findings or evidence

(investigation report, seizure report, for example).

First Instance: A court decision is rendered in the first instance if it is subject to appeal. A court decision is rendered in the last resort if it is not subject to appeal.

ANNEX 2: ABBREVIATIONS

CITES: Convention on International Trade in Endangered Species of Wild Fauna and Flora.

ENAM: National School of Magistracy.

ESI: Endangered Species International Congo.

MEF: Ministry of Forest Economy.

NGO: Non-Governmental Organization.

PALF: Support Project for the Application of the Fauna Law.

PROGEPP: Project for the Management of Ecosystems in the Periphery areas

DRC: Democratic Republic of Congo.

EAGLE Network : Eco Activists for Governance and Law Enforcement.

TGI: High Court.

IUCN: The International Union for the Conservation of Nature.

USAID: United States Agency for International Development.

USLAB: Anti-poaching monitoring unit.

WCS: Wildlife Conservation Society.

WCU: Wildlife Crime Unit.

WWF: World Wildlife Fund.

ANNEX 3: LIST OF MAPS AND CHARTS

Map 1: Location of the Courts Visited by the Study

Chart 1: Representation of Court Proceedings in the Republic of the Congo's in Wildlife Case

ANNEX 4: LIST OF FIGURES

Figure 1: Trend in the number of cases reaching judgment between 2008 and 2016 with and without Support from NGOs

Figure 2: A) Proportion of cases that reached a final judgment amongst all the cases referred to the courts, aggregated by city, and B) Proportion of cases that received support from NGOs, among all the cases transferred to the courts, aggregated by city. For A and B, the size of the circles for each city reflects the total number of cases referred from a minimum of 2 to a maximum of 353 cases).

Figure 3: Wildlife Species Involved in Offenses Tried by the Courts between 2008 and July 2017

Figure 4: Type of Wildlife Offenses Tried by the Courts between 2008 and July 2017

Figure 5: Type of Offenses Tried between 2008 and July 2017 by Geographical Areas

Figure 6: Type of Sentences Handed Down by the Courts for Wildlife Offenses between 2008 and 2016

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