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Legal remedies for harm to biodiversity

AN ANALYSIS OF CAMEROON'S ENVIRONMENTAL LIABILITY LEGISLATION

Conservation-Litigation.org is an international network of lawyers, scientists and conservationists. We support strategic liability litigation as a creative legal response to the biodiversity crisis. We do this by providing novel legal analyses to reduce the technical barriers for action, by supporting novel litigation cases around the world, and by empowering others to litigate for biodiversity.

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CONTENTS

KEY TERMS

Environmental legislation varies widely across countries, and related terminology is often easily confused. We use the following key terms to facilitate understanding across jurisdictions.

Biodiversity: The full diversity that makes up the natural environment. It typically refers to the number of species present in a given place, but also considers diversity across scales (i.e., genetic diversity, populations and subpopulations of a species, and ecological communities of multiple species). Importantly, biodiversity includes not only animals, but all terrestrial and marine fauna, plants, fungi, and microorganisms.

Compensation/Damages: A type of remedy, usually understood as referring specifically to financial payments to compensate for the harm caused. It is also known as "damages", not to be confused with "damage".

Damage claim: In many countries, the remedies sought by a plaintiff are referred to as a "claim" or "damage claim".

Defendant: A Party against whom a criminal or civil action is brought.

Environmental liability: The legal responsibility that a Party has for the harm they caused to the environment, including water, air, soil, and biodiversity. It is most frequently used in the context of pollution, but may be used to require responsibility for other drivers of environmental harm such as deforestation, illegal mining or illegal wildlife trade. In the context of this report, it refers to the legal responsibility that a party has for providing remedies in response to the harm they caused to biodiversity.

Harm: The negative impacts that result from the actions undertaken by a Party (e.g., person, company, organisation, etc.). Synonyms in some jurisdictions include "injury" and "damage". In this report, the term "damage" has been omitted to avoid confusion with the term "damages" that is described below.

Harm to biodiversity: Harm to biodiversity, whether caused by negative impacts on habitat (e.g., from deforestation), or injury to a finite number of individuals of a species (e.g., from illegal wildlife trade). It also includes harm to humans in so far as the impacts on biodiversity have a direct impact on livelihoods, wellbeing, private property, financial burdens on government agencies or civil society organisations, or on the State's ability to fulfil its environmental obligations.

Liability: The state of being held legally responsible for something. In law, liability may originate from the breach of contractual obligations or obligations described in laws or statutes, but also from harm caused in traffic accidents or due to defective products. It may also arise from harm caused to the environment, including to water, air, soil, climate, and biodiversity. Liability rules are rarely present in a single law, and relevant provisions may be found across civil, administrative, and even criminal laws in some countries. In this report, the term liability refers to legal approaches that request the responsible party to remedy and heal the harm they caused, and does not include punitive sanctions.

Litigation: The process of taking legal actions via the courts. In some countries this implies bringing a civil lawsuit to seek remedies, while in others it also refers to criminal prosecution and administrative processes.

Party: A legal entity that can be represented in court, whether a person, company, government agency, or other organisation.

Plaintiff: The Party bringing legal action seeking remedies. Depending on jurisdiction this can include government agencies, individual citizens, community groups, and non-governmental organisations.

Punitive sanctions: A sentence imposed to punish a party (person, company, etc.) for committing a criminal act, which typically includes a monetary fine or imprisonment. The monetary fine should not be confused with remedies that involve financial compensation, as the reasons for them are distinct. A judge may issue both punitive sanctions and financial compensation in the same case.

Remedies: Actions undertaken by the defendant to help remedy or heal the harms they have caused, with an aim to make the harmed/affected parties “whole” again. Remedies can include a range of remedial action or remedial measures, such as paying financial compensation (also called “damages”), participation in social service, restoration actions such as reforestation and species conservation, public apologies, and investments into educational and cultural events. In some countries, this is called “damage claim”. Remedies are distinct from punitive sanctions.

Strategic litigation: The use of legal action to bring about not only a resolution in an individual case, but to also catalyse broader systemic changes in society.

INTRODUCTION

Conservation Litigation as a response to remedy harm to biodiversity

Biodiversity faces growing threats from activities such as illegal wildlife trade and deforestation. More than one million species now face extinction, with cascading impacts on ecosystems and human wellbeing. There is growing demand for legal responses that meaningfully respond to these drivers of loss.

Although legislation and procedures vary widely across jurisdictions, there are broadly two main, complementary legal responses to environmental harm: responses that punish and deter, and liability provisions that provide remedies and seek to heal nature (Fig. 1).

Figure 1. Two broad, complementary legal responses to harm (Credit: A.Elam)

Many legal responses to environmental harm are focused on punishing violators and deterring future harm, typically focused on criminal and administrative sanctions involving fines and imprisonment. These sanctions often weakly reflect the harm that has occurred and are often considered too small to be a deterrent, prompting efforts to strengthen sanctions and enforcement.[1,2] Moreover, criminal justice systems often disproportionately target poorer defendants against whom additional enforcement is unlikely to be proportionate, justified or effective.[2]

Additionally, most countries also have existing legislation that includes liability provisions.[3,4] These provisions allow government agencies, victims, and sometimes citizens and civil society groups to bring lawsuits against those who harm the environment. They have the power to hold the worst offending companies and individuals legally accountable, meaning that they are liable for making the injured parties “whole” through remedies such as species rehabilitation, public apologies, habitat restoration, and investments into education.[3]

Related lawsuits have been brought across different contexts, such as marine oil pollution, industrial accidents, and even climate change – but this path remains a novel legal response to biodiversity harm.[5,6] There are, however, a growing number of recent cases that highlight the emerging potential for liability provisions to help remedy and protect biodiversity (Fig. 2).

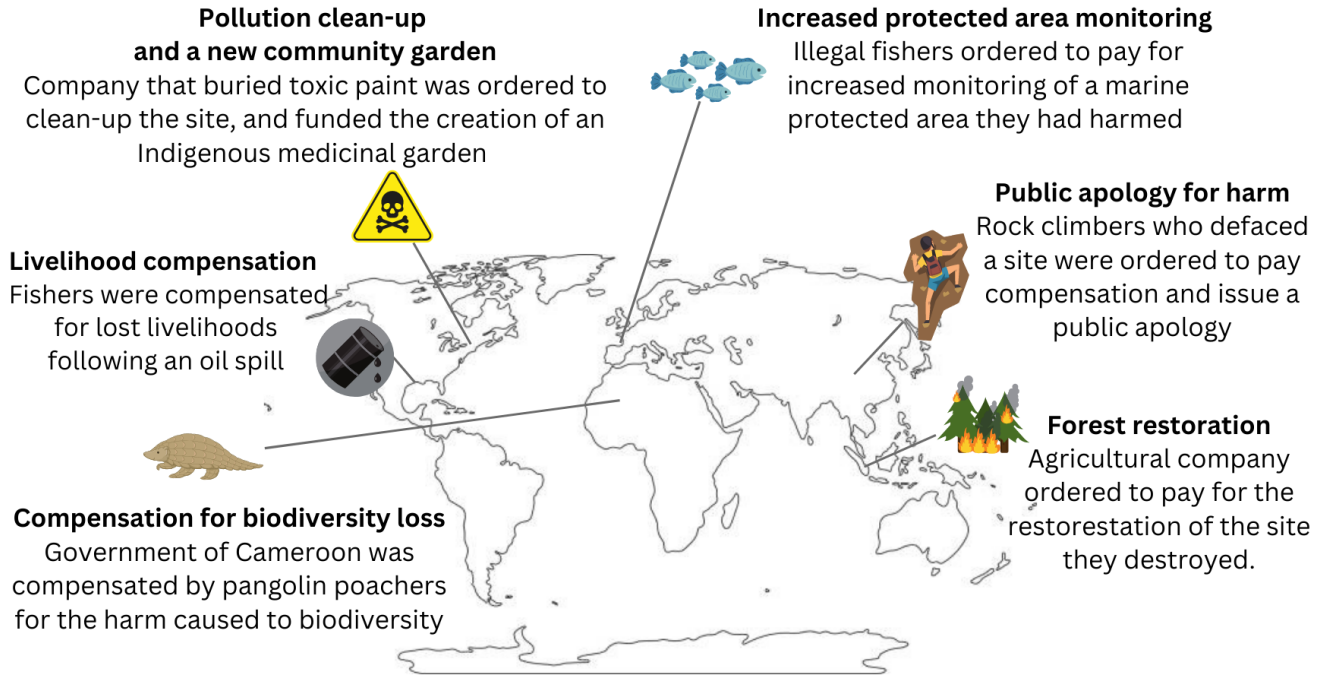


Figure 2. Examples of diverse remedies provided to biodiversity in liability cases

Liability provisions exist in countries around the world, and are found across different types of legislation including within civil codes, specialised environmental legislation, administrative procedures, and even criminal law.[4] Importantly, the viability of such liability litigation depends heavily on the nuances of domestic legislation.

Endangered orchid, *Ossiculum aurantiacum*, found only in Cameroon and DR Congo.
Credit: P.J.Cribb & Laan

This report analyses the potential for liability litigation to remedy and protect biodiversity in Cameroon. It answers key questions about whether legal actions to seek remedies for harm to biodiversity are viable in Cameroon, including:

1. What is harm to biodiversity and how is it legally recognised?
2. What triggers liability for parties to remedy harm to biodiversity?
3. What types of parties can be involved in these legal cases?
4. What courts are involved in these types of cases?
5. What types of remedies does the law allow?
6. What are the challenges and opportunities facing these actions in Cameroon?

The report provides general context about each question, and then specifically answers it in the context of Cameroon's legislation (boxes titled "Cameroon"). The analysis draws on examples of cases of Illegal Wildlife Trade (IWT) harming fauna, though the main elements of the analysis are also applicable for other causes of biodiversity harm such as habitat destruction, pollution, illegal fishing, and illegal mining.

The resource is intended for lawyers and non-lawyers alike, including prosecutors, judges, government agencies, and conservation organisations – to support plaintiffs in securing their legal rights, help guide strategic litigation, and inform legal practitioners.

Elephants in Gorom, Cameroon
Credit: Daniel Tiveau/CIFOR

1. WHAT IS HARM TO BIODIVERSITY AND HOW IS IT LEGALLY RECOGNISED?

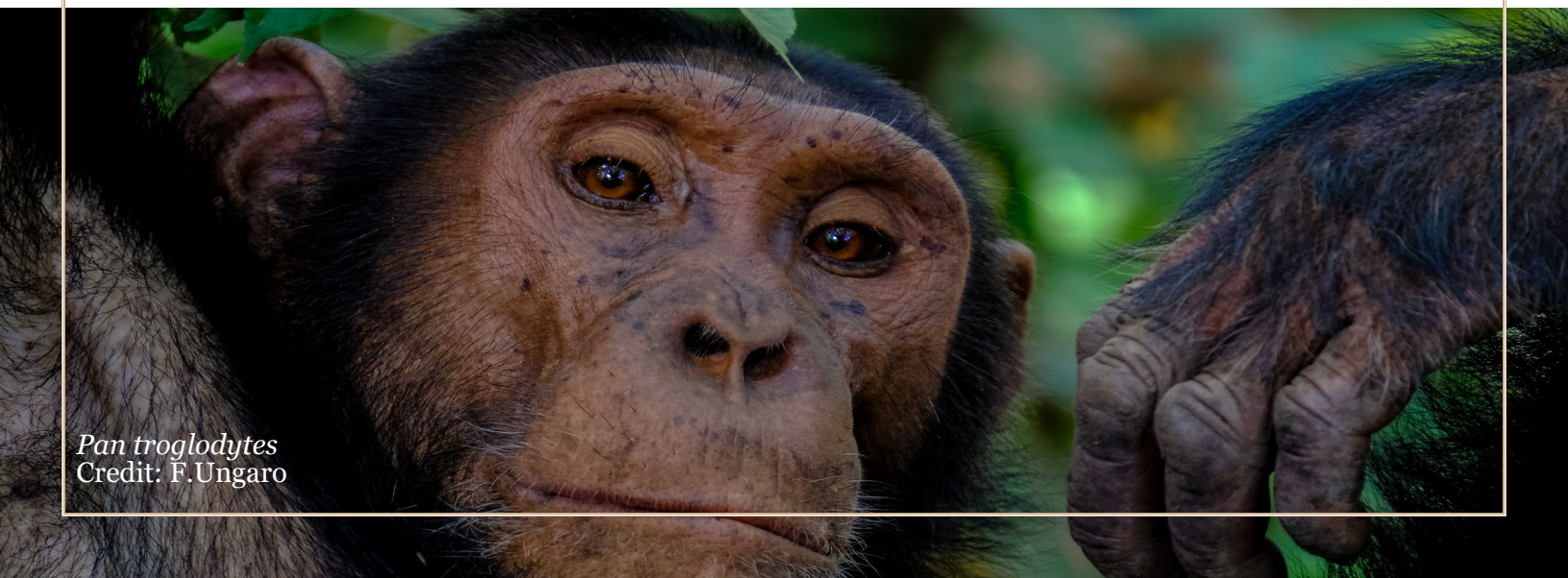
Identifying appropriate legal responses to environmental harm requires an understanding of the scope of environmental harm that can occur. There are many types of environmental harm that affect nature and humans, including both private and public interests. Although harm is often narrowly conceptualised in terms of impacts on specific individual sites and animals, this can cause a cascade of many types of harm on ecosystems, the State, human wellbeing, livelihoods, and the broader public (Table 1). For example, harm caused to a finite number of individuals of an endangered species can have cascading impacts that are often overlooked in law (Box 1).

Box 1: Liability litigation to address illegal wildlife trade of Great Apes

There are many, often interacting causes of biodiversity loss. Illegal Wildlife Trade (IWT) is a leading driver[7] that yields a cascade of harms that could become the subject of environmental liability litigation to support conservation goals.

For example, in the rivers region that stretches across Cameroon and Nigeria, large numbers of chimpanzees and gorillas are annually. Although some of this is subsistence and local level hunting, some is also commercial-scale and organised to feed an illegal trade in not only meat but body parts. Evidence suggests the ape trade is thriving in Cameroon, despite the existence of adequate laws and ongoing interventions by conservation organisations.[8,9]

Across these examples, IWT harms not only individual animals, but also the survival of populations and entire species. IWT also impacts ecosystem functions and services, and can disrupt livelihoods of communities.[3,10] IWT can also impact human wellbeing in other ways, such as harming cultural values and people's sense of place.[11] Moreover, IWT can increase costs for government agencies and NGOs that often bear the effects of IWT, including rehabilitation centres responsible for wildlife confiscated from IWT[12] and the costs of having to increase enforcement measures in certain areas. These harms, particularly where driven by commercial and organised trade, could become the subject of future liability litigation, to hold responsible parties liable for providing remedies to them.



Pan troglodytes
Credit: F.Ungaro

Table 1: Key categories of harm to biodiversity

Categories of Harm	Types of Harm	Example of Harm
Harm to Nature	Individual plants and animals	A Chimpanzee (*Pan troglodytes*) is rescued from illegal trade in Cameroon, and the individual animal needs long-term care in a wildlife centre.
	Species	The illegal trade of one giant ground pangolin (*Manis gigantea*), listed as class A protected in Cameroon laws, has a serious impact on the survival of the affected population, and thus on the survival of the species.
	Ecosystem goods & services	Killing yellow-casqued hornbill birds (*Ceratogymna elata*) is likely to have impacts on seed dispersal, especially of trees with large seeds. Although this has not been specifically studied for hornbills in Cameroon, this ecological pattern has been studied in other large, seed-dispersing birds, and this is very likely to be the same for hornbills as they are among the largest seed dispersing birds in their ecosystems.
Harm to Humans	Private livelihoods	Deforestation affects the livelihoods of Indigenous and other local communities because it reduces local availability of wild foods important to household diets and income.
	Private property, personal health	Deforestation negatively affects local communities' plantations in traditionally managed areas.
	Broader human wellbeing (e.g., culture, existence values, intrinsic values)	Killing sacred animals and destruction of sacred places harms local communities that have cultural and religious ties to these sites and species. They can also harm people distant from those species and places, if they also place value on them.
Harm to the State	Income loss (e.g., taxes)	Illegal fishing means that taxes owed to regional, or state governments were never paid.
	Increased cost of provision	Illegal wildlife trade in Cameroon, means that the State has to invest more into both monitoring and conservation measures for its wildlife.
	Reputational harm and reduced public trust	Poaching inside a protected area harms the public reputation of the park and the responsible authorities, reducing public trust in their capability to fulfil their obligations.

Most legal systems around the world recognise and protect against some forms of these environmental harms. However, there is no single definition for environmental harm: the concept is rarely defined in law and, where it exists, is often unclear or incomplete. Its relationship to different types of harm, including harm to biodiversity (Table 1), is often unstated.

Some countries have established specific environmental liability legislation (e.g., Mexico, Angola, Georgia) where environmental harm, liability provisions and remedies are defined, though, this is rare. In many countries, the rights to a clean environment and to remedies for environmental harm are present in the Constitution. Protections from environmental harm may also be included in a country's main environmental laws, with liability principles further developed in Ministerial Decrees or Notifications. Liability provisions can also sometimes be found in a country's general civil code. These different types of legislation carry different legal weight, with some taking precedence over others.

Cameroon

Cameroon does not explicitly define "biodiversity harm", but the concept is implicitly acknowledged in the country's environmental laws across multiple pieces of legislation.

- **Law No. 96/12 of 5 August 1996, The Environmental Management Law.** This law sets prohibitions on acts that degrade the quality of air, water and soil, and obliges the responsible party to restore contaminated sites. The focus is on harm caused by pollution, and describes civil liability for harm caused during the transport and use of hydrocarbons, chemical or other dangerous substances (Article 77). The obligation to provide remedies is thus not expressed in relation to biodiversity or other key drivers of biodiversity loss. This may be because the law is almost 30 years old, and was drafted in a time when environmental concerns were focused on the effects of industrial pollution on humans.

  Nevertheless, the law also articulates the national interest in the protection of nature, wildlife and their habitat, and the conservation of biodiversity against all causes of degradation and threats of extinction (Article 62). Moreover, the law includes a number of applicable principles and rules:
  - Principle of preventive and corrective action (Article 9.b). Requires environmental harm to be corrected first at source using the best available techniques at an economically acceptable cost.
  - Polluter pays principle (Article 9.c). Establishes that polluters must bear the costs of prevention and remediation of the pollution they caused.
  - Principle of liability (Article 9.d). Requires any person who creates conditions likely to endanger human health and the environment to "eliminate the causes in such a way as to avoid the effects". This may be understood as just "stopping a given action". For instance, in cases of illegal deforestation, this wording might be understood as "stop the logging". However, a narrow interpretation would render the principle of liability void of purpose, as it would not impose any responsibility on the offender, beyond an obligation to abide with the law, which already exists. The principle of liability tends to go much further, as expressed by the 1972 Stockholm Declaration on the Human Environment and the 1992 Declaration on Environment and Development: it requires States to provide liability and compensation paths to victims of environmental harm. It is in this light that the principle should be understood, meaning that the obligation to "stop the effects"

should be seen as a path to make offenders stop all causes of the harm including by holding them liable for the results of their actions, allowing victims to request remedies.

- **Law No. 94/01 of 20 January 1994 regarding the Management of Forests, Fauna and Fisheries (The Biodiversity Law).** This law stipulates that the protection of natural resources is an obligation of the State (Article 11), and serves to support the management of resources to ensure their sustainable use and protection. It lists numerous prohibitions for acts that harm forests, fauna and fisheries resources and establishes criminal sanctions for violations. However, legal actions taken under its scope do not pre-empt civil claims, including monetary compensation and restorative measures (Article 162.1). This is a reflection of Cameroon's general principle that the commission of any offence may lead to the institution of both criminal action and a civil suit [Article 59, Law No. 2005/007 of July 27, 2005 relating to the Code of Criminal Procedure (Criminal Procedure Code)].

- **Civil Code.** The Code establishes a general obligation that those who cause harm to someone, either by a voluntary action, negligence or imprudence, must remedy it (Articles 1382, 1383 and 1384).
- Criminal Procedure Code. It stipulates that anyone who feels harmed by a criminal offence, may become a plaintiff during the criminal procedure (Article 157.1)

The combination of these principles and rules show the possibilities in terms of remedial actions for biodiversity harm. As proof that this is possible, Cameroon's courts have interpreted these provisions widely and have embraced the concept of biodiversity harm and the obligation to remedy it in several decisions (**Case examples 1 and 2**).

Case Example 1: Liability for illegal possession of ivory products

(Decision No. 31/CO of 4 January 2016, Court of First Instance, Yaoundé, Public Prosecutor's Office and MINFOF v. Mfopou Félix Désiré)

The defendant was caught offering a number of ivory necklaces for sale at a hotel lobby. Alongside the criminal prosecution initiated by the Public Prosecutor, the Ministry of Forestry and Wildlife (MINFOF) intervened as a civil party, . The MINFOF requested almost CFA 8 million (approx. US$13,000) in compensation. This included environmental harm, which itself was stated as including cultural and social harm), material harm to the State, and harms related to the procedure such as the costs of enforcement operations and legal fees. In its decision, the Court limited claims to those that were supported with sufficient evidence (such as receipts), granting CFA 2,160,000 (approx. US$3,500) in compensation.

Case Example 2: Illegal Possession of pangolin scales

(Decision N. 3487/FD/COR of 28 December 2018, Court of First Instance Douala-Bonanjo, Public Prosecutor and MINFOF vs Tidjani, Abba, Tizani and Abbo)

The defendant was accused of illegal possession of over 600 kg of pangolin scales. Alongside the criminal prosecution initiated by the Public Prosecutor, the MINFOF again intervened as a civil party The MINFOF requested nearly CFA 60 million (approx. US$98,000) in compensation for material harm, environmental harm and procedure-related harms. The Court granted the full amount requested.

2. WHAT TRIGGERS LIABILITY FOR PARTIES TO REMEDY HARM TO BIODIVERSITY?

If the law provides protections from environmental harm, this is typically accompanied by an obligation that the responsible party provides remedies to correct that harm — a form of legal responsibility that is often referred to as *environmental liability*. Although terminology and procedures vary widely across countries, environmental liability is fundamentally about requiring that those who harm the environment are held legally responsible for providing remedies. This can include remedies to individual parties (e.g., for harm to livelihoods, property, health), as well as to the public for harm to public goods (e.g., a protected area, a protected species).

However, not every act that causes environmental harm necessarily triggers the liability of the responsible party to remedy that harm. There are several key considerations that help determine whether an offender who caused harm can be held legally liable:

- **Causation:** Cases require a clear link between the offender's actions and the purported harm to the plaintiff. In most jurisdictions, the plaintiff must prove that there was a direct link between the two, though the causal relationships in environmental cases can be complex and uncertain. For example, there may be uncertainty about the various relationships between biodiversity loss and ecosystem function. Many of these types of relationships, even those clearly understood by scientists, have not been widely recognized by courts.

- **Party's fault:** Legal liability is also often determined by the offending party's fault, which may be intentional or negligent. In some countries and contexts, liability is triggered irrespective of whether harm was caused intentionally or through negligence ("strict liability"). This is most often the case when harm is caused by actions that are legally identified as "inherently dangerous", such as handling oil and toxic chemicals. In most other contexts, the law requires that the harm have been committed intentionally or due to negligence ("fault-based liability"). Negligence requires non-deliberate but careless actions that result in the breach of a duty. For negligence to be established, an objective evaluation should be made to ascertain whether a reasonable person would have acted in the same way in the same circumstances, or if reasonable care was taken under the circumstances.

- **Specific environmental triggers:** In addition to these general requirements, many countries have additional, specific triggers that apply in environment cases and determine when offenders can be held liable for providing remedies. In some countries, the trigger is that harm was caused by a specific type of activity listed in legislation, and harm caused by actions that are not listed does not result in liability. Other countries use thresholds to define what triggers liability, such as concentrations of pollutants or percentage of a habitat that is harmed. In other countries, liability is

triggered if the harm is caused to specific species and habitats on protected lists. Despite thresholds present in some environmental liability laws, in several countries (e.g., Spain, Indonesia, Thailand) the general Civil Code has also been successfully used in environmental liability suits, essentially circumventing any specific environmental liability triggers.

Cameroon

Liability litigation for environmental harm is legally possible in Cameroon in a number of contexts. The law imposes liability when harm resulted from an unregulated activity, such as illegal logging or illegal wildlife trade. It can also impose liability for harm that resulted from a breach of the obligations stated in an administrative framework or agreement and the related administrative act articulates consequences for harming biodiversity, as would usually be the case of violating the conditions of a concession agreement, permit or quota. In these cases, the Ministry of Forestry and Wildlife (MINFOF), as the authority mandated with ensuring the sustainable management and conservation of Cameroon's biodiversity, is the responsible authority for taking legal action. It may initiate a civil litigation independently or, if it involves a criminal offence, may join an existing criminal procedure initiated by the Public Prosecutor.

However, there several criteria that need to be fulfilled in order to trigger liability:

- **Causation:** Liability is only triggered if the case successfully demonstrates a clear relationship between the defendant's purported action and the harm caused to the plaintiff. The notable exception in Cameroon involves harm caused by illegal wildlife trade, where the law is drafted in such a way so as to reverse the burden of proof (Box 2).

Box 2: Causation in illegal wildlife trade cases

Cameroon has unique liability triggers in cases of illegal wildlife trade. Cameroon offers legal protection to wildlife species based on a system of lists. Species listed as class "A" are fully protected and may only be hunted if exceptionally authorised (e.g., gorillas, chimpanzees, species listed on Appendix I of the CITES Convention). Species listed as class "B" are protected, but may be hunted with a permit (e.g., species listed in Appendix II of the CITES Convention; Article 78, Biodiversity Law). Cameroon's laws establish that any person found in possession of all or part of a class "A" or "B" species, whether alive or dead, shall be deemed to have captured or killed it (Article 101, Biodiversity Law). As a result, perhaps unintentionally, this wording eliminates the need to prove the relationship between the act and the harm, as possession equates to the harm caused by hunting or killing. This leaves the defendant with the burden to prove the contrary. In illegal wildlife trade cases, defendants selling protected species have been held responsible for also having hunted and killed the wildlife and have been held liable for providing compensation (Case Example 1).

- **Party's Fault:** Cameroon's Civil Code establishes that parties who cause harm are responsible for actions caused by their fault (fault liability), whether it was intentional or the result of negligence. In order to trigger liability, plaintiffs need to demonstrate the defendant's

intentionality and/or negligence. Case law in Cameroon has upheld the assumption that committing unlawful acts involves negligence and/or intentionality (e.g., Case Example 1).

- **Specific environmental triggers:** Although many other countries establish environmental thresholds or standards as triggers for environmental liability, Cameroon does not have related rules for most cases. Environmental triggers are only established for harm caused as a result of the use of dangerous substances, such as hydrocarbons, chemicals or toxic waste (e.g., Article 77, Environmental Management Law or Law No. 89/07 of 29 December 1989 on Toxic and Hazardous Waste). These provisions establish strict liability, requiring those who release dangerous substances to clean up and remedy the harm caused, without having to demonstrate intentionality or negligence. The lack of similar thresholds for harm to biodiversity caused by other actions (e.g., habitat destruction, wildlife trade) implies that liability is not be limited to protected species or protected areas, and that plaintiffs may claim remedies for any harm to biodiversity, provided that the general liability criteria are met (described above). In practice, however, case law shows that Cameroonian authorities have prioritised litigation in cases where a criminal offence was committed, and involved species listed as class "A" or "B" protected status. This is likely because of limited resources to litigate, and because the burden of proof is lowest for these protected species (Box 2).

Exceptions when environmental liability does not apply: Beyond the general exceptions applicable in the Civil and Criminal Codes (e.g., offences committed by minors), offenders are not considered liable in the following circumstances:

- **Permit defence:** When the action has been done legally within the limits of an administrative framework, such as a permit, even if it causes harm;

- **Self-defence in matters of wildlife:** The person who has killed the animal must inform the authorities within 72 hours (Article 83(1), Biodiversity Law);

- **Force majeure:** (Article 77(2), Environmental Management Law);

- **Traditional hunting:** Authorised by the legislator under specific conditions (Article 86, Biodiversity Law; Article 24(1), Decree No. 95/466/PM of 20 July 1995 Establishing the Modalities of Application of the Wildlife Regime); and

- **Legal protection of species:** Species that belong to category "C" may be hunted for consumption purposes (Article 24(2), Decree No. 95/466/PM of 20 July 1995 laying down the Modalities of Application of the Wildlife Regime).

3. WHAT TYPES OF PARTIES CAN BE INVOLVED IN THESE LEGAL CASES?

Liability litigation cases are brought to court by plaintiffs who make a claim that they have been harmed by a defendant and are entitled to remedies from them. There are often legal restrictions on who can serve as plaintiffs or defendants.

Who has the right to act as plaintiffs to claim remedies?

The right to bring forward a liability case, also known as legal standing, differs across countries. In some countries, only government agencies have the right to bring forward liability suits in the public interest. In others, individuals, communities and civil society groups can represent not only their own private rights (e.g., lost income), but also take legal action on behalf of the public interest (e.g., for the environment, for communities).

- **States as plaintiffs:** States' sovereignty over natural resources and their duty to protect the environment for present and future generations are established international principles acknowledged across UN Resolutions and now embedded in the Convention on Biological Diversity. These provide a basis for their legal standing to claim remedies when the resources and environment over which they have rights are harmed. Their rights to litigate in response to environment harm are also often reflected in national legislation.

- **Individual as plaintiffs:** The principles of access to environmental justice and right to judicial remedies, including redress and remedy to harm, are reflected in the 1992 Rio Declaration, 2016 Sustainable Development Goals, and Framework Principles of Human Right and the Environment. Consistent with this principle, Article 21.2 of the African Union Charter stipulates that "In case of spoliation, the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation".

- **Plaintiffs in Public Interest Litigation (PIL):** Third parties can sometimes act as plaintiffs working on behalf of a broader public interest, such as on behalf of an affected group that cannot access a legal system or afford to litigate, the public, or the environment itself. In some countries, only designated government agencies can act as plaintiffs in PIL cases. In others, citizens, communities and civil society groups have standing for PIL, although they may have to demonstrate a specific interest in the case or expertise on the topic.

Cameroon

Legislation places the main responsibility of protecting the environment on the State, and this obligation directly legitimises government authorities to be plaintiffs in cases of biodiversity harm. Beyond this, citizens have the right to live in a healthy environment, a duty to protect the environment, and have a right to claim damages if they are direct victims of harm. Equally, laws also open up the possibility for civil society organisations to become plaintiffs under certain conditions.

- **State's Right to remedies:** The Constitution and environmental legislation stipulate that environmental protection is an obligation of the State (Article 62, Environmental Management Law; Article 11, Biodiversity Law). It must develop policies for the management of the environment, following the principles listed in the Environmental Management Law. This includes the principle that the State must take preventive measures to anticipate and avoid harm. If harm is inevitable, then the State should ensure that harm is remedied at source using the Best Available Techniques Economically Achievable (BATEA).

  The State may decide to restore affected ecosystems or species using State resources and staff. For example, when wildlife is seized, the State is compelled to care for and protect the live specimens until a judge has reached a verdict in the case (Article 145, Biodiversity Law). In cases of habitat destruction, the State may invest efforts in restoring the affected site. Although the State is entitled to take unilateral action and cover the costs of remedial actions itself, it also has the right to request that offenders remedy the harm. To support this, the Biodiversity Law stipulates that any action under its scope does not preempt any claim for civil actions, including monetary compensation and restorative measures (Article 162.1). For cases involving biodiversity, the Ministry of Forestry and Fauna (MINFOF) is the responsible authority and has standing to seek remedies for harm affecting resources under its authority.

- **Individual's rights to remedies:** While the State is the primary caretaker of the environment, Cameroon's Constitution stipulates that every person has the right to a healthy environment (Preamble). Equally, the Civil Code establishes a general obligation for those who cause harm to remedy it (Articles 1382, 1383 and 1384, Civil Code). These rules allow victims of biodiversity harm to claim remedies if the harm interferes with their private rights, such as their physical person, property or livelihoods, as well as harm to their right to a healthy environment. This covers both the right to obtain injunctions (against the State, or where the State has failed to act) via the administrative courts, and to request remedies for harm they have suffered via the civil courts. Citizens may only bring a civil action for compensation where the harm is certain and direct. This includes rights to litigate resulting from ownership of forests and aquatic environments by local councils, village communities and private individuals (Article 7, Biodiversity Law). The private right to remedies also applies when harm is caused to customary or usage rights to exploit natural resources granted to local communities (Article 8, Biodiversity Law).

- **Plaintiffs working in Public Interest Litigation (PIL):** In PIL cases, citizens, communities or civil society organisations act on behalf of the environment and the general public interest. Cameroon's Constitution stipulates that citizens have the duty to protect the environment, and the Environmental Management Law acknowledges the duty of citizens to contribute to the

protection of the environment (Article 9.e). On this right, registered organisations with a public interest in environmental issues are allowed to be plaintiffs in relation to offences described in the Environmental Management Law that directly or indirectly affect matters within the organisation's scope of action (Article 8). This broad provision has been used by civil society organisations to institute legal action against persons breaching environmental laws. Courts have already had the opportunity to interpret this right in the framework of administrative procedures (Case Example 3). However, there is no knowledge of any cases where an organisation has brought a civil claim to court.

Case Example 3: Right of civil society organisation to bring a PIL case

(FEDEV v China Road and Bridge Corporation (unreported decision from 2009, number CFIB/004M/09)

The Foundation for Environment and Development (FEDEV), a civil society organisation with the mission to protect the environment, brought litigation against the China Road and Bridge Corporation, one of the world's largest engineering and construction firms for having caused pollution during road construction works. The case sought to require the defendant to comply with the country's public participation requirements as part of its environmental impact assessment procedure. The Bamenda Court of First Instance recognized the right of FEDEV to have legal standing in the matter, basing their decision on Article 8.2 of the Environmental Management Law, and stating that "it seems abundantly clear that any individual or association may be presumed to have locus standi to initiate litigation against environmental law violators, in so far as it is for the common good (public interest)".

Who can be a defendant and held legally liable for harming biodiversity?

In liability suits, the defendant is the person(s) considered responsible for causing the harm and from whom remedies are requested. Defendants are often individuals, but in some countries other entities with legal personality, such as companies or government agencies, may be held responsible ("corporate liability"). Organised criminal groups may also be liable in some countries, irrespective of their legal status, provided harm has been established and a criminal offence has been committed.

National legislation often articulates that, in cases where there are several defendants, liability may be distributed among the responsible parties:

- **Joint and several liability:** The plaintiff may seek the enforcement of the entire judgement against any one of the defendants responsible for the harm. After that, the liable defendant may seek contributions from the rest of defendants.
- **Several liability:** Each defendant is responsible for their contribution to the harm and nothing else. The plaintiff would have to seek enforcement against each defendant.

Cameroon

Both natural and legal persons can be defendants in criminal and civil cases (Section 74a, Law No. 2016/007 of July 12, 2016 on the Criminal Code (Criminal Code); Section 1382, Civil Code). This includes their right to be held liable in environmental cases (Article 9.d, Environmental Management Law). Moreover, when a defendant faces a criminal offence, they can also face a civil action and be held liable for remedies (Article 162.1, Biodiversity Law). There are, however, some exceptions that need to be considered, as discussed in the section about liability triggers.

The Civil Code does not state how liability is distributed among defendants, but it establishes that parties can be held liable not only for acts they committed, but also for those committed by people under their guardianship (Article 1384, Civil Code). In the context of harm to biodiversity, the law further details specific responsibilities for:

- Trophy hunting businesses, licenced foresters and general public authorities: They are liable for the harm caused by their clients and employees respectively (Articles 108.2, 152 and 153, Biodiversity Law).

- Hunting guides: Main guides are considered to be liable for themselves and the assistant guides under their supervision (Article 50.1, Decree No. 95/4466/PM).

Box 3: Compoundment of forestry, fisheries or wildlife offences

Compoundment, known in French as "*transaction*", is a legal mechanism that allows an offender to pay a certain monetary amount in exchange for avoiding criminal prosecution by Public Authorities.[13] Compoundment must be requested by the offender, but is not an automatic right and requires negotiation between parties. The responsible administrative body (e.g., MINFOF) considers each case individually, paying special attention to the status of the offender, if they are a repeat offender, and the type of offence. Compoundment is regularly used in environmental crime cases, and it is an option for forestry, fisheries and wildlife offences in Cameroon (Article 146, Forestry and ss, Biodiversity Law).

There is no guideline to determine compoundment payment amounts, which are determined in consultation with the finance administration (reportedly based on the value of environmental harm caused) and should not total less than the minimum amount of the corresponding criminal fine (Article 91(2), Environmental Management Law). Once the decision is taken, the offender has a maximum of three months to pay, with the funds disbursed to the Environment and Sustainable Development Nation Fund. However, this mechanism is not available for offences committed in protected areas, against protected species listed as class "A", in cases of repeat offenders (recidivism), and in case of water pollution (Articles 77 and following, Implementing Decree No. 95/466/PM of 20 July 1995). Compoundment can potentially undermine enforcement efforts and their deterrent effects, as offenders may see them as a way of circumventing the law. Compoundment payments may also not reflect the totality of the harm, and depend on the collection by authorities.

4. WHAT COURTS ARE INVOLVED IN THESE TYPES OF CASES?

Remedies for biodiversity harm may be sought in different types of courts, known as fora, with many countries having separate courts to deal with criminal, civil and administrative issues. The forum usually varies depending on legal systems (civil versus common law legal systems, or even mixed law systems), and is usually determined by domestic legislation and the type of harm that occurred. Several types of fora may also be used in the same country.

In many countries, civil courts have most commonly been used as the forum to request remedies. In some countries, administrative laws determine that government authorities oversee remedies for environmental harm, either requesting that defendants undertake specific remedial actions themselves or compensate the government for having taken remedial actions on their behalf. Some countries also allow criminal courts to add remedial actions to the criminal sentences.

Cameroon

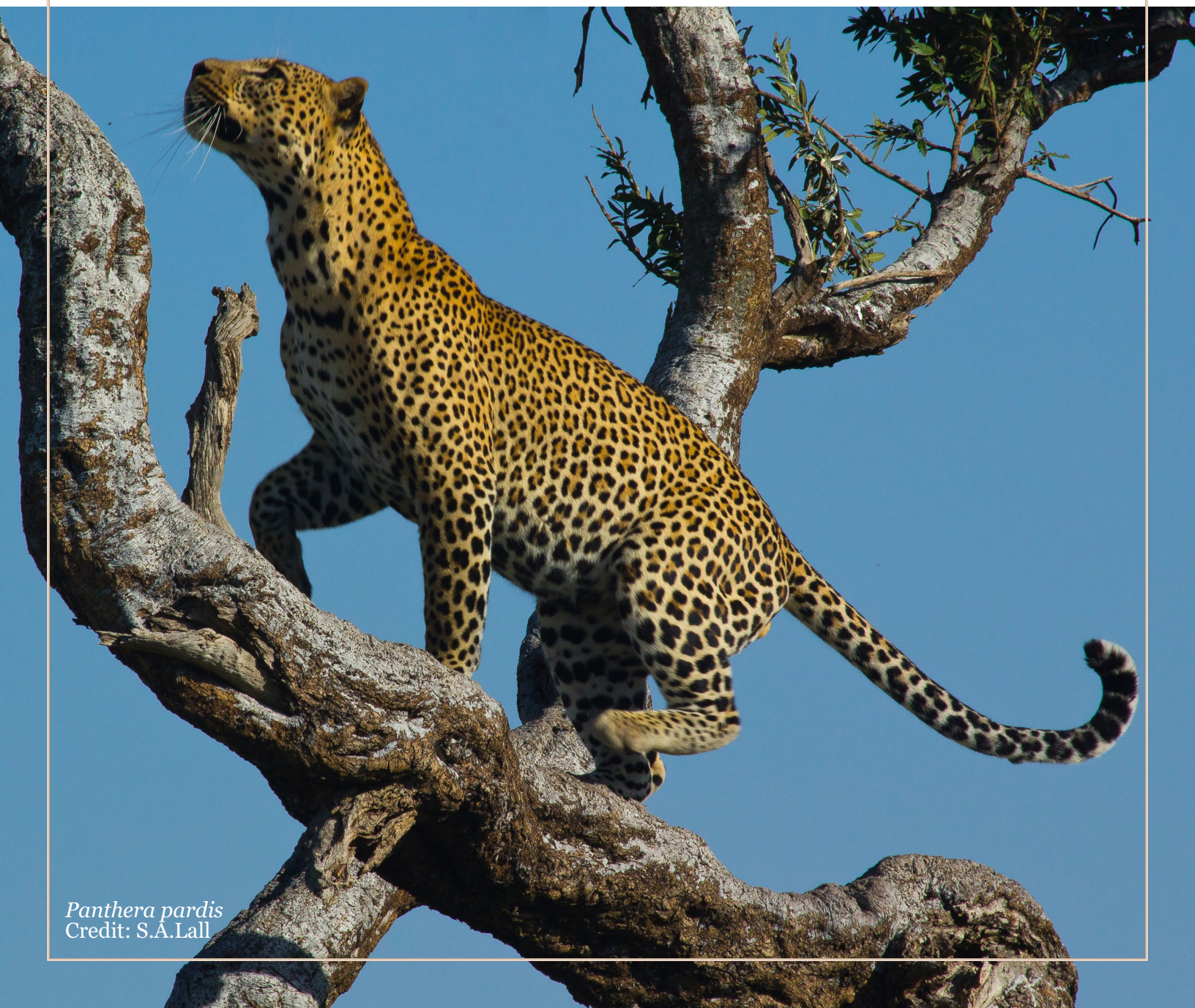
The Ministry of Environment and Nature Protection (MINEP) issued in 2009 an "Environmental Disputes Procedure Guide", which aims to present environmental litigation in a legal, clear, objective and transparent manner. The document briefly describes the actions that the Ministry of the Environment may take when establishing infringements and reports, and the procedures the Ministry should follow before the case is submitted to court.

Cameroon's courts are divided into three main categories: Original Jurisdiction Courts, also known as First Instance or Trial Courts, deal with disputes in the first instance, including civil, criminal and administrative cases. Appellate or High Courts are located in each of Cameroon's ten regions and serve as courts of appeal, with the Supreme Court having jurisdiction over the whole national territory. The third category is Courts with Special Jurisdiction that deal with either specified matters provided for by law or a particular class of persons (e.g., Military Tribunal, the State Security Court or the Court of Impeachment). The country has no specialised environmental courts or green benches. Remedies for biodiversity harm may be sought in Original and Appellate Courts.

Plaintiffs may seek remedies via a civil suit, or through a joint action that integrates their civil claim for remedies into an existing criminal procedure. If a request for compoundment is accepted by the MINFOF in a criminal case, the legal actions referred to the criminal offence are suspended. This does not affect other plaintiff's rights to a civil action. Criminal cases related to biodiversity will be first brought to the First Instance Courts if the imprisonment penalty provided by law is between 10 days and 10 years and the fine is more than CFA 25,000 (approx. US$40) (misdemeanour offence) (Article 21 (1), Criminal Code). This is the case in most biodiversity related offences. Beyond that threshold, the High Court will be a competent forum. For civil matters, the First Instance Court is competent to hear matters where the amount of damages claimed does not exceed CFA 10 million (approx. US$16,000).

Ordinary courts in Cameroon follow a written inquisitorial procedure where parties are allowed to submit their positions, followed by a formal hearing (Articles 37 and following, Law No. 2006/022 of December 29, 2006, Establishing the Organisation and Functioning of Administrative Court). During the inquisitorial phase, either the judge or the parties may request an investigation, and may call witnesses and experts. Judges may also visit the sites in dispute.

In Cameroon, requests for compensation for environmental harm may go hand in hand with the criminal prosecution: the civil claim may be introduced in the same criminal procedure that is dealing with the environmental offence at stake (e.g., Case Example 2). In these cases, the Ministry of Justice (Public Prosecutor) will initiate the criminal procedure and the different plaintiffs (e.g., MINFOF, individuals) may join their civil actions. Alternatively, a judge may direct the civil claims towards a civil court. In these cases, the plaintiff has three months to bring the claim after the court's decision (Article 163, Biodiversity Law).



Panthera pardis
Credit: S.A.Lall

5. WHAT TYPES OF REMEDIES DOES THE LAW ALLOW?

There are three broad types of court orders that grant remedies to environmental harm and are often included in national legislation. Although plaintiffs may wish to claim many different types of remedies, the law usually places some restrictions on this. Notably, different types of plaintiffs can often claim different types of remedies; some are reserved for private individuals and civil society groups, while are may only allowable in cases made by the government acting in the public interest.

Orders of injunction to stop ongoing harm

Plaintiffs may litigate to seek an injunction to require a party to undertake or to refrain from doing a specific act, and may be granted by a court or administrative body. Injunctions are normally issued as interim measures to avoid further environmental harm while the core subject of the matter is being resolved. These instruments are more commonly used in cases that involve development activities that may cause irreparable harm.

Cameroon

Cameroon's laws allow injunctive measures, both upon an applicant's request via the courts, or via administrative agencies that have the rights to order them without the need for a court order.

Injunctive relief ordered by the State: Injunctions can be directly ordered by government administrative agencies in cases where environmental impact assessments are neglected, or the impact assessment procedure is totally or partially disrespected. These can be ordered by environment inspectors and controllers, competent administrative bodies or, if need be, the administration in charge of the environment (Section 20 (2), Environmental Management Law). The emergency procedure consists of authorities immediately characterising the action as an infringement, giving a formal notice to the offender to immediately stop the said infringement, and ensuring the implementation of appropriate protective measures as soon as the infringement is established. These measures are evidenced by a written report from the responsible authority, and does not limit the potential for further penal sanctions.[13]

Injunctive relief ordered by a Court: Injunctions are also legally possible when authorities and business have not allowed affected parties and/or the public to participate in environmental decision-making process, and/or have not taken preventative measures to anticipate and prevent harm, and/or where the affected parties seek to put a stop to actions that endanger or harm their environment (Article 9.e, Environmental Management Law). The Biodiversity Law calls for forest management plans and concession forest contracts to be negotiated with the participation of local authorities and communities. In relation to biodiversity harm, injunctive reliefs may be submitted by affected communities when the holder of a forest concession has disrespected its obligation to engage with them and allow them to participate in the decision-making process. In these cases, the affected parties

can litigate via the courts for the harmful actions to be suspended. Despite the legal possibilities for these types of court requests for injunctions, their implementation is challenging, as public participation rights in Cameroon are more a formality than current practice, including due to corruption.[14]

Orders to correct, update or enforce a policy and continuing mandamus

Judicial orders (or mandamus in common law countries) are sometimes employed as a means of directing government agencies to comply with statutory obligations. For example, judicial reviews can order government agencies to review and update or revise a policy to ensure it complies with statutory requirements. PIL suits can also seek to order the State to implement a law that they failed to operationalise, or to meet a legal commitment that the State was failing to meet. Continuing mandamus are used by courts in common law countries to ensure compliance and enforcement of its directions within a stipulated period of time while the matter remains pending until complete execution.

Cameroon

Requests for judicial review in environmental matters have been submitted at least once in Cameroon with regards to a gas pipeline construction (Case Example 4) using Article 8 of the Environmental Management Law as a legal basis. Unfortunately, in this case, the legal standing of the applicant was dismissed because the organisation was not properly registered. It remains to be tested whether these types of orders may be sought in Cameroon, also in relation to biodiversity matters.

Case Example 4: Formal requirement for an organisation to have standing

(Judgment N°88/ QD / 16 of 26 May 2016, Association Club HSE v. State of Cameroon)

The legal standing of civil society organisations in Cameroon is still being tested in court. The civil society organisation, Association Club Hygiène Sécurité Environnement (HSE), brought an administrative court case seeking the annulment of a certificate of environmental compliance issued by the Ministry of the Environment, Nature Protection and Sustainable Development (MINEPDED). They challenged the MINEPDED's issuance of the certificate for a gas pipeline construction project in Douala by the company Gaz du Cameroun. However, the administrative judge rejected the association's legal standing before the court because it failed to comply with one legal requirement: the association was not registered with the authorities.

Orders to remedy the harm that has already occurred

Once harm has already occurred, legal orders for injunctions or mandamus are often inadequate. There is also a need for those who have caused harm to be held liable for providing remedies. The types of remedies that are allowable vary by country, but can involve a range of financial and non-financial remedies. In some countries, appropriate remedies are described and fixed by law, though it is more common that remedies are decided by courts according to the nature of the offence and the plaintiff's argument.

Remedies are often thought of in terms of financial compensation to individuals, to help correct the injuries experienced because of the environmental harm caused by another party. Indeed, remedies often involve monetary transfers to parties who have suffered an economic loss, such as having their property destroyed or livelihoods affected. In many countries, much of the environment is a public good entrusted to the State, and when it is harmed, the State can claim financial compensation for harm such as lost tax revenue and the lost market value of valuable resources. Remedies can also involve compensation for interim loss, a calculation of the lost monetary value of ecosystem goods and services incurred from the time the harm happened until the time that the harm was remedied.

Courts may also request that liable defendants undertake actions to restore the harm they caused, or to pay for a competent authority to undertake this restoration on their behalf. This may involve actions such as clean-up of pollutants, care for injured flora and fauna, habitat restoration, and actions to protect harmed species. Such remedial actions are often prioritised in legislation: in many countries (e.g., Indonesia, Cambodia, Philippines, Mexico, Brazil, Mozambique, Georgia, European Union) the law states that defendants should first be ordered to restore the harmed environment, and only when restoration is not possible should monetary compensation be claimed.

However, both monetary compensation and restoration actions are often insufficient to make the victim "whole". This is particularly true when harm affects relational values such as sense of place, culture, and wellbeing. These values are not easily remedied using monetary payments, and so this category of remedies covers a wide range of non-financial remedies such as apologies, support for educational measures, and orders for defendants to participate in social work in the community.

Because legislation often does not precisely state how remedies should be determined, this leaves both a lot of discretion, and potentially confusion about how to best approach remedies. There are several different approaches that can potentially be used: Some legal remedies focus on the monetary value of natural resources, whereas others focus more on remedial actions to heal the harm, such as restoration orders and non-financial remedies like public apologies (Fig. 3).

	Approach	Example remedies
Monetary value of the harmed wildlife	Market value	• $100-$2,000 for a pet animal on the black market
	Price lists	• $300 per affected animal
	Natural capital value	• $100(?) for seed dispersal services • $11,000(?) for reduced genetic stock • $8,000(?) for harm to cultural services
Focus on the actions needed to heal the harm caused	**Remedial actions**	• Rescue, care, rehabilitation and reintroduction of the harmed animal (cost: $13,000) • Public apology and explanation of the harm caused by wildlife trade • $5,000 compensation to local community for reduced ecotourism

Figure 3. Overview of four approaches to determining remedies, with an example of wildlife that has been illegally traded.[3]

- **Market value:** This approach equates market sale prices, usually on the black market, to remedies – assuming that the value of biodiversity is only what it can bring in the market. Although familiar, this outdated approach is narrow, incomplete, and does little to remedy harm.

- **Price lists:** Some countries have developed price lists, with a monetary value for each species to be paid by the party who harms it. Although these approaches are simple and familiar, they mistakenly conflate monetary fines with remedies. Paying a fixed amount does not help to remedy harm and may not meaningfully represent values for biodiversity.

- **Natural capital value:** This approach, known as natural capital accounting and total economic valuation, quantifies the amounts and monetary value of the ecosystem goods and services that are harmed in a case (e.g., pollination services, carbon storage). The approach can be thorough and may be possible in some contexts, but there is not enough relevant data available for most species, and the process is very demanding on plaintiffs, defendants, and courts.

- **Remedial actions:** The other main approach involves identifying the actions needed to remedy the harm that occurred in a case. This approach focuses on identifying meaningful remedial actions that respond to each type of harm, and then detailing the processes and budgets needed to undertake those actions. For example, deforestation of 5km^2 of protected forest is likely to harm many ecosystem goods and services such as carbon stock, biodiversity, timber stock, ecotourism, and human wellbeing. However, it is not necessary to quantify and place a monetary value onto each of those goods and services. Instead, it is important to consider what actions are needed to remedy the loss of 5km^2 of forest. These might include:
    - Actions to reduce/stop ongoing harm (e.g., injunctions);

- Actions to remedy harm to nature (e.g., reforestation, animal rehabilitation, clean-up);
- Actions to remedy harm to human wellbeing (e.g., educational programme, apology), and
- Actions to compensate for financial harm (e.g., to income, property, tax).

Identifying which remedial actions are appropriate depends on the scale and types of harm, the identity of the plaintiffs, and local legislation. Scientific experts, who have technical knowledge of the affected site and species, can help to identify appropriate remedies.

Cameroon

Cameroon allows for legal actions to see remedies for harm that has already occurred, including to biodiversity. Yet existing legislation provides no rules or guidance about how to identify remedies or present damage claims to the courts. Plaintiffs have no legal limitation on the type of remedies sought, and are responsible for developing their claim and submitting enough evidence to support the case.

Nevertheless, existing case law demonstrates how remedies are being identified by the MINFOF in practice (e.g., Case Example 1, 2). Notably, the consulted cases only relate to illegal wildlife trade criminal offences since 2014, To date, all remedies have been focused on monetary compensation, and considered three broad categories of harm and remedies (Table 2):

- **Material harm to the State:** Authorities calculated the "material harm" to the State based on the income they would have obtained had these specimens been caught harvested. They calculated the weight and amount of specimens affected by the case, and calculated harm based on the lost fees for the hunting, killing and collection permits, as well as the entry fee to a hunting area. The then estimated the number of days they thought would have been necessary to kill the animals, and used these to calculate a compensation amount. Legislation states these fees for harvesting wildlife (Finance Law 1996, updated Loi n°2022/020 du 27 Decembre 2022 Portant Loi de Finances de la Républiques du Cameroun), as well as for forest products (Article 159, Biodiversity Law, updated Arrêté 038 Minfi du 19 janvier 2023 Portant constatation des valeurs FOB). The Court will take the value of the resources at the time when the offence was committed.
  Ecological harm: Ecological harm was listed as including harm to society and culture. The MINFOF seems to have used a default value to calculate this, based on the ecological importance of the species and number of individuals affected (although the origin of the value is unclear).
  Monetary harm to the State: This includes not only the governments' expenses of undertaking the enforcement and legal action for the case, but also income losses in the tourism sector, and the market value of the specimens.

Table 2: Harm valuation in two civil claims in IWT cases in Cameroon

Categories of harm (as described in the cases)	**Specific elements of harm**	**Case descriptions, amounts for compensation (CFA) and calculation details provided in the case**	
		1st Instance Yaoundé, 2016 (Case Example 1: 18 Ivory products considered equivalent to 1 elephant)	**1st Instance Douala-Bonanjo, 2018** (Case Example 2: 630kg pangolin scales considered equivalent to 210 individuals)
Material harm to the State	Hunting Permit fees	130,000 (approx. US$213)	13,650,000 (approx. US$22,395)
	Killing permit fees	100,000 (approx. US$164)	2,100,000 (approx. US$3,445) (fees x 210 individuals)
	Collection permit fees	130,000 (approx. US$213)	27,300,000 (approx. US$44,791) (fees x210 individuals)
	Fees for hunting in a hunting area	300,000 (approx. US$492) (daily fee x 30 days of effort needed to kill an elephant	90,000 (approx. US$148)
Ecological harm	Ecological harm	1,000,000 (approx. US$1,641) (no calculation details)	2,100,000 (approx. US$3,445) (10,000/individual x 210 individuals)
	Socio-cultural harm	Listed, but included within the calculation for ecological harm (above)	Listed, but included within the calculation for ecological harm (above)
Monetary harm to the State	Harm to tourism	1,095,000 (approx. US$1,797) (entry price to a national park for 1 person during 2 years which is the average time calculated to kill 1 elephant)	1,095,000 (approx. US$1,797) (entry price to a national park to observe pangolins for 1 person during 2 years)
	Market value of species	4,000,000 (approx. US$6,563) (2,000/1 kg of elephant parts x 2,000kg for 1 elephant)	2,310,000 (approx. US$3,790) (200/kg x 1155kg pangolin meat)
	Patrol and operation costs	500,000 (approx. US$820)	500,000 (approx. US$820)
	Legal costs and others	1,000,000 (approx. US$1,641)	1,000,000 (approx. US$1,641)
TOTAL		**8,255,000 (approx. US$13,544)**	**50,955,000 (approx. US$83,601)**

Importantly, there are no specific provisions indicating the destination of the monies collected from this compensation. Cameroon has established several special funds (discussed below), and compensation collected from specific cases is not directly to remedy the harms caused in that specific case, but rather used to fund the protection of the environment.

Judicial discretion: Judges have full discretion to determine the remedies within the limits of what the parties request. In the cases consulted, almost all courts noted that the claims for remedies need to reflect the actual harm caused and present actual expenditure, although the scope of what exactly this constitutes has not been fully explored. However, this is why, in some claims judges have decreased the amount granted. For instance, in relation to operation and legal costs in Case Example 1, judges reduced the amount to CFA 400,000 (approx. US$653) because no evidence was produced. The same happened with other claims such as ecological and cultural harm, market value and harm to tourism.

Execution of remedies

Once a court issues a verdict in a case, it may then play a role in helping to ensure that the remedies it ordered are fully and effectively executed. A court may appoint a commission or special observer to periodically report back to the court on progress. In some jurisdictions, though, oversight may have to be exercised in more innovative ways. Some common law countries refer to this oversight authority as a "writ of continuing mandamus". Civil law countries generally have similar judicial power to ensure court orders are carried out. Other countries consider such authority to be inherent in the judicial power to issue remedial orders. However, in some countries courts lack the authority to monitor implementation of their orders and, if a remedy is not implemented, a new proceeding may have to be commenced.

In some countries, ensuring meaningful execution of remedies often involves the use of a specific environmental fund. This is a fund where compensation may be disbursed, especially in cases where the State was the plaintiff. Money can then be directed towards the ordered remedial actions or, at least, to conservation measures within the same jurisdiction. In countries where these types of funds do not exist, money is usually disbursed in the general budget and there is a risk that the remedies will not be executed.

Cameroon

Cases to date have exclusively considered monetary compensation, and the courts are responsible for ensuring that the established amounts are deposited into the plaintiff's account within due time.

Execution procedure: The Civil Procedure Code establishes a general procedure for the execution of remedies. After the award, remedy amounts should be immediately deposited at the court registry. In the event of non-immediate payment, imprisonment is applied instead of payment (Articles 557 to 569, Criminal Procedure Code). When the damages are not paid at the end of imprisonment, the defendant's property is seized (Article 571(1)b, Criminal Procedure Code). Cameroon's new National Debt Collection Company has been designed to facilitate this process (Box 4).

Distribution of sums awarded: If the State is the beneficiary of the monetary compensation awarded by the judge, the amounts are paid to the public treasury, which has established special environmental funds (Special Forestry Development Fund, Special Fund for the Development and Equipment of Wildlife Conservation and Protection Areas, National Environment and Sustainable Development Fund). Funds are distributed as follows: 25% to the officials who participated in the operation, 40% to the special fund, and 35% to the State Treasury (Article 167.1, Biodiversity Law). Although there are no specific provisions indicating the destination of the specific monies, the wording of the articles establishing the special funds seems to imply that monies collected in compensation for a specific case will not be directly allocated to the remediation of the harms caused, but rather will be used to fund the protection of the environment. For other types of plaintiffs, money will be directed to their bank accounts.

Non execution: In the event of a dispute concerning the enforcement of the decision, the plaintiff may initiate proceedings for its enforcement (Article 3(1), Law 2007/001 of 19 April 2007 establishing the conditions of the execution of judicial decisions in Cameroon).

Box 4: Recovering compensation for environmental harm

Cameroon's National Debt Collection Company was created in 1989, and recently been entrusted with the collection of State revenues, including compensation granted in Court (Decree n°2020/016 of 09 January 2020 establishing the reorganisation and functioning of the National Debt Collection Company of Cameroon). Each Ministry should collaborate with the Company to be able to recover the sums owed to them. Although MINFOF is actively pursuing the recovery of the amounts granted as compensation, it has encountered technical and budgetary difficulties to receive the amounts due.

Big-eyed Frog (*Leptopelis sp.*) in Korup National Park
Credit: Bernard Dupont

6. WHAT ARE THE CHALLENGES AND OPPORTUNITIES IN CAMEROON?

This section synthesises a number of practical considerations that have been presented in this report, drawing on discussions with practitioners in Cameroon.

Challenges

Challenges to exercising citizens' legal standing

Despite the legal right to a fair remedy, non-State plaintiffs face a number of challenges to exercising their rights. These factors help explain why there are not yet civil suits brought by citizens for environmental, and few cases brought by civil society organisations:

- **Financial burdens:** There are many costs involved in bringing a liability suit, including fees of litigators and experts, court fees for every judicial step taken (there are fees for cases at the First Instance, Appeal and Supreme Court levels), costs of issuing judicial documents, and the financial risks of losing a case (e.g., in civil cases the unsuccessful party is ordered to pay the costs.)
- **Procedural requirements:** Potential plaintiffs often lack the logistical capacity to overcome procedural burdens, especially when courts are far away from where the harm took place.
- **Geographic accessibility:** Courts and tribunals tend to be situated in big cities and capitals, whereas many environmental harms happen in remote areas, often of difficult access. Litigators, plaintiffs and witnesses may have to travel long distances just to submit single documents. This creates barriers to justice, as it diminishes communities' access to justice.
- **Fear:** Plaintiffs may feel intimidated by defendants' powers and status, and fear retaliation, threats, violence and Strategic Lawsuits Against Public Participation (SLAPPS).

Courts around the world have reflected on these burdens and offered potential solutions. For example, low-income plaintiffs in the Philippines are exempted from paying court fees. They are also granted free legal counsel, filing fees are reduced and inexpensive procedures are available. In Argentina, the Supreme Court invoked the principles *in dubio pro natura* and *in dubio pro acqua* to prioritise the substance (environmental protection) over the procedural issues in environmental litigation, seeking to reduce the administrative burdens on individual citizens who make judicial requests. Some green courts have the capability of travelling to where the harm occurred, such as in Australia, where the courts travelled to Melville Island to take evidence directly from First Nations peoples affected by an offshore project on which they had not been consulted. There are also a number of efforts to protect environmental activists. That said, it is important that citizens and civil society organisations meaningfully understand the risks associated with legal action in some contexts, and have mitigation measures and the support needed to overcome them.

Challenges to recovering monetary compensation

To date, MINFOF has not successfully recovered the compensation granted to it by the courts. This means MINFOF has limited incentive to act as a repeat plaintiff, as successful verdicts have brought neither remedies nor compensation for their costs in developing a claim. Despite special allocation accounts intended to direct compensation monies to the relevant government agencies, the recovery procedure in Cameroon is long, complex and expensive: MINFOF needs to undertake a number of steps, including efforts to collect the decision from the court, ensure that there has not been an appeal, and pay administrative fees. Moreover, defendants can claim financial insolvency, rendering them unable to pay compensation. Since 2020, the National Recovery Company has been entrusted to recovery monies for State institutions, but the procedure remains slow.

Challenges to the fair use of compoundment

The frequent use of compoundment has raised concerns across Cameroon's legal community that it reduces deterrence and allows offenders buy their way out of prison. Some experts also feel that the amounts requested are too low compared to the environmental harm caused, and that compoundment funds are not systemically recovered. Existing provisions provide some protections from abuse, though these have been insufficient to guarantee their transparent and efficient use.

The development of rules to guide the MINFOF on how and when to grant compoundment in environmental cases would increase legal certainty and transparency. Rules could further create the option for compoundment to extend beyond making payments, and allow offenders to undertake meaningful remedial actions that restore the harm they caused.

Logs from trees cut down in Cameroon
Credt: J. Collomb/World Resources Institute

Opportunities

Opportunity to develop litigation guidance

Cameroon is a global pioneer in using civil litigation to request compensation for biodiversity harm, notably in cases involving illegal wildlife trade: MINFOF has used a structured approach grounded on specific calculations to develop their cases, and the authorities and judges have widely interpreted general liability provisions to accommodate environmental harm.

There is an opportunity to develop new guidance to provide greater structure, clarity and guidance for future cases. Cameroon's laws do not currently provide rules or guidelines about when civil liability is triggered, how to characterise harm, or how to identify appropriate remedies. There is still some uncertainty about how to identify and present these, as reflected in court refusals of some calculations (Case Example 1), and gaps in the articulation of some types of remedies (Table 2). New guidelines could help articulate the breadth of remedies possible, guiding calculations and, in the absence of legal thresholds to determine when civil liability is triggered, help MINFOF prioritise cases for litigation. This could include guidance on characterising the harm to individual specimens of flora and fauna that are injured; on how harm to biodiversity affects species survival, and how harm to and socio-cultural values for biodiversity are represented. These would not only support various civil claims by MINFOF, but would also help guide judicial verdicts, and facilitate civil suits from individuals and civil society plaintiffs.

Opportunity to expand the scope of remedies

Cameroon, like many other countries, narrowly conceptualises harm and remedies in terms of monetary values and compensation (Table 2). Although monetary compensation is often central to remedies, a narrow focus on money overlooks important elements such as harm to biodiversity and human wellbeing. It also restricts the scope of remedies that could be considered. For example, a focus on compensation overlooks the need for on-the-ground remedial actions, such as habitat restoration and species compensation that can be accounted for in litigation. There is also scope for non-monetary actions that can help repair harm in meaningful ways that can also send powerful public signals. For example, remedial actions can also include public apologies and investments into educating the public.

There is an opportunity for future cases and guidelines to be more explicit about the broad scope of what constitutes biodiversity harm. Cameroon's Civil Code establishes a general obligation for those who cause harm to remedy it (Articles 1382, 1383 and 1384) and sets no limits on the type of remedies that are possible. This suggests that there is no legal barrier limiting the scope of future remedies. The MINFOF's approach could be expanded beyond default monetary values, to reflect the on-the-ground, meaningful remedial actions and many types of environmental values – including harm to species survival, many ecosystem goods and services, human relational values, and harm to reputation (Box 5).

Box 5: Illustration of expanded remedies to an illegal wildlife trade case

Legislation in Cameroon does not limit the types of remedies that may be requested. This example is based on a hypothetical case of live chimpanzee trafficking from Ebo Wildlife Reserve, and explores an expanded set of possible remedies (Table 3)

Table 3. Example remedies in chimpanzee trafficking case

Types of remedial actions	Remedies to include in a damage claim
To restore harm to the (live) specimen(s)	▪ Cost of rescue and transport of the chimpanzee ▪ Cost of rehabilitation and maintenance of the animal from the moment of rescue from illegal trade (e.g., current and future costs of enclosure, food, veterinary care costs).
To restore harm to the species and the ecosystem	▪ Contribution towards the cost of additional enforcement patrolling and extra scientific monitoring of chimpanzee populations in Ebo Wildlife Reserve. This would be done over a 10-year period, to help ensure an additional increase in the species population by at least 1 individual, to replace the animal that was removed.
To restore harm to humans, both financial and relational values (i.e., human wellbeing)	▪ Costs of implementing an educational programme in the affected community around the Reserve to highlight harms the defendant caused to the many relational values that humans have for nature. ▪ If the chimpanzee is exhibited to the public while in care (e.g., at a zoo), cost of an information board that explains the history of the case and the remedial actions taken. ▪ Financial compensation to local residents involved in wildlife ecotourism around the Reserve, for the lost income from ecotourism (e.g., percentage of previous years' income) ▪ Public apologies
To restore harm to the State	▪ Costs of undertaking enforcement actions and litigation ▪ Financial compensation for harm to State's obligation to protect the environment and harm to reputation

Opportunity for funds to provide remedies in specific cases

Following a positive verdict where compensation can be collected by the State, the current system directs monies to general funds to support the environment – but not necessarily to remedial actions at the specific sites and species affected in the case, although this has yet to be fully tested in court.

As Cameroon's new environmental funds mature, and monies are more successfully collected via the National Recovery Company, there is scope to begin directing resources towards the specific sites and species affected. Although this more targeted approach is perhaps more challenging to operationalise, it will help to ensure targeted remedies and clear links between specific cases, victims and the ultimate environmental outcomes of the case.

Opportunity to develop an administrative pathway for remedies

In many countries, in addition to civil liability litigation via the courts, there are established administrative processes that can also provide pathways to securing remedies for environmental harm. In these, parties who breach administrative frameworks, such as by abusing a quota or breaching the conditions of a licence, may be directly held liable for providing remedies. Importantly, this obligation to remedy can often be ordered by the responsible government authority, without a court process.

Cameroon has existing legislation that allows authorities to request and monitor parties' environmental obligations to administrative frameworks, such as their commitments within forest concessions or obligations of a hunting licence. These frameworks allow MINFOF to directly impose some penalties such as the licence suspension (Decrees n°95/531 of 23 August 1995 and 95/466 of 20 July 1995). However, the legislation does not state whether offenders are obliged to remedy the harm caused due to any breach of their provisions, and this currently reverts to the criminal and/or civil courts. A legislative revision to the administrative frameworks could introduce an obligation that offenders remedy the harm caused, and would provide the MINFOF to respond to breaches immediately and directly, without the need to initiate a civil case.

Opportunity to use civil liability litigation in strategic cases

To date, civil liability litigations appear to have been used principally in wildlife trade cases against mid-level offenders with limited financial means. These are important cases that have demonstrated the viability of operationalising these legal pathways in Cameroon, but have faced challenges related to fairness and the insolvency of defendants unable to pay for remedies.

There is now an opportunity to expand the scope of how and when this civil liability litigation is used, as part of a strategic litigation agenda. This could serve to tackle both other major drivers of biodiversity loss in Cameroon, and to target high-level actors involved in environmental harm with strategic litigation. The MINFOF and civil society organisations could review how these novel legal approaches align with their objectives to help develop coordinated strategies and pursue legal actions that have the greatest effect.

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