



**LEGAL ASSESSMENT OF THE  
IMPLEMENTATION OF THE CONVENTION ON  
MIGRATORY SPECIES AND THE GORILLA  
AGREEMENT IN CAMEROON AND NIGERIA**

Legal Study - Legal Assessment of the implementation of the Convention on Migratory Species and the Gorilla Agreement in Cameroon and Nigeria

Special Focus: Nigeria-Cameroon Chimpanzee and Cross River Gorillas

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# PART I. EXECUTIVE SUMMARY

## Legal Inquiries

This study is focused on the legal protection of two endangered animal species: the Cross River gorilla (*Gorilla gorilla diehli*) and the Nigerian-Cameroon chimpanzee (*Pan troglodytes ellioti*). The study is based on specific inquiries directed at the national laws and regulations of Cameroon and Nigeria to verify implementation of a selection of the standards set by several CMS instruments (Annexes I, II, III, and IV). In total, the study addresses 23 questions directed at both countries, and additional jurisdiction-specific inquiries (seven for Cameroon and five for Nigeria). Annex V includes the complete list of legal inquiries used for the assessment, referencing the international standards used as the basis of each inquiry.

## National Legislation

Because the inquiries cover an array of aspects from conservation to habitat protection, environmental procedures, and criminalization of illegal activities, responses also required consideration of a wide variety of legislation. Laws and regulations reviewed include those related to wildlife, environment, environmental impact assessment (EIA), forest, mining, implementation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), protected areas, and criminal law. More than 60 laws and regulations from both countries were analysed and used to answer the legal inquiries for each country (Annexes VII and VIII).

All national legislation used for the analysis was gathered online from primary and secondary sources (Annex VI), and some additional documents were obtained thanks to the collaboration of in-country focal points<sup>1</sup> of the Wildlife Conservation Society (WCS). National authorities in charge of drafting, approval and/or publishing of law did not participate in the vetting process of the collection of laws and regulations analysed. This limitation of this study needs to be noted since additional legal documents related to the object of the study might exist that could alter the assessment made, providing for fewer implementation gaps than those presented here.

## Assessment Method

For each legal inquiry, all available legislation was reviewed to determine whether any content addressed the issue, and whether it could be described as fully, partially, or not implemented according to international standards. For both jurisdictions reviewed, detailed reasoning justifies the final assessment and score (Sections IV and V), which included the following options:

- **Fully implemented** was determined when laws or other relevant material reviewed addressed the question explicitly with no discernible gaps and either no need for interpretation, or interpretations were considered minor and unproblematic (e.g., words with common legal or lay understandings and usage).

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<sup>1</sup> Andrew Dunn, Director, WCS Nigeria Country Program and Dr. Robert Fotso, Director, WCS Cameroon Country Program

● **Partially implemented** was determined when laws or other relevant material reviewed addressed at least some significant part of the question presented but there were obvious gaps or interpretation requirements that raised questions concerning the legal foundation for implementation.

● **Not implemented** was determined when there was no foundation in the law or other relevant material addressing the question presented.

The assessment for each country's legal implementation was based on legal documents obtained from primary and secondary online legal sources (Annex VI), as well as information received from WCS in-country focal points, which helped in gathering additional information not available online. The involvement of National Focal Points of CMS and the Gorilla Agreement in Cameroon and Nigeria was requested without success. More than 60 laws and regulations were analysed and used to answer the questions presented (see Annexes VII and VIII for a complete list of legal documents used).

## Legislative Assessment Summary

A summary of the rating results of the assessment for both countries (Table 1) indicated, in brief, that implementation was a concern for most of the questions presented.

Table 1. Assessment results for Cameroon and Nigeria. The table summarizes the results of the assessment for both countries, listing the 23 common questions first, followed by the jurisdiction-specific questions. The second ("Cameroon") and third ("Nigeria") columns indicate the rating as follows: green: full implementation, yellow: partial implementation or progress made towards implementation, red: no implementation, black: no response provided; grey square: the question was not directed at the respective country and thus no response was required.

#	CAMEROON	NIGERIA	IMPLEMENTATION INQUIRY
1	●	●	Is "take" defined in the law as including both killing animals as well as harvesting and/or collecting live specimens?
2	●	●	Is take of Cross River gorilla and Nigeria-Cameroon chimpanzees prohibited in the entire national territory?
3	●	●	What specific exceptions to the prohibition of taking protected species are permitted? Are they consistent with those listed by CMS?
4	●	●	Are exceptions to the prohibition of take of protected species applicable to gorillas or are they excluded?
5	●	●	Are exceptions precise in content and limited in space and time? Are they limited by any factor to ensure they do not operate to the disadvantage of the species?
6	●	●	Have exceptions been communicated to the CMS Secretariat? Is there a mechanism in place to promptly communicate with the CMS Secretariat regarding exceptions to the "take prohibition"?
7	●	●	Are critical habitats for Nigeria-Cameroon chimpanzees being identified? Are they legally protected under conservation objectives?
8	●	●	Are critical habitats for Cross River gorillas being identified? Are they legally protected under conservation objectives?
9	●	●	Do key development related laws require conservation and restoration of habitats?
10	●	●	Does the jurisdiction recognize nationally or internationally listed species in its environmental impact assessment (EIA) procedures?
11	●	●	Does the jurisdiction's EIA legislation require consideration of migratory species, including the impacts of linear infrastructure projects?
12	●	●	Does EIA and other key legislation (e.g., mining law, forestry law) incorporate the concept of mitigation hierarchy?

#	CAMEROON	NIGERIA	IMPLEMENTATION INQUIRY
13	●	●	Does EIA law include or exclude emergency interventions among the activities with mandatory environmental impact assessment requirement?
14	●	●	Does the law require regular studies to determine species status?
15	●	●	Are studies required to identify and describe threats to Cross River gorillas and Nigeria-Cameroon chimpanzees?
16	●	●	What specific legal controls are in place to protect listed species? Does this include protection against zoonotic disease, alien invasive species, wildlife trade?
17	●	●	Does land-use planning consider conflict between humans and gorillas? Are there any specific preventive measures considered in law?
18	●	●	Is the “attempt” to take a protected species also prohibited by law?
19	●	●	Are administrative and criminal penalty types and penalty levels defined for the crime of illegal take of protected species sufficient to deter crime?
20	●	●	Is there differential liability for public official and legal entities involved in the illegal take of protected species?
21	●	●	Does criminal liability for illegal take of protected species extend to accomplices?
22	●	●	Has a transboundary Takamanda-Okwangwo protected area complex been established by law?
23	●	●	Have Cameroon and Nigeria taken any steps to register the transboundary Takamanda-Okwangwo protected area complex as a World Heritage Site?
24		●	Has Nigeria revised the Endangered Species Decree since 2014?
25		●	Is there a new LAGA-type collaboration with an MOU in place between NGOs and the Nigerian Government?
26		●	Have the existing legal boundaries of the Afi Complex been reviewed and extended to include Olum Hills and Kagwagom-Irruan area?
27		●	Have the Mbe Mountains been legally designated and officially gazetted as a community forest or wildlife sanctuary?
28			Has the Cross River National Park (CRNP): Okwangwo Division Management plan been ratified by the National Parks Board?
24	●		Has Cameroon revised the 1994 Forestry and Wildlife Law since 2014 and 2019?
25	●		Is there an inter-ministerial taskforce in place to address poaching and transboundary trade in illegal timber in the Takamanda National Park (TNP)?
26	●		Has Mawambi Hills been protected under any formal designation, also involving local communities?
27	●		Is the Mbulu forest being protected under any formal designation, also involving local communities?
28	●		Has the gazette decree and boundary demarcation of Kagwene Gorilla Sanctuary (KGS) been corrected and implemented?
29	●		Has the proposed Ebo National Park (ENP) been approved and legally gazetted?
30	●		Has a management plan been developed for the Ebo National Park (ENP)?

## Conclusions

1. Legal frameworks in Cameroon and Nigeria cannot be considered fully implementing CMS-related obligations when referred to the protection of the Cross River gorilla and the Cameroon-Nigeria chimpanzee. Among all the inquiries analysed, less than 15 per cent have been fully implemented, raising concerns on the adequacy of current legal frameworks to effectively

provide for the necessary legal protection for those endangered species. With only four inquiries fully implemented each, both Nigeria and Cameroon present similar amounts of legal gaps, although gap areas not always coincide.

2. Gaps identified in relation to the **Convention on Migratory Species** include:
  - Legal definition of “take” for Cameroon and definition of “attempt to take” for Cameroon and Nigeria do not fully reflect the text of CMS Article I.1.i. (**Inquiries #1 and #18**)
  - Protection of critical habitats for species of interest is undertaken. As the obligation has not been clearly interpreted by the Convention, there is room for improving the conservation and restoration standards set out in CMS Article III.4.a (both countries). (**Inquiries #7, #8 and #9**)
  - Environmental Impact Assessment legislation is in place. As the obligation has not been clearly interpreted by the Convention, there is room for improving the prevention, compensation and mitigation standards set in CMS Article III.4.b (both countries). (**Inquiries #10, #11 and #12**)
3. Additional gaps identified in relation to the **CMS Recommendations for Developing and Strengthening National Legislation for Prohibiting the Taking of Appendix I Migratory Animals**<sup>2</sup> include:
  - Penalty types and levels are not considered sufficient to deter crime (**Inquiry #19**), as per standard set in Recommendations 13, 14, 15 and 16 (both countries).
  - Existing gaps in differential criminal liability in both countries for government officials and legal entities are not entirely following Recommendation 17. (**Inquiry #20**)
  - Nigeria presents gaps in making crime accomplices liable and is thus not fully following Recommendation 17. (**Inquiry #21**)
4. Gaps identified in relation to the **Gorilla Agreement** are three, with both countries scoring no implementation. These include:
  - Exceptions to take are legally applicable to gorillas, which is contrary to the standard set in Gorilla Agreement Article III.2.b. (**Inquiry #4**)
  - Emergency interventions related to gorillas are not subject to EIA requirements and thus fail to implement Gorilla Agreement Article III.2.i. (**Inquiry #13**)
  - Human-gorilla conflict is not considered in land use planning legal procedures, as required per Gorilla Agreement Article III.2.j. (**Inquiry #17**)
5. Lastly, gaps identified in the implementation of the **Cross River Gorilla Revised Regional Action Plan**<sup>3</sup> extend to 12 out of 14 activities identified by the plan as related to or requiring the approval of legislation (**Inquiries #22 to #30**). The two areas with full implementation are 1) the effective protection of Mbutu forest in Cameroon and 2) the positive steps taken to register the transboundary Takamanda-Okwangwo protected area complex as a World Heritage Site. All other sites identified as needing formal legal protection remain legally unprotected at this point.
6. Addressing the legal gaps identified would require amending existing legislation in both jurisdictions, as well creating new legislation to provide protection to the critical habitats for the Cross River gorilla and the Nigeria-Cameroon chimpanzee.

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<sup>2</sup> Contained in UNEP/CMS/COP13/Doc.22/Annex 2 Legislative Guidance Materials Relating to Implementation of Article III.5. This document has been *noted* by the Conference of the Parties as per UNEP/CMS/COP13/Report.

<sup>3</sup> Adopted by the Third Meeting of the Parties (MOP3) to the Gorilla Agreement in 2019.

## PART II. INTRODUCTION

### Scope of Work

This desk study focuses on the review of legal documents in the jurisdictions of Cameroon and Nigeria to identify possible gaps in relation to those CMS and Gorilla Agreement obligations relevant to the conservation of the Cross River Gorilla, the Nigeria-Cameroon chimpanzee, and their habitats. The assessment also uses policy, program, and project documents to assess implementation of the Action Plan for the Conservation of the Cross River Gorilla (*Gorilla gorilla diehli*) 2014 – 2019.

The study objectives are:

- Identification of existing legal gaps in Nigeria and Cameroon in relation to CMS and the Gorilla Agreement obligations, particularly those related to the Cross River gorilla and the Nigerian-Cameroon chimpanzee, with emphasis on Articles I, III and IV of the Convention and Article III of the Gorilla Agreement.
- Assessment of implementation progress in Nigeria of the 2014-2019 Regional Plan for Conservation for the Cross River gorilla, developed by the International Union for Conservation of Nature (IUCN) and adopted by the Third Meeting of the Parties to the Gorilla Agreement (MOP3).

### Background

Cameroon was one of the 15 original Parties of the Convention on Migratory Species, signing the Agreement in 1983. Nigeria joined five years later in 1987, becoming the Convention's 22<sup>nd</sup> Party. Additionally, Nigeria and Cameroon are also both Range States of the Gorilla Agreement, the only CMS species instruments of interest for this study, although only Nigeria has ratified it so far. Under that agreement, two action plans have been approved (2007 and 2014-2019) to enhance conservation of the Cross River gorilla.

During the Twelfth Meeting of the Conference of the Parties to CMS (COP12, Manila, 2017), the Parties agreed that it was necessary to verify implementation of the Convention in national legislation. To do this, the CMS Conference of the Parties established a National Legislation Programme to support strengthening the implementation of the Convention through national legislation and support Parties, if needed, in developing or improving relevant national legislation. CMS Article III, paragraphs 4(a) and (b) and 5 were included in the Programme. As requested by COP12, tools were developed, including assessment guidelines, a model law, national inventories, and questionnaires to assist the review and support Parties in implementing their obligations. While these were not adopted by the COP13 as part of a Resolution, Parties took note of these, as provided in the COP13 Meeting Report.<sup>4</sup>

To date, a total of 50 Parties have presented their completed questionnaires and submitted the required information to assess the status of their national legislation and identify gaps against Convention obligations. Neither Cameroon nor Nigeria are among these countries and their implementation status of the Convention was unknown prior to this study. Also unknown was the

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<sup>4</sup> See <https://www.cms.int/en/document/report-13th-meeting-conference-parties-cms>

implementation status of Nigeria (and Cameroon as a possible future Party) regarding the Gorilla Agreement.

## Species of Interest



Cross River gorilla (*G.g. diehli*) © Julia Langford

The **Cross River gorilla** (*G.g. diehli*) is the least abundant great ape of the African continent and is currently classified as “Critically Endangered” on the IUCN Red List of Threatened Species.<sup>5</sup> It gets its name from its habitat on the upper drainage of the Cross River on the Nigeria-Cameroon border. An estimated area of 700 km<sup>2</sup>, extending 30-40 km on either side of the border, is used by an estimated 218-309 mature gorillas.<sup>6</sup> This small population is in decline, severely fragmented into 11 subgroups or subpopulations (maximum number of individuals in the largest subgroup is 30) and potentially at risk from inbreeding and loss of genetic diversity.<sup>7</sup> Approximately two-thirds of the entire Cross River gorilla population are found in Cameroon.

Cross River gorillas are found mostly in remote forest areas of high relief. This distribution appears to be directly related to greater levels of human activity, rather than a result of ecological factors, since the potential landscape for habitat could be more than 12,000 km<sup>2</sup>. Threats affecting Cross

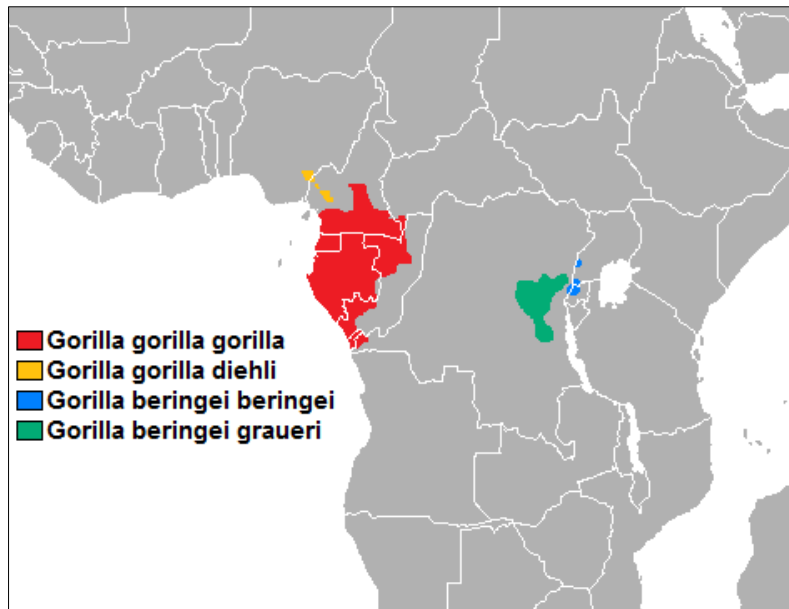
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<sup>5</sup> Bergl, R.A., Dunn, A., Fowler, A., Imong, I., Ndeloh, D., Nicholas, A. & Oates, J.F. 2016. *Gorilla gorilla* ssp. *diehli* (errata version published 2016). *The IUCN Red List of Threatened Species* 2016: e.T39998A102326240. <https://dx.doi.org/10.2305/IUCN.UK.2016-2.RLTS.T39998A17989492.en>. Downloaded on 15 July 2021

<sup>6</sup> Dunn, A. et al. 2014. Revised Regional Action Plan for the Conservation of the Cross River Gorilla (*Gorilla gorilla diehli*): 2014–2019. IUCN/SSC Primate Specialist Group and Wildlife Conservation Society, New York, NY, USA.

<sup>7</sup> Id 5.

River gorilla include: i) loss, fragmentation, and degradation of habitat due to humans' shifting to grazing and commercial agriculture, ii) construction and improvement of roads outside protected areas, iii) poaching for wild meat, and iv) human–wildlife conflict.



Distribution map of different gorilla Cross River gorilla (*G.g. diehli*) © Fobos92

The **Nigeria-Cameroon chimpanzee**<sup>8</sup> (*Pan troglodytes ellioti*) is the least abundant of all Chimpanzee subspecies. With an estimated population size of between 3,500–9,000 individuals,<sup>9</sup> it is classified by the IUCN as “Endangered” based on criteria that include decreasing population due to human activity, decreasing quality and extent of habitat, and illegal hunting. This subspecies’ population is declining and experiencing pressure from severe habitat fragmentation due to farming, logging, fire, and the spread of commercial plantations. Poaching for the wild meat trade and to provide traditional medicines is also a serious threat over most of the subspecies’ range.

The range of the Nigeria-Cameroon chimpanzee extends from Cameroon, West of the Sanaga River, to Nigeria. Within its larger range, the Nigeria-Cameroon chimpanzee is most seriously threatened in two subregions: South-West Nigeria and North-West Cameroon. In each of these subregions, overlapping with Cross River Gorilla habitat, the total chimpanzee population consists of fewer than 250 individuals.

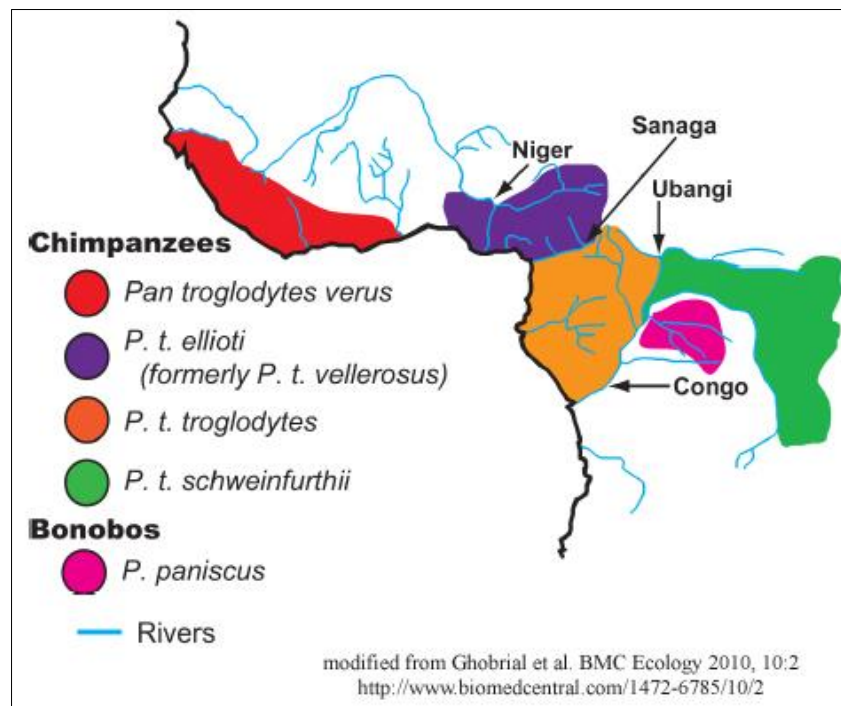
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<sup>8</sup> Oates, J.F., Doumbe, O., Dunn, A., Gonder, M.K., Ikemeh, R., Imong, I., Morgan, B.J., Ogunjemite, B. & Sommer, V. 2016. *Pan troglodytes* ssp. *ellioti*. The IUCN Red List of Threatened Species 2016: e.T40014A17990330. <https://dx.doi.org/10.2305/IUCN.UK.2016-2.RLTS.T40014A17990330.en>. Downloaded on 16 July 2021.

<sup>9</sup> Morgan, B.J. et al. 2011. Regional Action Plan for the Conservation of the Nigeria-Cameroon Chimpanzee (*Pan troglodytes ellioti*). IUCN/SSC Primate Specialist Group and Zoological Society of San Diego, CA, USA



Nigeria-Cameroon chimpanzee (*Pan troglodytes ellioti*) © WCS Nigeria



Distribution map of different chimpanzee species including the Nigerian-Cameroon chimpanzee (*Pan troglodytes ellioti*) © Tengwood Organization

## Priority Landscapes

### Cross-River Gorilla

Ten sites were identified as key areas of action for Cross River gorilla conservation (Table 2). Seven of those sites are in North-West Cameroon and three are located in southern Nigeria. All Nigerian sites are protected, while four of the seven sites in Cameroon do not have formal protection status at the time of this assessment,<sup>10</sup> which is especially concerning since two-thirds of the entire population are found in Cameroon.

Table 2. Priority Landscapes for Cross River Gorilla Conservation

#	Landscape	Status	Jurisdiction
1	Takamanda National Park	National Park/Transboundary	Cameroon
2	Mawambi Hills	Unprotected forest	Cameroon
3	Mone River Forest Reserve	Unprotected forest	Cameroon
4	Mbulu Forest	Unprotected forest	Cameroon
5	Kagwene Gorilla Sanctuary	Wildlife Sanctuary	Cameroon
6	Tofala Hills	Unprotected forest	Cameroon
7	Ebo Forest	Unprotected forest	Cameroon
8	Afi Mountain Wildlife Sanctuary	Wildlife Sanctuary	Nigeria
9	Mbe Mountains	Community Reserve	Nigeria
10	Cross River National Park, Okwangwo Division	National Park/Transboundary	Nigeria

Source: Revised Regional Action Plan for the Conservation of the Cross River Gorilla (*Gorilla gorilla diehli*) 2014-2019

### Nigeria-Cameroon Chimpanzee

For the Nigeria-Cameroon chimpanzee, a total of 25 priority conservation sites were identified in 2011, including 15 sites listed as “exceptional” priority and 10 sites classified as “important” priority.<sup>11</sup> The majority of the sites (14) are in Cameroon, while the remaining 11 are situated in Nigeria (Table 3).<sup>12</sup>

Table 3. Priority Landscapes for Nigeria-Cameroon Chimpanzee Conservation

#	Landscape	Status	Priority Level	Jurisdiction
1	Mount Cameroon Cluster		Exceptional	Cameroon
2	Takamanda Complex		Exceptional	Cameroon
3	Banyang Mbo Wildlife Sanctuary	Wildlife Sanctuary	Exceptional	Cameroon
4	Korup National Park	National Park	Exceptional	Cameroon
5	Mone-Oko Complex		Exceptional	Cameroon

<sup>10</sup> June 2019

<sup>11</sup> Morgan, B.J. et al. 2011. Regional Action Plan for the Conservation of the Nigeria-Cameroon Chimpanzee (*Pan troglodytes ellioti*). IUCN/SSC Primate Specialist Group and Zoological Society of San Diego, CA, USA

<sup>12</sup> Id. 7

6	Lebialem Complex		Exceptional	Cameroon
7	Kom-Wum Forest Reserve		Exceptional	Cameroon
8	Proposed Ebo National Park	National Park	Exceptional	Cameroon
9	Mbam & Djerem National Park	National Park	Exceptional	Cameroon
10	Bakossi National Park	National Park	Important	Cameroon
11	Ako-Mbembe Forest Reserve		Important	Cameroon
12	Fungom Forest Reserve		Important	Cameroon
13	Tubah-Awing Forest		Important	Cameroon
14	FMU-004		Important	Cameroon
15	Okomu Forest Reserve & National Park	National Park	Exceptional	Nigeria
16	Idanre Forest Cluster	Forest Reserves (5)	Exceptional	Nigeria
17	Omo Forest Cluster	Unprotected forest	Exceptional	Nigeria
18	Edumanom Forest Niger Delta	Unprotected forest	Exceptional	Nigeria
19	Oban Division, CRNP	National Park	Exceptional	Nigeria
20	Gashaka-Gumti National Park	National Park	Exceptional	Nigeria
21	Ise Forest Reserve	Unprotected forest	Important	Nigeria
22	Okwangwo Division, CRNP	National Park	Important	Nigeria
23	Afi Complex	Forest Reserve / Wildlife Sanctuary	Important	Nigeria
24	Mbe Mountains	Community Reserve	Important	Nigeria
25	Southern Taraba		Important	Nigeria

Source: 2011 Regional Action Plan for the Conservation of the Nigeria-Cameroon Chimpanzee (*Pan troglodytes ellioti*)

## International Obligations

### Convention on the Conservation of Migratory Species of Wild Animals (CMS)

The Convention on the Conservation of Migratory Species of Wild Animals (also “CMS”, “Convention on Migratory Species” or the “Bonn Convention”) is an environmental treaty of the United Nations that provides a global platform for the conservation and sustainable use of migratory species and their habitats. As of 1 January 2021, the Convention has 132 Parties.

In force since 1983, CMS brings together countries through which migratory species pass (the Range States) and lays the legal foundation for internationally coordinated conservation measures throughout a migratory range. CMS lists 657 taxa in two Appendices. Migratory species assessed as being in danger of extinction throughout all or a significant portion of their range are included on Appendix I of the Convention.<sup>13</sup> For Appendix-I listed species, the Convention calls for strict protection, conserving or restoring the places where they live, mitigating obstacles to migration, and controlling other factors that might endanger them. Appendix II covers migratory species that have an unfavorable conservation status and that require international agreements for their conservation and management. Species can be listed on either or both Appendices.

As for the species of interest for this study, the Cross River gorilla was included in Appendix I in 1979 as a member of the gorilla species and later, in 2005, listed independently as a sub-species. Concerning the Nigeria-Cameroon chimpanzee, the entire species of chimpanzees including their

<sup>13</sup> The Conference of the Parties has further interpreted the term “endangered” as meaning “facing a very high risk of extinction in the wild in the near future” (Res. 11.33 paragraph 1).

subspecies has been listed in both Appendix I and Appendix II since 2017. The sub-species are not listed independently.

### Agreement on the Conservation of Gorillas and Their Habitats

The Agreement on the Conservation of Gorillas and Their Habitats ('Gorilla Agreement'), in force since 2007, is one of the species instruments developed under the Convention on Migratory Species. The Gorilla Agreement provides a framework for the conservation of gorillas and their habitats and for the integration and collaboration of conservation actions among the ten Range States (Angola, Cameroon, Central African Republic, Congo Republic, Democratic Republic of the Congo, Equatorial Guinea, Gabon, Nigeria, Rwanda, and Uganda). In its Article VIII, the agreement establishes an Action Plan as the collaboration instrument. The Action Plan specifies the actions that the Parties shall undertake in relation to all species and sub-species of gorillas, as well as the priority issues to address (Article VIII paragraph 1). Parties are required to review these at each of their meetings (Article III paragraph 2). In practice, the Parties to the Gorilla Agreement adopted four IUCN Action Plans for the conservation of the different gorilla species at their first meeting (MOP1).

### Revised Regional Action Plan for the Conservation of the Cross River Gorilla 2014–2019

The Revised Regional Action Plan for the Conservation of the Cross River Gorilla 2014–2019<sup>14</sup> is the current action plan for Cross River gorillas adopted under the Gorilla Agreement. It is the result of technical discussions held in 2012 involving more than 40 experts, including representatives of forestry and wildlife conservation agencies from Cameroon and Nigeria, local and international conservation and development organizations, and university-based researchers. The action plan reviews and updates the prior and first 2007-2012 action plan for the conservation of the Cross River gorillas. It outlines a set of recommendations that are considered a priority for the survival of the species and estimates that approximately USD 10 mio. must be invested to implement all recommendations. The most recent revised plan was presented and adopted at the Third Meeting of the Parties to the Gorilla Agreement (MOP3, June 2019).

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<sup>14</sup> Dunn, A. et al. 2014. Revised Regional Action Plan for the Conservation of the Cross River Gorilla (*Gorilla gorilla diehli*): 2014–2019. IUCN/SSC Primate Specialist Group and Wildlife Conservation Society, New York, NY, USA.

## PART III. INTERNATIONAL STANDARDS

### Summary of International Legal Instruments

The assessment was based on a selection of obligations contained in two multilateral agreements: the Convention on Migratory Species and the Agreement on the Conservation of Gorillas and their Habitats. The selection of obligations was done based on their most direct relevance to the conservation of Cross River gorillas and Nigeria-Cameroon chimpanzees. Selected obligations were treated as international standards or legal benchmarks for assessment purposes. Other CMS tools were also considered when creating the set of standards for assessing Cameroon's and Nigeria's obligations (Table 4).

Table 4. International legal instruments applicable to the conservation of Cross River gorillas and Nigeria-Cameroon chimpanzees.

International Legal Instruments	Type of Instrument
Convention on the Conservation of Migratory Species of Wild Animals	Multilateral Agreement
Agreement on the Conservation of Gorillas and Their Habitats	Multilateral Agreement
Legislative Guidance Materials relating to implementation of Article III.5 of CMS	Legislative Guidance Material
2014–2019 Regional Action Plan for The Conservation of the Cross River Gorilla	Regional Action Plan

#### Convention on Migratory Species

Articles I, III and IV of the Convention provide the foundation for species conservation and are the ones relevant to this study (see Annex I for their literal text). Article I on Interpretation lists key terms and their legal definition, including the definition of “taking”. Articles III and IV contain the specific obligations related to the conservation of taxa listed in Appendices I and II.

#### Agreement on the Conservation of Gorillas and Their Habitats

Article III of the Gorilla Agreement is of most interest for this study, as it specifies the agreed conservation measures for gorillas.

Article III includes 17 conservation measures (see Annex III for their literal text), and this study selected the four measures whose implementation would necessarily leave a footprint in national laws and regulations. Implementation of the remaining 13 measures would mainly occur through plans, programs and projects by the government and its different agencies and are not included here.

### Legislative Guidance Materials relating to implementation of Article III.5 of CMS<sup>15</sup>

In 2017, CMS COP12 adopted Resolution 12.9 Establishment of a Review Mechanism and a National Legislation Programme. The National Legislation Programme is a process that encourages Parties to submit information to the Secretariat regarding their legislation and other domestic measures relating to implementation of Article III, paragraphs 4(a) and (b) and 5 and supports the development of national capacities to strengthen domestic legislation.

To assist Parties in the development of national legislation for prohibiting the taking of Appendix I-listed migratory species, the Secretariat presented Legislative Guidance Materials and a Model Law relating to the implementation of Article III.5 of the Convention at the 13<sup>th</sup> Meeting of the Conference of the Parties to CMS (COP13). CMS COP13, Document 22 provided 18 legal recommendations to Parties. Among them are 11 recommendations considered relevant to this study (see Annex II for their literal text), including five directly related to the prohibition of take (recommendations #6 to #10) and six on the design of penalties for the offense of illegal take (recommendations #12 to #17).

### Revised Regional Action Plan for the Conservation of the Cross River Gorilla 2014–2019

The action plan contains two types of priority actions for the conservation of Cross River gorillas. The first type includes regional non-site-specific actions grouped in thematic areas, including research, community participation, education and awareness, law and enforcement, capacity development, transboundary planning, health monitoring and disease prevention, ecotourism development, and landscape connectivity. The second type of priority action includes specific measures for each of the 10 identified habitat sites for Cross River gorillas (three located within Nigeria and seven within Cameroon). In total, the plan lists 93 actions, divided into 36 non-site-specific actions and 49 site-specific actions. Out of the 93 actions, this study selected as standards for the implementation analysis 13 that are of a legal nature, i.e., that require Parties to engage in the approval or amendment of laws or regulatory instruments (see Annex IV for their literal text).

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<sup>15</sup> UNEP/CMS/COP13/Doc.22/Annex 2. This document has been *noted* by the Conference of the Parties as per UNEP/CMS/COP13/Report.

## PART IV. CAMEROON IMPLEMENTATION ASSESSMENT

### Summary

Assessment for Cameroon's legal implementation was based also on primary and secondary online legal sources (see Annex VI), and the collaboration of WCS Cameroon, to obtain additional information not available online. No national authorities, including the CMS Cameroon focal point, have participated so far in providing legal documents or discussing results. In total, 35 laws and regulations from Cameroon, along with other policy, plans and programs documents were analyzed during this study (see Annex VII).

In summary, out of the 30 legal inquiries listed for Cameroon, only four are considered fully implemented, while 16 show partial implementation, and the remaining 10 have not been implemented (Table 5).

Table 5. Cameroon's summary implementation with selected legal obligations related to migratory species

	Implementation Level			Total
	Full	Partial	None	
Legal Inquiries	4	16	10	30
Legal Inquiries (%)	13%	54%	33%	100%

### Note on Interpretations

Virtually all legal assessments face the challenge of having to interpret certain terms and phrases. It is a rare law indeed that defines all terms or contains sentences so aptly written that no questions concerning the meaning of terms are ever raised. This assessment is no exception. This study is, however, aware that the judicial realities in Cameroon mean that undefined terms will not only suffer from the usual uncertainties, but once decided, their recognition by the lower courts may not be as consistent as is would be in a country with a single form of jurisprudence.

Cameroon is one of the few jurisdictions in the world with a formal bijural system (i.e., two legally recognized systems of jurisprudence),<sup>16</sup> and judicial interpretations are not equally recognized or applied in the subnational jurisdictions. English Common Law operates in the two Anglophone regions of the North-West and South-West, whereas French Civil Law operates in the eight francophone regions, including Adamaoua, Centre, East, Far North, Littoral, North, West, and South. Simplifying for purposes of this assessment, in the common law jurisdictions, judges routinely interpret law, and their rulings have precedential value (i.e., *stare decisis*). In the civil law

<sup>16</sup> For reference, Canada is another, as is Louisiana in the US, although not as pronounced.

jurisdictions, however, judicial decisions do not constitute precedent, other than those issued by the Supreme Court and, in Cameroon's case, only in certain circumstances.<sup>17</sup>

Despite the differing systems and attendant concerns, there are instances where interpretations are considered unproblematic, e.g., when a term has a common understanding and is likely to receive the same treatment regardless of the judicial system where the case resides. The text points out all instances where an interpretation was deemed necessary.

## Implementation Inquiries

### 1 Is "take" defined in the law as including both killing animals as well as harvesting and/or collecting live specimens?

**Partial Implementation.** The term "take" per se is not used or defined in the Forestry, Wildlife and Fisheries Law (where context allows herein, Wildlife Law). However, the term hunting (*fr. acte de chasse*) is defined and it includes both killing, as well as the "capture" (*fr. capturer*) of live specimens.<sup>18</sup> The English translation of the French official definition of hunting is:

*"Any action aimed at:*

- pursuing, killing or capturing a wild animal or guiding expeditions for that purpose;
- photographing and filming wild animals for commercial purposes

*shall be considered as an act of hunting."*<sup>19</sup>

Whether the concepts of "harvesting" and "collecting" are also covered by the term "capture" requires some interpretation. The French term "capturer" is not defined but it has effectively the same meaning and use as it does in English; defined as taking into one's possession or control by force.<sup>20</sup> This is suggestive of taking a live, wild animal and to that extent may be sufficient to meet the basic CMS requirements. However, it is not the same as using the term "collect" or "harvest", as these often have greater meaning and application in wildlife legislation. Their use is typically intended to regulate practices connected with smaller species, eggs, insects, i.e., objects that do not move or require force to bring them into one's possession.

To the extent the regulation of these other areas of wildlife use is intended by the CMS requirement, Cameroon's law falls short. The term "collecting" is used in Cameroon's law but only in reference to hides and skins and those in possession of hides and skins are presumed to be the ones that hunted the animals.<sup>21</sup> As such, the term is used more closely in relation to hunting than other practices.

A separate provision in the legal framework is directed at eggs, and understanding its application first requires reference to how species are listed for protection purposes. The Wildlife Law divides species residing within Cameroon's national territory into three classes - A, B, and C.<sup>22</sup> The Animal Classes Order defines them as follows:

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<sup>17</sup> For a fuller discussion of this issue see, Fombad, C. (2009). Researching Cameroonian Law. GlobalLex.

<sup>18</sup> Forestry, Wildlife & Fisheries Law, Sec. 85.

<sup>19</sup> Ibid.

<sup>20</sup> In French, "S'emparer (prendre violemment possession de quelque chose) d'un animal à la chasse ou à la pêche".

<sup>21</sup> Forestry, Wildlife and Fisheries Law, Sec. 85.

<sup>22</sup> Forestry, Wildlife & Fisheries Law, Sec. 78(1).

- Class A species are defined as “rare species or species threatened with extinction”,<sup>23</sup> and further includes those listed in CITES Annex I and those listed by the IUCN as Critically Endangered, Endangered, Threatened and Vulnerable.<sup>24</sup> As listed in the Animal Classes Order, Class A includes 31 mammals, 61 birds, 15 reptiles, and one amphibian.<sup>25</sup>
- Class B species “comprises species that benefit from partial protection, and which can only be hunted, captured or killed by obtaining a wildlife exploitation title or licence”.<sup>26</sup> This list also includes “species listed in CITES Annex II with the exception of those already recognized in Class A at the national level and those of species listed by IUCN as Near Threatened to Least Concern”.<sup>27</sup> Class B includes 20 mammals, 89 birds, and 44 reptiles.<sup>28</sup>
- Class C species includes all other species for which “capture and killing are regulated in order to maintain the dynamics of their populations”.<sup>29</sup> It also includes CITES Annex III, with the exception of those already recognized in classes A or B at the national level, and those listed by IUCN as Least Concern.<sup>30</sup>

Class A species are “totally protected” and hunting is prohibited in the entirety of the country.<sup>31</sup> For eggs, the Animal Classes Order extends the Class A prohibition on take to “the eggs of birds of class A and B”.<sup>32</sup> The Order is silent on the collection of eggs of Class C birds. There are also no provisions in the Wildlife Law or other legal instrument in the framework addressing this or related practices, e.g., trapping, live traps, live capture, etc.

While “capture” may be sufficient to cover the acts of harvesting and collecting, it would likely require an interpretation, which, as mentioned, carries with it special considerations in Cameroon’s judicial system.

## 2 Is take for Cross River gorilla and Nigeria-Cameroon chimpanzees prohibited in the entire national territory?

**Full Implementation.** Gorillas (*Gorilla gorilla*) and Chimpanzees (*Pan troglodytes*) are both listed in Class A of the Wildlife Law.<sup>33</sup>

Subspecies are not mentioned and there is no legislative instruction concerning the listing format, e.g., that species include all subspecies. The typical interpretation, however, is that the listing of a higher taxonomic level (e.g., genus) includes all lower levels (e.g., species and subspecies), unless otherwise expressly excluded. This assessment therefore assumes that all subspecies of gorilla and chimpanzee present in Cameroon are included by the listing at the species level.

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<sup>23</sup> Animal Classes Order, Sec. 2(1).

<sup>24</sup> Ibid at Sec. 6.

<sup>25</sup> Ibid at. Sec 3.

<sup>26</sup> Ibid at Sec. 3, Lists I, II and III.

<sup>27</sup> Ibid at Sec. 6.

<sup>28</sup> Ibid at Sec. 4, Lists I, II and III.

<sup>29</sup> Ibid at Sec. 5(2).

<sup>30</sup> Order NO. 0648/MINFOF of 18 December 2006 to set the list of animals of classes A, B and C, Sec. 2(1).

<sup>31</sup> Ibid.

<sup>32</sup> Animal Classes Order, Sec. 5.

<sup>33</sup> Id. at Art. 2

3 What specific exceptions to the prohibition of taking protected species are permitted? Are they consistent with those listed by CMS?

**Partial Implementation.** Legally defined exceptions to the prohibition on “hunting” (for example, for species in Class A) include:

- 1) the ministry’s authority to cull dangerous animals,<sup>34</sup>
- 2) a citizen’s right to defense of self and property,<sup>35</sup> and
- 3) the right to capture and possess a wild animal subject to authorization.<sup>36</sup>

Capture and possession are allowed “for management purposes or within the framework of scientific research”.<sup>37</sup>

**Exceptions for defense of self and property**

The exceptions for defense of self and property appear to comply with the CMS exception of “extraordinary circumstances”.<sup>38</sup> Although the CMS does not offer an interpretation of what extraordinary circumstances are, defense of self and property are commonly understood as such, and almost universally present exceptions in national hunting laws.

Cameroon’s law may open the door to unintended uses of a species, however, as it allows individuals to obtain a permit for defense of self in advance,<sup>39</sup> when this is usually predicated on an immediate need, which would foreclose the ability to obtain a permit. This is not the case for defense of property, where coordination with the wildlife authority is common, as a landowners or livestock owners undertake efforts to remove (i.e., take, capture and relocate) an animal that is causing demonstrable damage to property.

**Exceptions for management and scientific purposes**

It is less clear whether the exceptions for management purposes and for scientific purposes similarly qualify. CMS Article III.5 allows taking “for the purpose of enhancing the propagation or survival of the affected species”. The purposes listed in Cameroon’s legislation are not as narrowly worded. The law does not define either term and neither of them is limited to enhancing propagation and survival. Indeed, chimpanzees are a well-known target for scientific study entirely unrelated to the health of the species or its survival; a use that is a concern as the need to understand zoonotic disease emergence increases.<sup>40</sup>

4 Are exceptions to the prohibition of take of protected species applicable to gorillas or are they excluded?

**No Implementation.** This response reflects the understanding that, pursuant to the Art. III of the Gorilla Agreement, gorillas should be excluded from the exceptions, creating an absolute bar to their take.

Stated in the negative, nothing in the laws or regulations reviewed indicates that the allowed exceptions exclude gorillas. In other words, the current interpretation is that gorillas may be hunted or taken from the wild based on the exceptions allowed by Sections. 72, 82, and 83 and further stated in the Wild Animal Class Order.

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<sup>34</sup> Forestry, Wildlife & Fisheries Law, Sec. 82.

<sup>35</sup> Forestry, Wildlife & Fisheries Law, Sec. 83.

<sup>36</sup> Animal Classes Order, Art. 2(1).

<sup>37</sup> Id. at Section 2(2).

<sup>38</sup> CMS, Art. 4(a)(ii).

<sup>39</sup> Animal Classes Order, Sec. 2(1).

<sup>40</sup> Wingard, J. et. al. 2021. Wildlife, Pandemics, and the Law: Fighting This Year’s Virus with Last Year’s Law. Legal Atlas.

Weighing in favor of this interpretation are a few key provisions in the Animal Classes Order and Wildlife Law. These include:

- Animal Classes Order, Sec. 2(2) – states the listed exception specifically in reference to the list of species that includes chimpanzees and gorillas.
- Wildlife Law Sec. 98 – provides for the keeping and traffic in live protected animals pursuant to certificate of origin and, if traded internationally, an export permit.
- Wildlife Law Sec. 101 – allows for the collection of the hides and skins of Class A and B species for commercial purposes.

According to local sources, the requirement to secure a special permit from the ministry effectively prevents the taking of either gorillas or chimpanzees under any of the exceptions listed.<sup>41</sup> However, there does not appear to be a specific ministry order that would confirm this. It may be that under current practices, the take of these species under any of the exceptions is not being granted. Nonetheless, in the absence of a full legal basis, the potential for take to occur under the exceptions listed in the preceding response (Question 3) remains a legal reality.

It may be that subsidiary legislation clarifies this response, which remains open for further review.

**5 Are exceptions precise in content and limited in space and time? Are they limited by any factor to ensure they do not operate to the disadvantage of the species?**

**Partial Implementation.** Some of the exceptions identified (e.g., the right to defense of self) seem precise enough in content and have additional limitations the combination of which likely bring them into at least partial implementation of CMS requirements. Cameroon's law falls short of full implementation as none of the exceptions lists conditions or factors that would ensure these rights are not used in a manner that would disadvantage the species.

**Right to Defense of Self and Property.** In the case of the citizen's right to defense of self and property, the exception is limited by placing the burden of proof on the individual claiming the right and further requiring them to present evidence supporting their claim within 72 hours of the incident.<sup>42</sup> A fine of CFA 50,000 to 200,000 (USD 90 to 360) or imprisonment from twenty days to two months or both applies for failure to provide adequate proof.<sup>43</sup> However, this appears to apply to instances where the right has been exercised based on an immediate need. It is not clear what limitations and conditions apply to individuals who obtain a permit in advance, which appears to be permitted by the Animal Classes Order.<sup>44</sup>

**Power to Remove Dangerous Animals.** For the removal of dangerous animals, the exception is limited to the service in charge of wildlife under conditions laid down by order of the minister in charge of wildlife.<sup>45</sup> However, none of the legislation available for review clarifies what conditions apply to the exercise of this authority. Further, it is concerning that the trophies resulting from such are to be sold "by public auction or by mutual agreement in the absence of a bidder" with the proceeds paid to the Treasury.<sup>46</sup> Experience with these types of provisions in other jurisdictions indicates that they create both a motive and opportunity for expanded use and, in some cases, corruption and abuse.

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<sup>41</sup> Personal comm with Dr. Fotso, WCS Cameroon Country Program.

<sup>42</sup> Id. at Sec. 83(2).

<sup>43</sup> Id. at Sec. 155.

<sup>44</sup> Animal Classes Order, Sec. 2(2).

<sup>45</sup> Wildlife Law, Sec. 82.

<sup>46</sup> Id. at Sec. 84.

6 Have exceptions been communicated to the CMS Secretariat? Is there a mechanism in place to promptly communicate with the CMS Secretariat regarding exceptions to the “take prohibition”?

**No Implementation.** In its most recent national report to CMS in 2019, Cameroon stated that no exceptions applied to the prohibition of take. Based on the preceding responses to Questions 3, 4, and 5, this review does not concur with this statement.

There is no information concerning a specific mechanism to communicate exceptions to CMS other than the focal point and the standard reports relied on in this review.

7 Are critical habitats for chimpanzees being identified? Are they legally protected under conservation objectives?

**Partial Implementation.** Habitat is being recognized and brought under formal protection, although the legal foundations requiring such recognition are still lacking.

As presented in the section on “Priority Landscapes”, several areas constituting critical habitat for the Nigeria-Cameroon chimpanzee have been identified in the Regional Action Plan for the Conservation of the Nigeria-Cameroon Chimpanzee (*Pan troglodytes ellioti*). The plan was developed in 2011 as a multi-stakeholder effort under the leadership of the IUCN SCC Primate Specialist Group and the Zoological Society of San Diego, California.

The plan lists 14 critical habitats for the Nigeria-Cameroon chimpanzee in Cameroon, nine (9) of which are listed as “exceptional priority” and the remaining five (5) as “important priority”. The plan recognized that identification was based on available knowledge and data in 2011 and suggested a review in 2016 to adjust priorities based on new understanding on conservation needs. This study has not been able to determine whether such a study ever took place.

As a function of legal requirements, “habitat”, itself is not defined by Cameroon’s laws but is nonetheless mentioned as a general concept under the conservation objectives stated in the overarching legislation.<sup>47</sup> Pursuant to the Environmental Framework Law, the preservation of wildlife habitats generally (i.e., without definition or reference to a particular species or class of species) is of national interest and it is the affirmative duty of the government and citizenry to protect such.<sup>48</sup> By itself, this type of aspirational statement alone does not easily rise to the level of an enforceable mandate in law, in particular as the term here lacks a definition to support its implementation. To ensure sustainable uses, however, the law further requires:

- an inventory of existing species, in particular those threatened with extinction;
- species management and habitat preservation plans;
- the creation and management of nature reserves and national parks.<sup>49</sup>

Chimpanzees are listed in Class A, which includes species threatened with extinction,<sup>50</sup> and therefore should be the object of wildlife inventories. There is, however, no definition of the content of the inventory, no use of the term “critical habitat” in the law, and, as such, no definition or concomitant requirement that critical habitat be identified and protected. Local sources are unaware of any instrument defining or requiring the protection of critical habitat.<sup>51</sup>

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<sup>47</sup> Framework Law on the Management of the Environment

<sup>48</sup> Framework Law on the Management of the Environment, Art. 62.

<sup>49</sup> Id. at Art. 64

<sup>50</sup> Animal Classes Order, Sec. 2.

<sup>51</sup> Personal comm with Dr. Fotso, WCS Cameroon Country Program.

As a legal and practical matter, Cameroon's Wildlife Law establishes seven categories (a-g) of State Forests, which are set aside to protect wildlife and therefore have the potential to protect critical habitat. These include:

- a. national parks,
- b. game reserves,
- c. hunting areas,
- d. game ranches belonging to the State,
- e. wildlife sanctuaries,
- f. buffer zones, and
- g. zoological gardens belonging to the State.<sup>52</sup>

Individual State Forests, regardless of the category, must be established by a statutory instrument that identifies its location and category,<sup>53</sup> and considers "the land use plan of the ecological area in question".<sup>54</sup> At present, Cameroon has a total of 54 terrestrial protected areas (Table 6), covering a land area of 51,538 km<sup>2</sup>, equivalent to 10.98% of its territory. Of the available protected area types, national parks are the most common (27 of 54, or 50%).<sup>55</sup>

Table 6. Number of Terrestrial Protected Areas by type

No.	Designation Type	#
1	International Designations	12
2	National Parks	27
3	Strict Nature Reserves	2
4	Wildlife Sanctuaries	6
5	Flora Sanctuaries	1
6	Wildlife Reserves	6
<b>Total</b>		<b>54</b>

Of the 14 sites identified for Cameroon's Nigerian-Cameroon chimpanzee habitat, five 5 of them overlap with formally established protected areas overlap. As listed and numbered in Table 3, these include:

3	Banyang Mbo Wildlife Sanctuary	Wildlife Sanctuary	Exceptional	Cameroon
4	Korup National Park	National Park	Exceptional	Cameroon
8	Proposed Ebo National Park	National Park	Exceptional	Cameroon
9	Mbam & Djerem National Park	National Park	Exceptional	Cameroon
10	Bakossi National Park	National Park	Important	Cameroon

However, there is no specific legal requirement that this overlap occur. The majority of the identified habitat areas (nine out of 14) have no formal protection, and a cursory review of

<sup>52</sup> Forestry, Wildlife and Fisheries Law, Sec. 24.

<sup>53</sup> Id. at Sec. 25(2).

<sup>54</sup> Id. at Sec. 25(3).

<sup>55</sup> Decree No. 155/2002 of June 18, 2002

research maps indicates that majority of the habitat remains outside protected areas.<sup>56</sup> Although there is supposed to be some consideration of "land use plan of the ecological area", the instrument establishing the protected area makes no mention of this or its intended purposes, e.g., the protection of chimpanzee habitat.<sup>57</sup> Pursuant to the Wildlife Regulation, there is supposed to be a Decree that establishes which species will benefit from the protected area. No instrument of this type was available for review.

Looking at the current implementation of protected areas suggests that critical habitat is not only not fully protected but is also actively under threat. The example of the now-suspended logging concession in the Ebo Forest is only one example. There are numerous reports pointing to the loss of critical habitat for all great apes in the region, but a summary of these was beyond the scope of this report.

## 8 Are critical habitats for Cross River gorillas being identified? Are they legally protected under conservation objectives?

**Partial Implementation.** The same overarching analysis in response to Question 7 applies to the identification and protection of critical habitat for Cross River gorillas in Cameroon. Like with the Nigeria-Cameroon chimpanzees, a majority of the identified habitat areas listed in Table 2 remain unprotected. Of the seven sites listed for Cameroon, only two fall under formal protection, including:

1	Takamanda National Park	National Park/Transboundary	Cameroon
5	Kagwene Gorilla Sanctuary	Wildlife Sanctuary	Cameroon

The legal instruments for the Takamanda National Park and the Kagwene Gorilla Sanctuary Decree comply with the legal requirements of identifying the boundaries and the category of State Forest. However, neither offer evidence of the extent to which the area is considered critical habitat, nor is there a legal requirement to identify and protect gorilla habitat, per se.

## 9 Do key development related laws require conservation and restoration of habitats?

**Partial Implementation** This is a mixed question with varying responses. In sum, conservation is a generally recognized concept but not necessarily an enforceable legal requirement. Restoration is also mentioned but only in the context of the Mining Law does it rise to a specific requirement. In the Forest Law it remains a power that may be exercised but not an obligation.

### Mining Law

The Mining law has a few provisions directed at conservation and restoration of damages caused. These are generally worded requirements that do not mention habitats specifically but are likely sufficient to be compliant. In particular, the law defines Mining Activity and Quarry Activity as including mining site restoration.<sup>58</sup> Mining agreements must include a section covering restoration operations.<sup>59</sup> Rehabilitation is defined as the "sustainable restoration of former mining sites to conditions of security, rural productivity, and physical appearance close to their original state".<sup>60</sup> Each mine operator is responsible for restoring and rehabilitating its mining and quarry sites.<sup>61</sup> Finally, the law also establishes the Mining Site and Quarry

<sup>56</sup> Ibid.

<sup>57</sup> See for example, the Tofala Hill Wildlife Sanctuary Decree.

<sup>58</sup> Mining Law, Art. 4.

<sup>59</sup> Id. at Arts. 4 and 44.

<sup>60</sup> Id. at Art. 4.

<sup>61</sup> Id. at Art. 136.

Restoration, Rehabilitation and Closure Fund intended to finance the 'programme to conserve and rehabilitate the environment damaged by the execution of mining projects.'<sup>62</sup>

### **Forestry, Wildlife and Fisheries Law**

This law allows for, but does not require, the declaration of certain lands as 1) "out of bounds", 2) an "ecologically fragile area", 3) a protected State Forest, 4) a full nature reserve, or 5) a wildlife sanctuary.<sup>63</sup> Clearing and exploitation are prohibited in such forests, but this prohibition may be limited to only a part of the declared area.<sup>64</sup> There is otherwise no specific requirement to restore habitats.

The Forestry, Wildlife and Fisheries Law also creates an offset requirement for any State Forest that is declassified, requiring that an equivalent area of the same forest category in the same ecological zone be created before any area is declassified.<sup>65</sup>

### **Environmental Impact Assessment Laws**

The Environmental Impact Study Decree references the requirement to eliminate or compensate for environmental damages caused by development activities.<sup>66</sup> It contains no further details outlining what this elimination or compensation might entail, and no statement concerning the conservation or restoration of habitats.

## **10 Does the jurisdiction recognize nationally or internationally listed species in its environmental impact assessment (EIA) procedures?**

**Partial Implementation.** Species listed by CITES and the IUCN are automatically recognized as belonging to Cameroon's national list of protected species. Specifically, Section 6 of the Animal Classes Order automatically incorporates these species as follows:

- Class A species include those listed in CITES Annex I and those listed by the IUCN as Critically Endangered, Endangered, Threatened and Vulnerable.
- Class B species include CITES Annex II with the exception of those already recognized in Class A at the national level and those of species listed by IUCN as Near Threatened to Least Concern;
- Class C species includes CITES Annex III, except for those already recognized in classes A or B at the national level, and those listed by IUCN as Least Concern.<sup>67</sup>

Their recognition by EIA procedures is less straightforward. Chapter 2 of the Framework Law on the Management of the Environment is brief, containing three articles that establish some of the basic requirements for the conduct of impact studies.<sup>68</sup> The law delegates the delineation of which types of projects must comply and how studies will be conducted to a separate regulation, specifically to Decree No. 0001/MINEPDED. In addition, there are two more primary regulations and more than 70 internal procedures in place.

While there is no express consideration of internationally listed species within these, consideration of the "environment" is required, and this may be sufficient. The term is defined broadly as the:

*"set of natural or artificial elements and the biogeochemical balances in which they participate, as well as economic, social and cultural factors that promote the existence,*

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<sup>62</sup> Id. at Arts. 232 and 235.

<sup>63</sup> Forest, Wildlife, and Fisheries Law, Sec. 17(1).

<sup>64</sup> Id. at Sec. 17(2).

<sup>65</sup> Id. at Sec. 28.

<sup>66</sup> Environmental Impact Study Regulation, Art. 12

<sup>67</sup> Animal Classes Order, Sec. 6.

<sup>68</sup> Framework Law on the Management of the Environment, Art. 19(1).

*transformation and development of the environment, living organisms and human activities*".<sup>69</sup>

Wildlife (using the term "fauna"), however, is only mentioned under a separate definition of "ecosystems" found in the Ministry of Environment's Administrative Procedures Manual. Indeed, neither wildlife (e.g., wild fauna, captive bred, domesticated, foreign, migratory), nor ecosystems are terms used in the EIA section of the Framework Law on Management of the Environment, or in the implementing regulation specific to environmental and social impact studies. A rapid review of the more than 70 applicable procedures similarly did not confirm consideration of wildlife, or, more specifically, internationally listed wildlife.

This does not mean that wildlife is excluded, as the term "environment" is nonetheless broadly defined, and it would not be unreasonable to argue that the term "natural elements" includes wildlife. This of course would require an interpretation and the concerns mentioned in the introduction to this assessment apply. It should also be noted that it may be equally valid to argue that wildlife are not "natural elements" and that wildlife are therefore excluded. The law is silent on this issue and no case law was reviewed that provides a basis for arguing one way or the other.

For the sake of continuing the favorable argument, however, to the extent internationally listed wildlife is automatically treated as Class A, B, or C species in Cameroon's national listing,<sup>70</sup> then species listed by CITES and the IUCN should be considered in the context of an impact assessment. This same reasoning, however, would not automatically apply to all CMS listed migratory species (unless they are already covered by CITES or IUCN), as automatic listing under this treaty is not recognized in the Animal Classes Order.

**11 Does the jurisdiction's EIA legislation require consideration of migratory species, including the impacts of linear infrastructure projects?**

**Partial Implementation.** The extent to which the EIA law recognizes migratory species is a function of its definition of the term "environment" and the degree to which the Animal Classes Order automatically recognize internationally listed species (see response to question 10 for a discussion of this topic).

**Consideration of Migratory Species.** Neither the Law on Environmental Management nor the EIA Regulation include an express requirement to consider CMS listed species. However, that does not mean that they are necessarily excluded; only that there is no specific mandate for their inclusion.

The EIA legislation contains wording that is may be sufficient to make consideration possible. The EIA Regulation requires Summary Impact studies to describe the environment and the impacts of the project on the environment.<sup>71</sup> Going a step further, Detailed Impact studies must "describe and analyse the physical, biological, socio-economic and human environment".<sup>72</sup> Other study types (Strategic and Notices) have analogous wording.<sup>73</sup> As noted in the response to Question 10, the term "environment" is defined broadly enough to include consideration of wildlife generally, and therefore migratory species by extension. In other words, to the extent all forms of EIA must consider the environment, they must consider the wildlife that are some of the "natural elements" of those "ecosystems".

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<sup>69</sup> Manuel de Procédures Administratives du Ministère de l'Environnement, de la Protection de la Nature et du Développement Durable

<sup>70</sup> Pursuant to Sec. 6 of the Animal Class Order.

<sup>71</sup> Environmental and Social Impact Study Regulation, Art. 9

<sup>72</sup> Id.

<sup>73</sup> Id.

Creating a potential regulatory gap, however, is the lack of any specific requirement to consider the specific needs of migratory species and the fact that CMS listed migratory species are not automatically included in Cameroon's protected species Classes A, B, or C.

**Consideration of Linear Infrastructure.** The EIA regulations do not specifically regulate linear infrastructure as a separate category, although several linear infrastructure project types are listed,<sup>74</sup> including:

#### Pipelines and Irrigation

- construction of pipelines, aqueducts and other installations intended to regulate or transport water, at a flow rate greater than 25,000 m<sup>3</sup> per day;
- construction of pipeline for the transport of dangerous substances (oil, gas and others);
- surface water irrigated agriculture projects with a pumping capacity greater than 100 m<sup>3</sup> per day;

#### Roads

- construction or rehabilitation of roads in urban areas;
- construction or rehabilitation of roads in urban areas of more than one billion [sic] or a linear [sic] of more than 10 kilometres;
- rehabilitation of asphalt roads in the event of a change in route in places [sic];
- construction or rehabilitation of roads in a department by the same promoter;
- construction of asphalt roads and highways;
- construction of a large engineering structure (bridge or viaduct with a span greater than 100 m);
- construction or rehabilitation of airports with airstrips longer than 2,100 m;

#### Waterways

- waterway development project including dredging of more than 5 km;

#### Railways

- construction and extension of railway lines;

#### Powerlines

- construction of high voltage lines;

The only linear infrastructure types missing from this list are fencing<sup>75</sup> and upgrades to powerlines, railways, asphalt roads, and highways. Fencing may be included under more general categories, such as agricultural production and livestock.

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<sup>74</sup> Decree No. 0001/MINEPDED

<sup>75</sup> Wingard, J. P. Zahler, R. Victurine, O Bayasgalan, B. Buuveibaatar. 2014. Guidelines on Mitigating the Impact of Linear Infrastructure and Related Disturbance on Mammals in Central Asia. 11th Meeting of the Conference of the Parties Quito, Ecuador, 4-9 November 2014, Agenda Item 23.3.2.

## 12 Does EIA and other key legislation (e.g., mining law, forestry law) incorporate the concept of mitigation hierarchy?

**Partial Implementation.** In its EIA-related legislation, Cameroon makes mention of all 4 major principals that comprise the mitigation hierarchy. Its framework nonetheless only partially implements this requirement, as it lacks regulatory details that would implement and support the application of the mitigation hierarchy.

For all EIA notices, Cameroon requires a statement of “the measures planned to avoid, reduce, eliminate or compensate for the damaging effects of the project on the environment”. This is a strong starting point, but a closer look at each of the principals indicates critical gaps that likely compromise Cameroon’s ability to implement. Each concept is assessed as follows:

**Avoidance of impacts** – Generally recognized as the most important element of the mitigation hierarchy, avoidance provides an effective means of managing biodiversity impacts, particularly for large-scale development.<sup>76</sup> Two approaches are considered key in this regard – 1) early and wide-ranging consideration of impacts is required for effective avoidance measures, and 2) Strategic Environmental Assessments (SEAs).<sup>77</sup> Cameroon includes SEAs in its requirements but has limited or ill-defined consideration of impacts.<sup>78</sup>

**Minimising and Remediating Impacts.** Measures to minimize, rehabilitate and restore impacts constitute the next level of the mitigation hierarchy. Beyond recognition of the primary requirement to mitigate harm, this principle benefits from additional regulatory tools, including monitoring throughout a project’s lifecycle, the power to require amendments, suspend or terminate, community participation, and rigorous assessment standards.<sup>79</sup>

Cameroon requires community consultations.<sup>80</sup> It also requires a description of mitigation measures, but only for two of its three types of EIA (Summary, Detailed, but not the Strategic).<sup>81</sup> In the list of requirements for the SEA study, there is no reference to minimizing or remediating impacts, only a description of alternatives. The EIA Regulation has an entire section dedicated to the administration’s authority and powers to monitor. There is, however, no ability to suspend or terminate projects to secure the performance of mitigation measures.<sup>82</sup> Finally, there are no explicit assessment standards and, in the case of silence on the part of the administration, it appears that projects may move forward essentially in the absence of any reviewable assessment, at least for one part of the process.<sup>83</sup> What happens when there is silence concerning final approval is unclear.

**Offsets.** Offsets are an important but controversial tool often criticized as a means for legitimizing unsuitable development. Whether properly or improperly used, assessing the severity, extent and duration of residual impacts is a necessary first step to implementing offsets.<sup>84</sup> The absence of detailed assessment requirements for Cameroon suggests that residual impacts may be largely overlooked. Offsets should also only be used as a last resort. Cameroon has no legal requirement to this effect.

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<sup>76</sup> Evans, T, J. Wingard, and T. Humle. (2021) The mitigation hierarchy in environmental impact assessment and related legislation as a tool for species conservation: A case study of western chimpanzees and mining development. *Biological Conservation*, Volume 261, 2021, 109237, ISSN 0006-3207, <https://doi.org/10.1016/j.biocon.2021.109237>.

<sup>77</sup> Id.

<sup>78</sup> Environmental Impact Study Regulation, Arts. 2 and 4.

<sup>79</sup> Evans, T, et. al. 2021.

<sup>80</sup> Environmental Impact Study Regulation, Arts. 20 and 21.

<sup>81</sup> Id. at Arts 9 and 10.

<sup>82</sup> Id. at Chapter IV, Arts. 27-29.

<sup>83</sup> Id. at Art. 24(2)

<sup>84</sup> Evans, T. et. al. 2021.

13 Does the EIA law include or exclude emergency interventions among the activities with mandatory environmental impact assessment requirements?

**No Implementation.** None of the EIA-related legislation makes mention of emergency interventions as part of its mandatory environmental impact assessment requirements.<sup>85</sup>

14 Does the law require regular studies to determine species status?

**Partial Implementation.** Studies are required but no periodicity is established that legally requires them to be conducted “regularly”.

Pursuant to the Environmental Framework Law, the preservation of wildlife habitats generally (i.e., without reference to any particular species or class of species) is of national interest and it is the affirmative duty of the government and citizenry to protect such habitats.<sup>86</sup> To this end and to ensure sustainable uses, the law further requires an inventory of existing species, in particular those threatened with extinction.<sup>87</sup>

Chimpanzees are listed in Class A and therefore should be the object of wildlife inventories. The Wildlife Regulation further requires the updating of the classification of listed species every five years.<sup>88</sup> There is, however, no expression of a time frame either in this law or in the primary Wildlife Law concerning the periodicity of wildlife studies.

15 Are studies required to identify and describe threats to Cross River gorillas and Nigeria-Cameroon chimpanzees?

**No Implementation.** In addition to the inventories<sup>89</sup> described in response to question 14, the wildlife authority is also charged with creating Management Plans. Neither instrument is fully defined in the law.

16 What specific legal controls are in place to protect listed species? Does this include protection against zoonotic disease, alien invasive species, wildlife trade?

**Partial Implementation.** Listed species are primarily protected by the prohibition on hunting and conditions placed on the exceptions. Supporting protections come in several forms, among them:

- The establishment of protected areas and the requirement that “any project, particularly industrial, mining and agro-stylo-pastoral [sic] likely to affect the conservation of a protected area must be accompanied by an environmental impact survey”.<sup>90</sup>
- Wildlife management plans for the sustainable use of one or several given wildlife resources.<sup>91</sup>
- The creation of “integral ecological reserves”, areas whose various resources are given full protection and where human activities of all kinds are strictly prohibited.<sup>92</sup>

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<sup>85</sup> See Articles 9-12 of the Environmental and Social Impact Study Regulation.

<sup>86</sup> Framework Law on the Management of the Environment, Art. 62.

<sup>87</sup> Id. at Art. 64

<sup>88</sup> Wildlife Regulation, Sec. 14.

<sup>89</sup> Framework Law on the Management of the Environment, Art. 64

<sup>90</sup> Decree No. 95-466-PM of 20 July 1995 to Lay down the Conditions for the Implementation of Wildlife Regulations, Sec. 2(1)

<sup>91</sup> Id at Sec. 2(2).

<sup>92</sup> Id.

- The power of the ministry to prohibit or regulate any hunting methods that endanger the conservation of certain animals.<sup>93</sup>
- The prohibition of traditional hunting, otherwise permitted in the entire country, in protected areas established for wildlife.<sup>94</sup>

That said, the hides and skins of certain Class A and B species may be traded commercially.<sup>95</sup> The list of species affected by was not available for review in this assessment. Both chimpanzees and gorillas are included in the list of Class A species and therefore potentially implicated.

Beyond this, no provisions in the laws reviewed created a clear basis for protecting against or preventing the emergence of zoonotic disease or the impacts of alien invasive species.

**17 Does land-use planning consider conflict between humans and gorillas? Are there any specific preventive measures considered in law?**

**No Implementation.** No provisions in the laws reviewed provided a clear basis for the consideration of human-gorilla conflicts or for their prevention.

**18 Is the “attempt” to take a protected species also prohibited by law?**

**No Implementation.** The Forestry, Wildlife and Fisheries Law makes no mention of liability for attempted violations.

The Criminal Code criminalizes attempts,<sup>96</sup> just as it holds other common forms of criminal actor liable (e.g., conspirators,<sup>97</sup> co-offenders,<sup>98</sup> accessories<sup>99</sup>). However, none of the crimes it contains are related to the violations of the Forestry, Wildlife and Fisheries Law and none are directed at the illegal taking of wildlife.

**19 Are administrative and criminal penalty types and penalty levels defined for the crime of illegal take of protected species sufficient to deter crime?**

**Partial Implementation.** Fines and penalties for violation of the Wildlife Law range from CFA 50,000 to 10,000,000 (USD 90 to 18,000). Most of the violations listed in the law range from CFA 50,000 to 200,000 (USD 90 to 360). The lower end of the fines clearly bears no relation to the market values and therefore probably has little if any deterrence value. The higher end fines may be adequate as they are clearly greater than the local values paid to poachers and domestic traders.

The first major issue is that, while there are five violation types that expressly mention protected species, none of them penalize take or trade, per se. Instead, they penalize keeping and trafficking **without a certificate of origin** (Table 5, lines 6 and 7), collecting hides and skins of Class A and B animals **for commercial purposes**, and taking **in a closed season** or **closed area** (Table 7, no. 14 and 15). While it may seem technical, it is critical to remember that the crimes as stated are limited by the emphasized qualifying terms. For example, it is not generally a crime to take a species, only to take one in a closed season or area. Criminals become expert at exploiting small gaps, and even small arguments available to defence

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<sup>93</sup> Forestry, Wildlife and Fisheries Law, Sec. 81.

<sup>94</sup> Id. at Sec. 86.

<sup>95</sup> Id. at Sec. 101.

<sup>96</sup> Criminal Code, Sec. 94.

<sup>97</sup> Id. at Sec. 95.

<sup>98</sup> Id. at Sec. 96.

<sup>99</sup> Id. at Sec. 97.

counsel can delay proceedings, open the door to corruption, and provide an avenue for appeals, however frivolous they may seem.

The second issue is that the fines for keeping, trafficking, and collecting skins are only CFA 50,000 to 200,000 (USD 90 to 360), while fines for take range from CFA 3,000,000 to 10,000,000 (USD 5,400 to 18,000). The fine levels for the first three crime types (keeping, trafficking, and collecting) are small in relation to the estimated beginning and end market values for selling protected species like gorillas. According to one report, the retail value of the estimated 14 infant gorillas that are sold on the market annually is between USD 546,000 and 2,100,000, suggesting an individual price of USD 39,000 and 150,000.<sup>100</sup> It is unlikely that the fine levels act as a deterrent when the market is this lucrative.

Table 7. Fines and penalties for violation of wildlife related provisions the Forestry, Wildlife and Fisheries Law.

No.	Violation	Fine (CFA)		Prison term (months)	
		Min	Max	Min	Max
1	Absence of proof of self-defense <sup>101</sup>	50,000	200,000	0.66	2.0
2	Violation of hunting permit or license (Sec. 87)	50,000	200,000	0.66	2.0
3	Violation of firearms requirements (Sec. 90)	50,000	200,000	0.66	2.0
4	Failure to pay required fees (Sec. 91)	50,000	200,000	0.66	2.0
5	Violation of professional hunter requirements (Sec. 93)	50,000	200,000	0.66	2.0
6	Keeping of protected species without a certificate of origin (Sec. 98)	50,000	200,000	0.66	2.0
7	Trafficking (domestic) of protected species without a certificate of origin (Sec. 98)	50,000	200,000	0.66	2.0
8	Capture of wild animals without a permit (Sec. 99)	50,000	200,000	0.66	2.0
9	Collecting hides and skins of Class A and B animals for commercial purposes without a permit (Sec. 101)	50,000	200,000	0.66	2.0
10	Breeding wild animals without a permit (Sec. 103)	50,000	200,000	0.66	2.0
11	Hunting without a license or permit	50,000	200,000	0.66	2.0
12	Exceeding quota	50,000	200,000	0.66	2.0
13	Falsification or forgery of any document issued by the wildlife services <sup>102</sup>	3,000,000	10,000,000	12	36
14	Killing or capture of protected animals in closed seasons	3,000,000	10,000,000	12	36
15	Killing or capture of protected animals in closed areas	3,000,000	10,000,000	12	36

In addition to the foregoing, the law allows for confiscations, restrictions, the award of damages and restoration of property.<sup>103</sup> However, none of the administrative penalties (e.g., bar on

<sup>100</sup> Clough, Christine, and Channing May. *Illicit Financial Flows and the Illegal Trade in Great Apes*. Washington, DC: Global Financial Integrity, 2018.

<sup>101</sup> *Id.* at Sec. 155.

<sup>102</sup> *Id.* at Sec. 158.

<sup>103</sup> *Id.* at Sec. 162.

serving on the Chamber of Commerce or Chamber of Agriculture) applicable to forestry and fisheries crimes are applied to wildlife crimes.<sup>104</sup>

## 20 Is there differential liability for public official and legal entities involved in the illegal take of protected species?

**Partial Implementation.** The existence of differential liability is clearly stated in the Criminal Code but not in the Wildlife Law. The primary question is whether the Criminal Code's provisions apply to the violations and penalties stated in the Wildlife Law.

**For Legal Entities.** Legal entities are mentioned in the Wildlife Law and may be held liable for the same violations as persons.<sup>105</sup> However, there are no fines or penalties for these violations different from those applied to persons, and none of the specialized forms or levels of liability applicable to legal entities listed in the Criminal Code have been restated or cross-referenced.

There are nonetheless a few provisions that, depending on the interaction of the Wildlife Law and Criminal Codes, add components of differential liability for legal entities.

One provision is in the Wildlife Law, which appears to make legal entities liable for acts committed by employees. The wording is difficult to interpret, preventing a conclusive analysis. In particular, the law states that:

*"[t]he liability of those granted exploitation rights or any authorized agent acting for the administration shall, as the case may be, be absolute **where the offenders are its employees, representatives, and sub-contractors**".*<sup>106</sup>

This is a form of vicarious criminal liability, but it is limited in this provision only to instances where the entity ("those") in question has already been granted exploitation rights, i.e., liability would attach only if existing rights have been exceeded, not in instances where no rights have been granted and the operation is entirely illegal. The use of the term "those" makes its sole (and therefore differential) application to legal entities uncertain, as, theoretically, it might apply to individuals as well.

The other provisions that may apply, and that would add significant components of differential liability, are provided in the Criminal Code. Specifically, they define what fines and penalties apply to corporate bodies (i.e., legal entities).

Fine levels allowable under the Criminal Code applicable to legal entities are:

- a maximum of five times the fine applicable to natural persons
- payment of a fine in lieu of a prison sentence of CFA 1,000,000 to 500,000,000 (USD 1,800 to 900,074)

In addition, there are three penalty types – principal, accessory, and preventive.

Principal penalties for legal entities come in three forms:

- dissolution,
- temporary or final closure, and
- fines.<sup>107</sup>

There are five types of "accessory penalties" directed at legal entities. These are:

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<sup>104</sup> Id. at Sec. 164.

<sup>105</sup> Id. at Secs. 154-160.

<sup>106</sup> Forestry, Wildlife and Fisheries Law, Sec. 152.

<sup>107</sup> Criminal Code, Sec. 18(b)

- a ban on the direct or indirect exercise of any or all of its activities
- placement under judicial supervision
- closure of establishments or branches having served in the commission of offenses
- publication or media broadcast of the judgment
- any other accessory penalties provided for by special instrument.<sup>108</sup>

Finally, there are two forms of “preventive liability” that apply to legal entities:

- a ban on exercise of activity
- placement under judicial supervision.

None of the fine levels and none of the principal, accessory, or preventive forms of liability applicable to legal entities are mentioned in the Wildlife Law. The open question is whether the forms and levels of liability stated in the Criminal Code operate independently, i.e., can a judge impose them even if they are not expressly stated in the law and provision defining the penalties? If this is the case, legal drafting best practice would suggest that a cross-reference to the applicable provisions should be included.

Weighing against such an interpretation, however, are those provisions that do mention forms of differential liability. One standard of statutory interpretation is that of statutory silence, where silence is an indicator of significant meaning. The basic argument is that if something has been mentioned in one place and not another, then its absence in the other has meaning; in this case, that those forms of liability not mentioned are not applicable to the crime listed.

This level of interpretation, however, should be viewed with caution. There is nothing in the statute that indicates an intent one way or the other. Just as silence may have meaning, it is also true that one should not assume the law has “hidden an elephant in a mousehole”.

**For Public Officials.** Public officials, in particular “sworn officials of the competent services” and “judicial police officers with general jurisdiction”<sup>109</sup> are also mentioned, and fines for violations they commit are doubled.<sup>110</sup> The competent service is the Ministry of Forestry and Wildlife (MINFOF).<sup>111</sup> This is based on the provisions that states “[c]ontrol and surveillance of wildlife activities are carried out by the staff of the administration in charge of wildlife, following the arrangements defined by order by the ministry in charge of wildlife”.<sup>112</sup>

Notably excluded from this list are the following:

- **Judicial police agents** - This category includes those gendarmes who are not judicial police officers, police inspectors, and police constables. They are public servants but are not the same as Judicial Police Officers.<sup>113</sup>
- **Judicial police officers with special competence** – There are two, MINFOF and Customs Agents. The first is not excluded as they would fall under the category of sworn officials of the competent service. Customs agents, however, would appear to be excluded from this differential liability clause.

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<sup>108</sup> Id. at Sec. 19(b)

<sup>109</sup> These are defined by Criminal Procedure Code, Sec. 81(1).

<sup>110</sup> Forestry, Wildlife and Fisheries Law, Sec.

<sup>111</sup> Decree No. 2005/099 of April 6, 2005, organizing the Ministry of Forestry and Wildlife, implementing the Forestry, Wildlife, and Fisheries Law.

<sup>112</sup> Id. at Sec. 68.

<sup>113</sup> Criminal Procedure Code, Sec. 81(1).

## 21 Does criminal liability for illegal take of protected species extend to accomplices?

**Ful Implementation.** The Wildlife Law extends its penalty provisions to all individuals that aid in the commission of a violation defined in the law.<sup>114</sup> It should be noted that, while all penalties defined carry the potential for imprisonment, none of them are listed in the Criminal Code and for most of them, the maximum prison terms do not exceed the defined terms for misdemeanours.<sup>115</sup>

## 22 Has a transboundary Takamanda-Okwangwo protected area complex been established by law?

**Partial Implementation.** There is a process in place to develop the transboundary Takamanda-Okwangwo complex as a Transboundary Biosphere Reserve and World Heritage Site (WHS), but legal establishment has yet to occur.

WCS-Nigeria is currently supporting the WHS nomination process. In that context, a draft Cooperation Framework Agreement between Cameroon and Nigeria was created in July 2019, entitled the “Transboundary Ecosystems Conservation and Sustainable Management of Forestry and Wildlife Resources”.<sup>116</sup> This draft bilateral instrument aims at a common approach for the management of transboundary conservation areas along the 1,500 km shared border, the sustainable exploitation of forest products, and the fight against poaching and illegal logging.<sup>117</sup>

Among the different actions listed, the agreement includes site-specific programmes with an emphasis on “[d]eveloping a common management strategy via a landscape approach that considers aspects of connectivity amongst the Protected Areas” and also “[c]reating and managing biosphere reserves and world heritage sites covering strategic transboundary conservation areas”.<sup>118</sup>

This agreement is a recommended milestone of the WHS nomination process and promoters will pursue its signature during the coming months.

## 23 Have Cameroon and Nigeria taken any steps to register the transboundary Takamanda-Okwangwo protected area complex as a World Heritage Site?

**Ful Implementation.** Pursuant to the latest amendments of its operational procedures, the inscription of cultural and natural sites in the UNESCO’s World Heritage List requires four steps:

- i) inclusion of candidate site into the Tentative List, the inventory of those properties which each State Party intends to consider for nomination,
- ii) presentation of site nomination file to the World Heritage Center,
- iii) independent evaluation by advisory board, which for the case of natural sites is the IUCN, and
- iv) final decision on inscription by the intergovernmental World Heritage Committee.

Both Cameroon and Nigeria have so far completed the first step to include the Takamanda-Okwangwo transboundary protected area on the Tentative List. The area was submitted by the Ministère des Arts et de la Culture de la République ou Cameroun on 10 February 2020<sup>119</sup>

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<sup>114</sup> Forestry, Wildlife and Fisheries Law, Sec. 150(2).

<sup>115</sup> See Criminal Code, Sec. 21 Classification of Offenses.

<sup>116</sup> Herein “draft Cooperation Framework Agreement”.

<sup>117</sup> draft Cooperation Framework Agreement, Art 3. 2019.

<sup>118</sup> Id. at Art. 4.4.

<sup>119</sup> See <https://whc.unesco.org/en/tentativelists/6451/>

and by the National Commission for Museums and Monuments Nigeria three months later, on 4 June 2020.<sup>120</sup> The formal candidate site has been inscribed under the name of “Cross River – Korup – Takamanda (CRIKOT) National Parks” with the reference numbers 6541 for Cameroon and 6204 for Nigeria. The WHS criteria used are (ix) and (x), both related to natural sites of outstanding universal value.<sup>121</sup>

The proposed CRIKOT World Heritage Site (WHS) has been registered incorporating the following specific areas:

In Cameroon:

- Korup National Park
- Ejagham Council Forest Reserve
- Takamanda National Park
- Mone River Forest Reserve
- Kagwene Gorilla Sanctuary.

In Nigeria:

- Cross River National Park (Oban and Okwangwo Divisions)
- Afi Mountain Wildlife Sanctuary
- Mbe Mountains Community Wildlife Sanctuary
- Ekuri Community Forest.

The application process is currently focused on the second step, preparation of the Site Nomination File. This effort builds on the 2016 draft Nomination File prepared for the “Cross-Sanaga Heartland” site and will focus on filling existing gaps including changes in the name of the proposed property, definition of buffer zones, review of organigrammes, greater precision in maps, photography, location, human settlements, and threats.

During 2021, with funding from the German government and managed through GRASP, WCS-Nigeria and WCS-Cameroon have been providing international technical assistance for the review, updating, and completion the 2016 Site Nomination File. This will enter an extensive stakeholder consultation process and several identified outstanding challenges addressed simultaneously. The end of 2023 has been tentatively scheduled as the filing date with WHS. At this point, however, 2025 is the most optimistic timeframe for completion of the WHS inscription, as only nominations received before 1 February of a given year may be inscribed in the following year.

## 24 Has Cameroon revised the 1994 Forestry, Wildlife and Fisheries Law since 2014?

**Partial Implementation.** The body of the text has not been amended in recent years. The compiled framework indicates it was last amended in 1999 (adding provisions specific to forestry management). Numerous regulatory instruments have been issued with the aim of improving the text or its implementation. Among those directed specifically at amending the text are:

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<sup>120</sup> See <https://whc.unesco.org/en/tentativelists/6204/>

<sup>121</sup> Criterion (ix) requires the candidate sites to be “outstanding examples representing significant on-going ecological and biological processes in the evolution and development of terrestrial, fresh water, coastal and marine ecosystems and communities of plants and animals.” As per criterion (x), it refers to sites that “contain the most important and significant natural habitats for in-situ conservation of biological diversity, including those containing threatened species of outstanding universal value from the point of view of science or conservation”.

- Decision N° 0941/D/MINFOF/SG/DF/SDAFF of 02/09/2008 Creating an Ad-hoc Working Group Responsible for the Follow-up of the Revision of Law N° 94-01 of 20 January 1994;
- Decision N° 0557/D/MINFOF/SG/DF/SDAFF of 05/05/2009 Creating an Ad-Hoc Working Group Responsible for the Follow-up of the Updating the Forest Policy and Law N° 94-01 of 20 January 1994 modifying Decision N° 0941 of 02/09/2008;
- Technical Meeting of 27/05/09 in MINFOF to adopt the Terms of Reference of the Ad-hoc Working Group and Support Consulting Firm to facilitate the process of updating the forestry law.

There is, however, no further indication that the body of the text has been amended since 1999.

**25 Is there an inter-ministerial taskforce in place to address poaching and transboundary trade in illegal timber in the Takamanda National Park (TNP)?**

**Partial Implementation.** In 2018, Cameroon officially established an inter-ministerial anti-poaching task force (Unité de Lutte Anti Braconnage au Sud-ouest; LAB) for the South-West region (covering Takamanda National Park). The Decision establishing LAB states more specifically:

*“Placed under the supervision of the Regional Delegate of Forests and Wildlife of the South-West, and under the coordination of the Head of the Regional Department of Wildlife and Protected Areas for the South-West, in conjunction with the Head of the Regional Operations Brigade of Forest Control and Anti-Poaching in the South-West, the LAB Unit in the South-West, is in particular in charge of the organization of anti-poaching operations in the Protected Areas of the South-West Region, and their peripheries.”<sup>122</sup>*

Unfortunately, since the establishment of the LAB, the security situation in the region has deteriorated, negatively affecting operations in the South-West where the task force was to operate.<sup>123</sup> Operations have therefore been suspended and it is unclear when they can be resumed.

**26 Has Mawambi Hills been protected under any formal designation, also involving local communities?**

**No Implementation.** The Mawambi Hill area has not been protected under any formal designation. Local resistance to the idea is apparently high, given the number of protected areas already in the area. Efforts are being made under the umbrella of the Program for the Sustainable Management of Natural Resources in Cameroon (PSMNR) to promote the idea of a “community forest”, which would be designed to be jointly managed with the local communities.<sup>124</sup>

**27 Is the Mbulu forest being protected under any formal designation, also involving local communities?**

**No Implementation.** The Mbulu Forest has not yet been brought under formal protection. As with the Mawambi Hills, the implementation of community forest management is being explored through the PSMNR.<sup>125</sup>

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<sup>122</sup> DECISION N ° 0163 / D / MINFOF / SETAT / SG / DFAP / SDAP of May 17, 2018 on the creation, organization and functioning of an Anti-Poaching Unit in the South-West, Art. 2.

<sup>123</sup> Personal comm. with Dr. Robert Fotso, Director, WCS Cameroon Country Program.

<sup>124</sup> Ibid.

<sup>125</sup> Ibid.

28 Has the gazettment decree and boundary demarcation of Kagwene Gorilla Sanctuary (KGS) been corrected and implemented?

**Ful Implementation.** Apparently, there was a technical error in the GPS system used to record boundary coordinates and provide the legal demarcation for the boundary for this sanctuary. This error has apparently since been corrected.<sup>126</sup> No official source has been referenced to independently confirm the correction.

29 Has the proposed Ebo National Park (ENP) been approved and legally gazetted?

**No Implementation.** Although the proposed ENP appears on the World Conservation Monitoring Center (WCMC) Protected Planet platform,<sup>127</sup> it has not yet materialized. The initiative suffered a severe setback in 2020 when the government issued a logging concession for the area. Shortly thereafter, the President rescinded the Decree, but the actual creation of the ENP is still considered remote.

30 Has a management plan been developed for the proposed Ebo National Park (ENP)?

**No Implementation.** No management plan has been drafted for the proposed ENP.

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<sup>126</sup> Ibid.

<sup>127</sup> UNEP-WCMC (2021). Protected Area Profile for Ebo from the World Database of Protected Areas, September 2021. Available at: [www.protectedplanet.net](http://www.protectedplanet.net)

# PART V. NIGERIA IMPLEMENTATION ASSESSMENT

## Summary

Assessment for Nigeria's legal implementation was based also on primary and secondary online legal sources (see Annex VI), and the collaboration of WCS Nigeria to identify and gather additional information not available online. No national authorities, including CMS Nigeria focal point, have participated so far in providing legal documents or discussing results of the study. In total, 25 laws and regulations from Nigeria, along with other policy, plans and program documents were analyzed during this study (see Annex VIII).

In summary, out of the 28 legal inquiries listed for Nigeria only four are fully compliant with the selected international standards, while 15 show partial implementation, and another nine are not compliant at all (Table 8).

Table 8. Nigeria's summary implementation with selected legal obligations related to migratory species

	Implementation Level			
	Full	Partial	None	Total
Legal Inquiries	4	15	9	28
Legal Inquiries (%)	14%	54%	32%	100%

## Legal Assessment

- 1 Is "take" defined in the law as including both killing animals, as well as harvesting and/or collecting live specimens?

**Full Implementation.** Nigeria defines key terms in a dedicated article (titled "interpretation") found at the beginning or end of its legislation. There is no explicit definition of "take". Instead, the National Park Service Act defines the term capture, which includes "to take eggs or nests".<sup>128</sup> As a surrogate to an explicit definition, Nigeria's laws include powers, prohibited actions, and offenses in separate articles that, combined, provide a composite understanding of "take". The National Park Service Act, for example, provides regulatory powers to the Minister on "the killing, capturing or impounding of any animal in a National Park"<sup>129</sup> and defines as an offence the unauthorized hunting, capture, destroying and collecting of an animal.<sup>130</sup>

<sup>128</sup> National Park Service Act, Art 52.

<sup>129</sup> Id. at Art. 51.1.o

<sup>130</sup> Id. at Art. 30.1.a) and b).

At the regional level, the Cross River State Forestry Commission Law 2010 includes a definition for “hunt”, encompassing both killing, capturing and injury, including attempts of the same.<sup>131</sup> In the relevant part: “Hunt includes an attempt to kill or capture, and also an intentional causing of injury, or an attempt to cause injury, to an animal or bird”.<sup>132</sup>

**2 Is take of Cross River gorilla and Nigeria-Cameroon chimpanzees prohibited in the entire national territory?**

**Ful Implementation.** In its most recent national report to CMS in 2019, Nigeria claims full legal protection for all CMS Appendix I species. The Endangered Species (Control of International Trade and Traffic) Act, 1985, establishes the absolute prohibition of ‘hunting, capturing of, or trade’ animals determined to be threatened with extinction and listed in Schedule I.<sup>133</sup> The schedule lists *Gorilla gorilla* and *Pan troglodytes* and therefore, the two sub-species of interest for this study, the Cross River gorillas and the Nigerian-Cameroon chimpanzees are legally protected. This law is applicable to the entire national territory.

Additionally, legislation of the Cross River State (Forest Commission Act, 2010) provides also for full protection of *Gorilla gorilla diehli* and *Pan troglodytes* in that state through their inclusion in Schedule II of Fully Protected Species in the Cross River State of Nigeria.

**3 What specific exceptions are permitted to the prohibition of take of protected species? Are they consistent with those listed by CMS?**

**Partial Implementation.** In its latest national report to CMS in 2019, Nigeria states there are no exceptions to the prohibition of take. This assessment finds several exceptions in two national-level laws and one State-level law, not all of which are consistent with the CMS requirements.

**The Endangered Species (Control of International Trade and Traffic) Act (1985)** does not provide for any explicit exception to the prohibition of take. There are, however, five permitted defenses to a charge of illegal take of protected species.<sup>134</sup> These are:

- (a) the paramount public interest;
- (b) the defense of human life;
- (c) the protection of public health;
- (d) the defense of property; and
- (e) the defense of the lives of other animals.

Although not labeled as such, their successful use as a defense would convert them into *de facto* exceptions. To the extent that the list includes circumstances beyond those allowed by CMS, the law is deemed not implemented.

**The National Parks Act**<sup>135</sup> provides for exceptions inside national parks as follows:

“(4) The Conservator-General may issue a permit to a person authorising the person, under the direction of the Conservator-General, to hunt wild animals in a National Park-

- (a) if the Conservator-General is satisfied that--
  - (i) a wild animal ought to be hunted for the better preservation of other animal life in the National Park; or

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<sup>131</sup> Cross River State Forestry Commission Law, Art. 105.

<sup>132</sup> *Id.*

<sup>133</sup> Endangered Species (Control of International Trade and Traffic) Act, Art. 1.

<sup>134</sup> *Id.* at Article 5(5).

<sup>135</sup> National Park Service Act, Art. 30.4.

- (ii) a wounded animal ought to be destroyed; or
- (b) in order to ensure that the population of a particular species does not exceed the carrying capacity of the National Park”.

This study determines that:

- exception 4(a)(i) is probably implementing CMS, which allows for the taking for the purpose of enhancing the propagation or survival of the affected species<sup>136</sup>;
- exception 4(a)(ii) complies with CMS, which allows ‘extraordinary circumstances’ as an exception. While the CMS does not offer an interpretation of what extraordinary circumstances are, self-defense and wounded wildlife are common exceptions in national hunting laws and reasonable fit as extraordinary circumstances; and
- exception 4(b) may be implementing CMS to the extent that “carrying capacity” is a reliable metric serving the purpose of enhancing survival of the species.

However, none of these exceptions apply to national park staff “acting in the performance of his duties under this Act or any other written law”.<sup>137</sup> This authority appears to be open-ended, with no controlling or limiting language other than acting in their official capacity.

At the regional level, the **Cross River State Forestry Commission Law** (2010) provides the following exceptions:

- killing of a protected species if done “in defense of himself or any other person”.<sup>138</sup>
- killing a protected animal “to protect the lives of any persons or to prevent the destruction of crops or of domestic stock or in time of famine or for any requirement relating to public health or public order”.

For the second exception, the Conservator-General and the Advisory Committee have broad discretion and may authorize this power “for such period and by such methods (even though prohibited by provisions of this Law or the regulations made there under) and subject to such condition as he may direct”. The only controlling elements are that the power should be exercised “with due regard to the prevention of any unnecessary destruction of protected animals” and “not be granted in the case of animals in the protected areas”.<sup>139</sup>

As stated previously, defense of self and others are considered appropriate exceptions consistent with CMS requirements. The second power is clearly inconsistent.

#### 4 Are exceptions to the prohibition of take of protected species applicable to gorillas or are they excluded?

**No Implementation.** Neither the National Park Service Act nor the Cross River State Forestry Commission Law provide for any limitation to hunting exceptions based on species. As such, the listed exceptions apply to all protected species, including gorillas. While some of these may be permissible under the CMS, Nigeria would nonetheless be out of compliance with the Gorilla Agreement, which calls for no exceptions to their take.

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<sup>136</sup> CMS, Art. 4.b)

<sup>137</sup> National Park Service Act, Art 30.7.

<sup>138</sup> Cross River State Forestry Commission Law, Art. 76(1).

<sup>139</sup> Id. at Art. 81.

- 5 Are exceptions precise in content and limited in space and time? Are they limited by any factor to ensure they do not operate to the disadvantage of the species?

**Partial Implementation.** The National Park Service Act provides for special limitations by linking each exceptional hunting permit for protected species to a specific national park, but it is completely silent on time limitations. Other factors limiting the exceptions are the mandatory inclusion in the permit of the name of the species and the number of specimens allowed to take.<sup>140</sup>

In the Cross River State, the Forestry Commission Law 2010 does not provide for special and time limitations. Two other factors are considered including: i) requiring mandatory reporting to authorities in less than 48 hr and ii) assigning property rights of the carcasses or remains of protected animals to the regional authority. The latter clause aims at removing the incentive of false self-defense hunting claims.

- 6 Have exceptions been communicated to the CMS Secretariat? Is there a mechanism in place to promptly communicate with the CMS Secretariat regarding exceptions to the “take prohibition”?

**No Implementation.** Exceptions have not been communicated so far to the CMS Secretariat. On the contrary, Nigeria reported no exceptions to the take prohibition in its 2019 national CMS report. The legislation reviewed also does not include any reporting mechanisms to ensure prompt communications with CMS regarding take exceptions.

- 7 Are critical habitats for Nigeria-Cameroon chimpanzees being identified? Are they legally protected under conservation objectives?

**Partial Compliance.** As presented in the previous section “Priority Landscapes”, critical habitats for the Nigeria-Cameroon chimpanzees are identified in the Regional Action Plan for the Conservation of the Nigeria-Cameroon Chimpanzee (*Pan troglodytes ellioti*). The plan was developed in 2011 as a multi-stakeholder effort under the leadership of the IUCN SCC Primate Specialist Group and the Zoological Society of San Diego, California. Three Nigerian governmental agencies participated in the planning including the Cross River Agricultural Development Programme, the National Parks Service, and the Ministry of Environment, whose Minister also formally endorsed the final plan.

The plan lists ten critical habits for the Nigeria-Cameroon chimpanzee including half considered as “exceptional” priority and another half considered as “important” priority. The plan recognized that identification was based on available knowledge and data in 2011 and suggested a review in 2016 to adjust priorities based on new understandings of conservation needs. This study has not been able to determine whether such a study ever took place.

This study did not have access to any specific legal instrument for protected area designation but several of the sites are legally unprotected forests, including the Idanre and the Omo forest clusters.

- 8 Are critical habitats for Cross River gorillas being identified? Are they legally protected under conservation objectives?

**Partial Implementation.** Nigeria informed the CMS Secretariat in its 2019 national report that all critical habitats have already been identified. This study does not find any official documentation to back up the statement but assumes its accuracy.

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<sup>140</sup> National Park Service Act, Art. 30(5), a “permit issued pursuant to subsection (4) of this section shall specify the species and number of wild animals which may be hunted under the permit”.

The reason for this assumption is that Nigerian representatives participated in drafting the Regional Plan for Cross River Gorilla conservation, which identifies a total of three areas as critical for its conservation. These areas have been included in the above section on Priority Landscapes and include the Afi Mountain Wildlife Sanctuary, the Mbe Mountains Community Reserve, and the Okwangwo Division of the Cross River National Park (CRNP).

The revised plan states that both the Afi Mountain Wildlife Sanctuary and the Okwangwo Division of the CRNP are legally established, but this study did not have access to gazetted legal instruments to verify. Mbe Mountains, on the other side, does not have legal recognition and are currently being managed by surrounding communities through a community association.

## 9 Do key development related laws require conservation and restoration of habitats?

**Full Implementation.** Four out of five of the development related laws reviewed require conservation and/or restoration of habitats.

**The Minerals and Mining Act** (2007) dedicates a full chapter (Chapter 4) and 33 articles to Environmental Considerations and Rights of Host Communities. Some articles establish obligations for holders of mineral rights to prevent damages, while others focus on restoration. These are:

- Obligation to “take such steps, as may be necessary, to prevent pollution of the environment resulting from the mining operation”.<sup>141</sup>
- Obligation to “minimize, manage and mitigate any environmental impact resulting from activities carried out under this Act”.<sup>142</sup>
- Prohibition to “pollute or cause to be polluted any water or watercourse in the area within the mining lease or beyond that area”.<sup>143</sup>
- Obligation for water users to “ensure that the water so used does not contain injurious substances in quantities likely to prove detrimental to animal or vegetable life when the water leaves the mining area in which it has been so used”.<sup>144</sup>
- Obligation to “restore any area in respect of which mining operation has been, is being, or is to be carried out”.<sup>145</sup>
- Obligation, for land that has been exploited, to “rehabilitate and reclaim, where applicable, the land disturbed, excavated, explored, mined or covered with tailings arising from mining operations to its natural predetermined state”.<sup>146</sup>
- Obligation to present an Environmental Protection and Rehabilitation Program,<sup>147</sup> providing for specific rehabilitation and reclamation actions, estimated total cost and timeline of rehabilitation.<sup>148</sup>

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<sup>141</sup> Minerals and Mining Act, Section 111 on Prevention of pollution of environment

<sup>142</sup> Id. at Section 118 on Environmental Obligations

<sup>143</sup> Id. at Section 123. Pollution of water course prohibited

<sup>144</sup> Id. at Section 124. Purification of water

<sup>145</sup> Id. at Section 114. Restoration of mine lands

<sup>146</sup> Id. at Section 115. Reclamation

<sup>147</sup> Id. at Section 119. Environmental Impact Assessment

<sup>148</sup> Id. at Section 120. Contents of the Environmental Protection and Rehabilitation Program

**The Environmental Impact Assessment (EIA) Decree** (1992) with scope over certain development projects, requires the “(e) identification and description of measures available to mitigate adverse environmental impacts of the proposed activity”.<sup>149</sup>

**The NESREA Act** (2007) provides the implementing agency with the function to “(i) ensure that environmental projects funded by donor organizations and external support agencies adhered to regulations in environmental safety and protection”.<sup>150</sup>

**The Cross River Forestry Commission Act** statement of goals includes “providing sustainable management of the forest” and also the “protection of the ecosystem”. Some of the requirements related to conservation can be found in the following sections:

“The Commission shall not grant any permits, licenses and concessions where the purpose shall impact negatively on the habitats of protected plant or animal species.”<sup>151</sup>

“No permits, licenses and concessions shall be granted by the Commission where the purpose shall impact negatively on water quality, water supply, watershed and fisheries.”<sup>152</sup>

“The Commission may for ecological reasons or the preservation of animal and plant species and their habitats, by regulation, declare any forest area a protected forest”.<sup>153</sup>

Additionally, it authorizes but does not require the Commission to “embark on regeneration or reforestation of the forest in the event of deforestation in any forest reserve”.<sup>154</sup>

**The Tourism National Corporation Act** (1992), responsible for promoting national and international tourism and the development of tourism infrastructure, does not require conservation or restoration of habitats.

#### 10 Does the jurisdiction recognize nationally or internationally listed species in its environmental impact assessment (EIA) procedures?

**Partial Implementation.** Like many jurisdictions, Nigeria’s recognition of listed species in its environmental impact assessment legislation is a function of several laws. While nationally listed species seem to be recognized, there is no indication that internationally listed species are.

Listed species are not explicitly mentioned in the **EIA Decree** and **EIA Procedural Guideline**, both of which are applicable to projects generally. Wildlife is, however, recognized falling under the “description of the potential affected environment, including specific information necessary to identify and assess the environmental effect of the proposed activities”.<sup>155</sup> The National EIA Procedural Guideline regulates this by outlining a mandatory table of contents for all EIA reports,<sup>156</sup> which includes a section on the description of the environment,<sup>157</sup> which in turn covers “terrestrial fauna and wildlife”, *inter alia*.

Beyond this, the **Biophysical Impact Assessment Guidelines** provide criteria for projects proposed in “identified environmentally significant areas, natural parks and natural areas”. These guidelines establish that minimum information for project descriptions must include

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<sup>149</sup> Environmental Impact Assessment (EIA) Decree, Sec. 4, Minimum content of environmental impact assessment

<sup>150</sup> NESREA Act, Sec. 7, Functions of the Agency

<sup>151</sup> Cross River Forestry Commission Act, Sec. 45(4).

<sup>152</sup> *Id.* at Sec. 46.

<sup>153</sup> *Id.* at Sec. 47(1).

<sup>154</sup> *Id.* at Sect 49(1).

<sup>155</sup> EIA Decree, Art. 4(b).

<sup>156</sup> EIA Procedural Guideline, Annex C

<sup>157</sup> *Id.* at Annex C, Sec. 7.

“database research results on the potential presence of listed species at risk, species of special status or rare communities”.<sup>158</sup> In some instances, authorities may require a Preliminary Natural Site Assessment before approval of the terms of reference for the assessments. In that case, the “presence of listed species at risk or species of special status (plant and/or wildlife)” must also be considered.<sup>159</sup>

Additionally, the **Strategic Environmental Assessments Guidelines** (2017) recognize “endangered species” as one of the components of the natural environment that needs to be part of baseline studies.<sup>160</sup> Although nothing in this regulation (or the overarching EIA law and Endangered Species Act) expressly pairs the concepts of “endangered species” and “listed species”, the assumption is these terms reference the same nationally listed species.

#### 11 Does the jurisdiction’s EIA legislation require consideration of migratory species, including the impacts of linear infrastructure projects?

**Partial Implementation.** Nigeria’s recognition of migratory species in its environmental impact assessment legislation is fragmented and incomplete resulting in its assessment as partially compliant.

No explicit mention is made of migratory species or CMS listed species in the overarching EIA Decree, the generic EIA Procedural Guidelines, or the SEA Guidelines.

Guidelines that do require consideration of migratory species in general, without specific mention to CMS listed species, are the following:

The **EIA Guidelines for Solar Energy Projects** mentions migratory species in two of the three biological components that must be assessed:

- Flora – type, density, exploitation, etc.
- Fauna – distribution, abundance, rarity, **migratory**, species diversity, habitat requirements, habitat resilience, economic significance, commercial value, etc.
- Fisheries – **migratory species**, species with commercial/ recreational value, etc.<sup>161</sup>

The same occurs in the **EIA Guidelines for Wind Energy Projects**, which also include migratory fauna as part of the baseline studies.<sup>162</sup> The Guidelines also list the areas of potential project impacts that are required to be studied and includes, among others, the “[d]isruption of migratory pattern of birds, bat, etc.”<sup>163</sup>

Departing from this regulatory pattern, the **EIA Guidelines on Hydropower Projects** do not mention migratory species but only the need to document “unusual, rare or endangered species” as part of baseline studies (Section 4.2 Biological Environment).

There are no dedicated EIA guidelines in place for other, linear infrastructure projects such as roads, railroads, electric transmission lines, or fences. The scope of the EIA for wind energy projects must comprise “associated activities (like erection of transmission lines)” (Section 5.2 Impacts on Biodiversity) and, similarly, hydropower projects must consider the impacts of “distributions lines” (Section 3.0 Project Description).

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<sup>158</sup> Biophysical Impact Assessment Guidelines, Sec. 7.1 on Project Biophysical Description

<sup>159</sup> Id. at Annex xi: Table for Preliminary Natural Site Assessment

<sup>160</sup> Strategic Environmental Assessments Guidelines, Sec. 3.2.4.1 Collection of Baseline data and information

<sup>161</sup> EIA Guidelines for Solar Energy Projects, Sec. 4 on Description of Project Environment/Baseline Study (Table 1),

<sup>162</sup> EIA Guidelines for Wind Energy Projects, Sec. 4. Description of Project Environment/Baseline Study (Table 1)

<sup>163</sup> EIA Guidelines for Wind Energy Projects, Sec. 5.2. Impacts on Biodiversity.

## 12 Does EIA and other key legislation (e.g., mining law, forestry law) incorporate the concept of mitigation hierarchy?

**Partial Implementation** This study reviewed seven pieces of legislation and found only one (SEA Guidelines, 2017) incorporating the concept of mitigation hierarchy:

- The **EIA Decree**, though it does not include the concept of mitigation hierarchy, defines the term “mitigation”,<sup>164</sup> mandates the identification and assessment of mitigation measures,<sup>165</sup> and lists them as factors to consider during review<sup>166</sup> and final decision (Section 21. Decision of the Agency).
- The **EIA Procedural Guidelines**, one of the EIA Decree subsidiary laws, also does not explicitly incorporate the concept of mitigation hierarchy, but its Annex C contains the outline of an EIA report, which lists the following sub-topics:
  - best available control technology/best practicable technology
  - liability compensation/resettlement
  - site alternative, location/routes
  - no-project option
  - compliance with health & safety hazards requirements.<sup>167</sup>
- The **SEA Guidelines**, another regulatory instrument of the EIA Decree, does incorporate the mitigation hierarchy. The guidelines state:

“Mitigation measures in SEA shall follow the same procedure of mitigation hierarchy [...] with particular reference to the environment. Cumulative and residual impacts can be evaluated after necessary mitigation measures fit a proposal. Caution should be taken in proffering mitigation measures for the forms of SEA as plan level SEA are mostly to avoid or reduce or offset significant impacts while mitigation measure for programme level SEA can be related to a project level mitigation measure which are recognized in the typical sector or industry practice. This shall be achieved by putting in place mitigation measures [...]:

- Avoidance - totally avoid or prevent effects and impacts by going with an alternative;
- Reduction - reduce the magnitude, probability, severity or extent of the activities and impacts;
- Remediation - repair, rehabilitate, or restore to its original state the effects or impact of activities on the environment;
- Compensation - compensate for effects, balancing out negative impacts with other positive ones. This could be in creating environments elsewhere similar to those affected. For social impacts, it can mean providing land, money, or buildings elsewhere. Compensation measures are usually negotiated with affected parties;
- Where the impact assessment indicates a potential for major, irreversible, negative impacts on the environment, a less risky alternative shall be considered. Otherwise,

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<sup>164</sup> EIA Decree, Sec. 61. Interpretation

<sup>165</sup> Id. at Sec. 4(e).

<sup>166</sup> Id. at Sec. 16. Factors for consideration of a review panel

<sup>167</sup> EIA Procedural Guidelines, Sec. 9. Measure/Alternatives

standard mitigation measures shall be used to minimize adverse impacts to “as-low-as-reasonably-practicable” (ALARP) level.”<sup>168</sup>

- The **Minerals and Mining Act** does not incorporate the concept of mitigation hierarchy and only establishes that approved EIAs are pre-condition for mineral license holders to commence development work or extraction.<sup>169</sup> The act also includes the obligation to mitigate environmental impacts by license holders, without further guidelines.<sup>170</sup>
- The **National Park Service Act** calls for “appropriate mitigation or remedial programme” if buildings or other facilities are located or constructed inside national parks and an environmental impact audit determines its necessity. It does not go further in defining procedures for mitigation or incorporating the concept of mitigation hierarchy.<sup>171</sup>
- The National Environmental Standards and Regulations Enforcement Agency (Establishment) Act (NESREA) and the Cross River State Forestry Commission Act are silent concerning concepts of mitigation and the mitigation hierarchy.

**13 Does EIA law include or exclude emergency interventions among the activities with mandatory environmental impact assessment requirement?**

**No Implementation.** The **Environmental Impact Decree** approves a list of projects for which no environmental impact assessment is required or mandatory. They are considered exceptions or exclusions to the assessment requirements outlined in the law.<sup>172</sup> One of those exclusions are “national emergencies”, regulated as follows:

“(1) An environmental assessment of a project shall not be required where-

- (a) in the opinion of the Agency, the project is in the list of projects which the President or the Council is of the opinion that the environmental effects of the project are likely to be minimal;
- (b) the project is to be carried out during national emergency for which temporary measures have been taken by the Government;
- (c) the project is to be carried out in response to circumstances that, in the opinion of the Agency, the project is in the interest of public health or safety.”<sup>173</sup>

This exception, commonly found in EIA legislation, is not limited by any condition related to gorilla conservation or gorilla habitats.

Nigeria therefore does not fulfil its obligation to Gorilla Agreement Article III paragraph 2(i), which requires Parties to consider the environmental impact of their relief efforts in emergency situations.

**14 Does the law require regular studies to determine species status?**

**No Implementation.** The **Endangered Species (Control of International Trade and Traffic) Act** uses two Schedules (I and II) and divides species into three groups, as follows:

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<sup>168</sup> SEA Guidelines, Sec. 3.2.6 Mitigation of Adverse Impact and Opportunity Enhancement

<sup>169</sup> Minerals and Mining Act, Sec. 71.

<sup>170</sup> Id. at Sec. 118.

<sup>171</sup> National Parks Service Act, Sec. 43. Restriction on construction of building within National Parks

<sup>172</sup> Environmental Impact Decree, Sec. 14.

<sup>173</sup> Id. Sec. 14(1)(b).

- Animal species threatened with extinction (Schedule I),
- Animal species that may become threatened with extinction unless trade is controlled (Schedule II), and
- All other animals.<sup>174</sup>

The law is, however, silent regarding the process and authorities involved in the determination of the status of species. It only provides the Minister<sup>175</sup> with powers to “alter the list of animals specified in the First or Second Schedule to this Act by way of addition, substitution or deletion or otherwise howsoever”.<sup>176</sup> There is no reference to mandatory studies, survey populations or species monitoring protocols as necessary factors for amending Schedules I and II.

The **National Parks Act** authorizes the National Parks Service to “prepare surveys and maintain up-to-date records [...] for wild or domesticated animals”.<sup>177</sup> The Act further requires “every person responsible for the administration of this Act [to] ensure that any measure taken or instituted under this Act is based on the result of scientific investigation, including the monitoring of the status and habitat conditions of the species”.<sup>178</sup> It also provides powers to the authority in charge to “appoint suitable persons, organisations, committee of scientists, academicians or such other persons as it may think fit, to assist in undertaking surveys, scientific research and other studies of a scientific and professional nature relating to its functions under this Act”.<sup>179</sup>

**15 Are studies required to identify and describe threats to Cross River gorillas and Nigeria-Cameroon chimpanzees?**

**No Implementation.** Although functions of the National Park service regarding scientific investigation are broad enough to cover studies on threats for the subspecies of our interest, its legal mandate is not specific on requiring studies or assessment on threats.

**16 What specific legal controls are in place to protect listed species? Does this include protection against zoonotic disease, alien invasive species, wildlife trade?**

**Partial Implementation.** Several specific legal controls are in place in Nigeria to protect listed species related to take, trade, and invasive species, with opportunities to include monitoring and control for zoonotic diseases.

At the national level, these controls include

- Prohibition to take (hunting and collecting) protected listed.<sup>180</sup>
- Prohibition to trade protected species.<sup>181</sup>
- CITES permitting system for the import/export of Appendix I, II and III species.<sup>182</sup>

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<sup>174</sup> Endangered Species (Control of International Trade and Traffic) Act, Art. 1.

<sup>175</sup> Endangered Species (Control of International Trade and Traffic). As per Art. 8 Interpretation, “Minister” means Minister of the Government of the Federation charged with responsibility of matters relating to wildlife

<sup>176</sup> Id. at Art. 4.

<sup>177</sup> National Parks Act, Art. 7(f).

<sup>178</sup> Id. at Art. 45(1)

<sup>179</sup> Id. at Art. 45(2).

<sup>180</sup> Endangered Species (Control of International Trade and Traffic) Act, Sec. 1.

<sup>181</sup> Id.

<sup>182</sup> National Environmental (Protection of Endangered Species in International Trade) Regulations, Sec. 4, 2011.

- Mandatory registration of international traders, captive breeders, and artificial propagators of protected species.<sup>183</sup>

At the Cross River State level, they additionally include

- Prohibition to take eggs of protected species in the wild.<sup>184</sup>
- Prohibition to possess, purchase, sell or transfer wildlife products from protected species.<sup>185</sup>
- Prohibition introducing animals into a wildlife conservation area.<sup>186</sup>

**17 Does land-use planning consider conflict between humans and gorillas? Are there any specific preventive measures considered in law?**

**No Implementation.** The Urban and Regional Planning Act, 1992 is the core legal instrument for land planning at the national, regional, and local levels. It contains no reference to human-wildlife conflict, nor any criteria or guiding principles for land planning.

Another relevant land planning instrument, the EIA Guidelines for Strategic Environmental Assessment, are silent about human-wildlife conflicts.

Another three laws with implications for land planning have been reviewed, with similar results. There are:

- National Parks Service Act does not explicitly consider the concept of human-wildlife conflict, let alone human-gorilla conflicts.
- The Minerals and Mining Act lists the land types excluded from mineral exploration and exploitation including land assigned to military purposes, urban settlements, national parks<sup>187</sup> and others but does not otherwise consider human-wildlife conflict as a land planning criterion.
- The Cross River Forestry Commission Act, providing the legal framework for the protection and sustainable management of forest and ecosystems in the State, also does not consider human-wildlife conflict.

**18 Is the “attempt” to take a protected species also prohibited by law?**

**Partial Implementation.** Of the five major laws deemed relevant to this inquiry, only two extend liability to attempts to take (the National Parks Act, the Cross River State Forestry Commission Law). Both laws provide clear statements that criminalize both take and attempts to take and thus implement CMS. Nevertheless, other three critical laws fail to directly criminalize the take of protected species, and therefore attempts to take as well. These are the Criminal Code, the Miscellaneous Offences Act, and the Endangered Species (Control of International Trade and Traffic) Act.

The illegal take of protected species is a crime not included in any of the two core criminal laws in Nigeria (the **Criminal Code**, 1916 and **Miscellaneous Offences Act**, 1984), which does criminalize other activities along the value chain as the illegal import/export of protected species.

Similarly, the **Endangered Species (Control of International Trade and Traffic) Act**, although it prohibits the take of Schedule I species, defines penalties solely for acts that follow

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<sup>183</sup> Id.

<sup>184</sup> Cross River State Forestry Commission Act, Sec. 72.

<sup>185</sup> Id. at Sec. 75.

<sup>186</sup> Id. at Sec. 88.2(e).

<sup>187</sup> Minerals and Mining Act, Sec. 3.

the take. Neither the take, nor the attempt to take are criminalized. Specifically, the Act states that '[a]ny person who, in contravention of the provisions of this Act, trades in, or is in possession of or otherwise deals with a specimen specified in the First and Second Schedules to this Act, shall be guilty of an offence and liable on conviction.'<sup>188</sup> In using this language, the law effectively fails to criminalize the act of taking and therefore negates any opportunity to extend liability to attempts of that same act.

Regulations under this law address only CITES-related trade and do not provide language concerning the attempt to hunt.

Pursuant to the **National Parks Act**, the attempt to commit any of the offenses established in the law is also considered an offense. Specifically, '[a] person who [...] attempts to commit any of the offences specified in this Act or regulations made under this Act is guilty of an offence as if he himself had committed the offence and shall be punished accordingly.'<sup>189</sup>

At the regional level, the **Cross River State Forestry Commission Law** also penalizes the attempt to hunt protected species by extending the definition of hunt.<sup>190</sup>

**19 Are administrative and criminal penalty types and penalty levels defined for the crime of illegal take of protected species sufficient to deter crime?**

**Partial Implementation.**

The **Endangered Species (Control of International Trade and Traffic) Act** prohibits the take of protected species but does not define penalties for the crime of illegal hunting. Instead, penalties are defined for trade, possession and dealing in Schedule I species. Fines for these are set at NGN5,000,000 (USD 12,138) for a first offence, and imprisonment for one year without the option of a fine for any repeat offence.<sup>191</sup>

The penalty for hunting protected species inside national parks includes "imprisonment for a term of not less than three months but not exceeding five years without the option of a fine".<sup>192</sup> Additional potential penalties include forfeiture of equipment and instruments and damage compensation.<sup>193</sup>

Under the Forestry Commission Law, the penalty for hunting protected species in the Cross River State is set at two years of imprisonment or a fine of not less than NGN 100,000 (USD 242) or both".<sup>194</sup> Supplementary penalties that the court may order include:

- payment of an amount equal to the value of animal at not less than five times the prevailing market value,<sup>195</sup>
- forfeiture of specimens to the Commission,<sup>196</sup>
- sale of the specimen or any instrument or thing used to commit the offence and payment of the proceeds to the Commission,<sup>197</sup>

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<sup>188</sup> Endangered Species (Control of International Trade and Traffic) Act, Art. 5 (1).

<sup>189</sup> National Parks Act, Art. 36.

<sup>190</sup> Cross River State Forestry Commission Law Art. 105.

<sup>191</sup> Article 5.1(a)

<sup>192</sup> National Parks Act, Art. 37.2(a).

<sup>193</sup> Id. at Art. 39.

<sup>194</sup> Forestry Commission Law, Art. 85(1).

<sup>195</sup> Id. at Art. 90(1)(a).

<sup>196</sup> Id. at Art. 90(1).

<sup>197</sup> Id. at Art. 90 (1)(b).

- destruction or cessation of the offending activity or any instrument or thing with which the offence was committed,<sup>198</sup>
- temporary and/or permanent suspension of rights including existing permits, licenses, or concessions,<sup>199</sup> and
- payment to the informant on whose information the offence was detected and proved, a portion, not exceeding one half of any fine imposed.<sup>200</sup>

## 20 Is there differential liability for public official and legal entities involved in the illegal take of protected species?

### No Implementation.

**The Endangered Species (Control of International Trade and Traffic) Act** is silent on the liability of legal entities. Instead, it provides for unique penalty for offenders without distinction between natural and legal persons.

**The National Parks Act** makes corporations expressly liable for crimes attributable to persons acting on behalf of the company.<sup>201</sup> However, this liability is not accompanied by different or increased penalties. Natural persons and corporations are subject to the same penalty levels.

As for public officials, there is nothing related to their liability other than the exceptions they enjoy for hunting and capturing protected species when “acting in the performance of his duties”.

In the Cross River State, there is some degree of differential liability. The Forestry Commission Law provides for a maximum fine of NGN 100,000 (USD 242) for officers violating the act, including the loss of employment.<sup>202</sup> The fine level is equal to the minimum fine for individuals, making the loss of employments the only real differential liability for public officials.

## 21 Does criminal liability for illegal take of protected species extend to accomplices?

**Partial Implementation.** Only one of the primary laws governing take extends liability to accomplices.

**The National Parks Act** extends liability to accomplices, stating in relevant part that “[a] person who aids, abets, procures or conspires with another person [...] to commit any of the offences specified in this Act or regulations made under this Act is guilty of an offence as if he himself had committed the offence and shall be punished accordingly”.<sup>203</sup>

**The Endangered Species (Control of International Trade and Traffic) Act** does not extend liability to accomplices of crimes.

**The Cross River State Forestry Commission Act** also does not extend liability to accomplices. Instead, it criminalizes corruption by enforcement personnel, penalizing them separate from any other crime they might be involved. Specifically, the law states that “[a]ny Commission or Association enforcement officer who receives gratification from any person in order to breach any of the provisions of this Law commits an offence and shall on conviction

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<sup>198</sup> Id. at Art. 90(1)(d)

<sup>199</sup> Id. at Art. 90 (1e), (5-7).

<sup>200</sup> Id. at Art. 90(1)(g).

<sup>201</sup> National Parks Act, Art. 38. Specifically, it states that “[w]here an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any director, manager, secretary or other similar officer of the body corporate or any person purporting to act in any of those capacities, he, as well as the body corporate, shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly”.

<sup>202</sup> Id. at Arts. 87 (1) and 87(2).

<sup>203</sup> National Parks Act, Art. 36.

be liable to a fine of not less than NGN 50,000 (USD 121) or two years imprisonment or both".<sup>204</sup>

**22 Has a transboundary Takamanda-Okwangwo protected area complex been established by law?**

**Partial Implementation.** Reasoning coincides with the one provided in inquiry 22 of the Cameroon Compliance Assessment

**23 Have Cameroon and Nigeria taken any steps to register the transboundary Takamanda-Okwangwo protected area complex as a World Heritage Site?**

**Full Implementation.** Reasoning coincides with the one provided in inquiry 23 of the Cameroon Compliance Assessment.

**24 Has Nigeria revised the Endangered Species Decree since 2014 and 2019?**

**Partial Implementation.** The Endangered Species Act was amended in 2016, as called for by the revised regional plan for Gorillas. Amendments, however, are limited, focusing solely on updating a single article containing fines for the illegal trade and possession of protected species. For Schedule I species, including gorillas and chimpanzees, this update meant a significant increase from just NGN 1,000 to 5,000,000 (USD 2.43 to 12,138).

As this assessment points out, other provisions of the law could have benefited from the political effort of amending the act.

**25 Is there a new LAGA-type<sup>205</sup> collaboration with an MOU in place between NGOs and the Nigerian Government?**

**Partial Implementation.** Nothing like LAGA-type collaboration for enforcing wildlife crimes exists so far in Nigeria. Nevertheless, some elements providing foundation for future more formal public-private coordination to fight illegal wildlife trade were found. They include:

- In 2019, a CITES Meeting for Nigeria stakeholders, organized by the CITES Management Authority, included public and private participation.<sup>206</sup> Among conclusions and recommendations of the group was the establishment of an enforcement task force.<sup>207</sup>
- The UNODC started in 2020 the implementation of a project to strengthen the capacity of relevant Nigerian authorities to respond to wildlife and forest crimes ("Strengthening Nigeria's response to the trafficking of wildlife and forestry products"). This Project includes assistance to Nigerian authorities to better coordinate efforts among federal ministries, departments and agencies, state authorities and civil society organizations. The first ever National Strategy to Combat Wildlife Crime will

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<sup>204</sup> Cross River State Forestry Commission Act, Art. 87(3).

<sup>205</sup> The Last Great Ape organization (LAGA) is a field-based NGO operating in Cameroon dedicated to Wildlife Law Enforcement and working under a unique approach and in close collaboration with the government to increase prosecution of wildlife crimes. The LAGA model is being extended to other countries including Congo Brazzaville, Gabon, Benin, Togo, Senegal, Côte d'Ivoire, Uganda and Burkina Faso. (See <https://www.laga-enforcement.org/en>)

<sup>206</sup> Participants included: National Environmental Standard and Regulatory Enforcement Agency (NESREA), Nigeria Immigration Service, Interpol, US Embassy/Nigeria, Nigerian Conservation Foundation, the United Nations Office of Drugs and Crime (UNODC), National Park Service, Nigeria Postal Service, Nigeria Export Promotion Council, Federal Ministry of Trade, Nigeria CITES Management Authority (Federal Ministry of Environment), Forestry Research Institute of Nigeria, National Institute of Oceanography and Marine Research, Lufthansa Airlines and West Africa Biodiversity and Climate Change (WA BiCC), among others.

<sup>207</sup> <https://www.wabicc.org/nigeria-gears-up-to-combat-wildlife-crime/>

be developed also with support of this program, with anticipated participation of civil society both in its design and its implementation.<sup>208</sup>

**26 Have the existing legal boundaries of the Afi Complex been reviewed and extended to include Olum Hills and Kagwagom-Irruan area?**

**No Implementation.** The Afi Mountain Wildlife Sanctuary was established in 2000 and so far, its legal boundaries have not been extended to include the Olum Hills or the Kagwagom-Irruan area. The international commitment has not yet found enough political support in the Cross River State for the extension to be implemented.

**27 Have the Mbe Mountains been legally designated and officially gazetted as a community forest or wildlife sanctuary?**

**No Implementation.** Federal and regional governments share competences over protected areas based on designation types. The National Park Service has powers to designate and manage national parks at the federal level, while state agencies have authority over the rest of the designations. Legal designation for the Mbe Mountains therefore falls under the legal competences of the Cross River State. The Cross River State Forest Commission Law establishes eight categories for state forests including:

- State Forest Reserve
- Local Government Forest
- Community Forest
- Private Forest
- Wildlife Sanctuary
- Forest Plantation
- Strict Nature Reserve
- Garden, Park and Urban Forest.<sup>209</sup>

The Cross River State Forest Commission may declare "state forest reserves" and "community forests" as protected forests.<sup>210</sup> The law requires the publication of a gazette on the following three occasions during the approval process:

- Notification of intention to reserve land and appointment of the Reserve Settlement Officer<sup>211</sup> at the initiation of the process.
- Notification of lands to be reserved,<sup>212</sup> after concluding the period of receiving inquiries by the public and resolving them.
- Order to constitute legal reserve,<sup>213</sup> after receiving all appeals to the notification of lands to be reserved and arrival at final decision.

At this point, the designation for the Mbe Mountains has not been gazetted at any of the stages of the process to formalize legal protection. Since 2007, the area has *de facto* been managed

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<sup>208</sup> <https://www.unodc.org/nigeria/en/strengthening-nigerias-response-to-the-trafficking-of-wildlife-and-forestry-products-2020-2022.html>

<sup>209</sup> Cross River State Forest Commission Law, Art. 24.

<sup>210</sup> Id. at Art. 26.

<sup>211</sup> Id. at Art. 27.

<sup>212</sup> Id. at Art. 33.

<sup>213</sup> Id. at Art. 35.

as a community wildlife sanctuary by the Conservation Association of the Mbe Mountains (Camm) with support from the WCS and the Cross River State Forestry Commission.

Nevertheless, the Rainforest Trust has an active project, funded with USD 433,000, to support local partners WCS-Nigeria and Conservation Association of the Mbe Mountains (Camm) to secure the Cross River State Government's official designation and gazettelement of the Mbe Mountains Community Wildlife Sanctuary.<sup>214</sup>

**28 Has the Cross River National Park (CRNP): Okwangwo Division Management plan been ratified by the National Parks Board?**

**Partial Implementation.** The Cross River National Park (CRNP): Okwangwo Division has an old management plan that is scheduled to be updated and ratified by the National Parks Board, but which has not occurred as of September 2021. EU funds are currently available to support this activity in the coming months, although COVID-19 related travel restrictions have delayed field work by international consultants.

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<sup>214</sup> See <https://www.rainforesttrust.org/projects/creating-a-new-sanctuary-for-the-cross-river-gorilla/>

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# ANNEX I.

## Selected Obligations from the text of the Convention on the Conservation of Migratory Species of Wild Animals (CMS)

### Article I Interpretation

1. For the purpose of this Convention:

a) "Migratory species" means the entire population or any geographically separate part of the population of any species or lower taxon of wild animals, a significant proportion of whose members cyclically and predictably cross one or more national jurisdictional boundaries;

[...]

i) "Taking" means taking, hunting, fishing, capturing, harassing, deliberate killing, or attempting to engage in any such conduct

### Article III Endangered Migratory Species: Appendix I

[...]

4. Parties that are Range States of a migratory species listed in Appendix I shall endeavour:

a) to conserve and, where feasible and appropriate, restore those habitats of the species which are of importance in removing the species from danger of extinction;

b) to prevent, remove, compensate for or minimize, as appropriate, the adverse effects of activities or obstacles that seriously impede or prevent the migration of the species; and

c) to the extent feasible and appropriate, to prevent, reduce or control factors that are endangering or are likely to further endanger the species, including strictly controlling the introduction of, or controlling or eliminating, already introduced exotic species.

5. Parties that are Range States of a migratory species listed in Appendix I shall prohibit the taking of animals belonging to such species. Exceptions may be made to this prohibition only if:

a) the taking is for scientific purposes;

b) the taking is for the purpose of enhancing the propagation or survival of the affected species;

c) the taking is to accommodate the needs of traditional subsistence users of such species; or

d) extraordinary circumstances so require;

provided that such exceptions are precise as to content and limited in space and time. Such taking should not operate to the disadvantage of the species.

[...]

7. The Parties shall as soon as possible inform the Secretariat of any exceptions made pursuant to paragraph 5 of this Article.

#### Article IV. Migratory Species to Be the Subject of AGREEMENTS: Appendix II

[...]

3. Parties that are Range States of migratory species listed in Appendix II shall endeavour to conclude AGREEMENTS where these would benefit the species and should give priority to those species in an unfavourable conservation status.

## ANNEX II.

# Selected Recommendations from the Legislative Guidance Materials relating to implementation of Article III.5 of CMS

Annex Table 1. Selected Recommendations

No.	Recommendation
Recommendation 6	Clearly define “take”
Recommendation 7	Clearly define “take” to include the destruction and removal of eggs and nests
Recommendation 8	Clearly identify the exceptions, if any, to the take prohibition
Recommendation 9	Clearly describe the means by which exceptions will be “precise as to content and limited in space and time”.
Recommendation 10	Establish a threshold for determining when the taking does “not operate to the disadvantage of the species”.
Recommendation 12	Establish a process for communicating exceptions to the Secretariat
Recommendation 13	Establish civil and criminal penalties that are sufficient to deter future violations
Recommendation 14	Include provisions for seizure and forfeiture of property used to facilitate or to commit a crime
Recommendation 15	Establish obligations to affected resources, if possible, or require the economic compensation for the damage caused
Recommendation 16	Include provisions for the suspension or withdrawal of licenses and authorizations, or for the limitation, restriction or suspension of activities, or for the shutdown of premises and establishments
Recommendation 17	Extend liability for the commission of the offence to any person who contributes in its commission, with increased penalties for public officials

## ANNEX III.

# Selected Gorilla Agreement Obligations

### Article III. General Conservation Measures

1. The Parties shall take measures to conserve all populations of gorillas
2. To this end, the Parties shall:
  - (a) accord the same strict protection for gorillas in the Agreement Range as provided for under Article III, paragraphs 4 and 5 (excluding exceptions (a) through (d) specified for paragraph 5), of the Convention;
  - (b) identify sites and habitats for gorillas occurring within their territory and ensure the protection, management, rehabilitation and restoration of these sites in liason with those bodies listed in Article IX, paragraphs (a) and (b) of this Agreement, concerned with habitat conservation;
  - [...]
  - (i) when such emergency situations affect people in the region, Parties must seek to ensure that humanitarian agencies take into account the environmental impact of their relief efforts and coordinate with the relevant authorities designated by the Parties to this Agreement;
  - (j) take all efforts to prevent conflicts between humans and gorillas through appropriate land-use planning. When human-gorilla conflict occurs, parties must take measures to reduce the conflict, with expert advice. There measures must be humane, consistent with the terms of this Agreement and to the benefit of both humans and gorillas;

## ANNEX IV.

# Selected Regional Action Plan Activities

### REGIONAL NON-SITE-SPECIFIC PRIORITY ACTIONS

- Revise existing legislation including the 1994 Forestry and Wildlife Law (Cameroon) and the Endangered Species Decree (Nigeria)
- Establish a LAGA-type collaboration in Nigeria with MOU between NGOs and government
- Establish a transboundary Takamanda-Okwangwo protected area complex and investigate options for World Heritage Site status

### NIGERIA SITE-BASED ACTIONS

#### Afi Complex (AMWS and ARFR including Olum Hills and Olum-Buanchor enclave)

- Review existing boundaries of AMWS and possible extension to include Olum Hills and Kagwagom-Irruan area

#### Mbe Mountains

- Define legal status and complete gazettelement as a community forest or wildlife sanctuary

#### Cross River National Park (CRNP): Okwangwo Division

- Review draft management plan and ensure ratification by National Parks Board

### CAMEROON SITE-BASED ACTIONS

#### Takamanda National Park (TNP)

- Convene meeting to bring together agencies to create inter-ministerial taskforce to address poaching and transboundary trade in illegal timber

#### Mawambi Hills

- Explore formal designation options for Mawambi Hills and implement designation with local communities

#### Mbulu Forest

- Explore options for formal designation of Mbulu forest and implement designation with local communities

#### Proposed Ebo National Park (ENP)

- Legally gazette the national park and develop a management plan, install ecoguards and demarcate the boundary

## ANNEX V.

# Legal Inquiries by International Standard

Annex Table 2. Legal Inquiries by International Standard

Legal Inquiry	CMS	CMS Legal Recommendations	Gorilla Agreement	CRG Revised Regional Action Plan
1 Is “take” defined in law as including both killing animals, as well as harvesting and/or collecting alive specimens?	I.1.i)	6, 7		
2 Is take of Cross River gorilla and Nigeria-Cameroon chimpanzees prohibited in the entire national territory?	III.5		III.2.a	
3 What specific exceptions to the prohibition of taking protected species are permitted? Are they consistent with those listed by CMS?	III.5	8		
4 Are exceptions to the prohibition of take of protected species applicable to gorillas or are they excluded?			III.2.b	
5 Are exceptions precise in content and limited in space and time? Are they limited by any factor to ensure they do not operate to the disadvantage of the species?	III.5	9, 10		
6 Have exceptions been communicated to the CMS Secretariat? Is there a mechanism in place to promptly communicate with the CMS Secretariat regarding take exceptions?	III.7	12		
7 Are critical habitats for Nigerian-Cameroon chimpanzees being identified? Are they legally protected under conservation objectives?	III.4.a)			
8 Are critical habitats for Cross River gorillas being identified? Are they legally protected under conservation objectives?	III.4.a)			
9 Do key development related laws require conservation and/or restoration of habitats?	III.4.a)			
10 Does the jurisdiction recognize nationally or internationally listed species in its environmental impact assessment (EIA) procedures?	III.4.b)			
11 Does the jurisdiction’s EIA legislation require consideration of migratory species, including the impacts of linear infrastructure projects?	III.4.b)			
12 Does the EIA and other key legislation (e.g., mining law, forestry law) incorporate the concept of mitigation hierarchy?	III.4.b)			

Legal Inquiry	CMS	CMS Legal Recommendations	Gorilla Agreement	CRG Revised Regional Action Plan
13 Does the EIA law include or exclude emergency interventions among the activities with mandatory environmental impact assessment requirement?			III.2.i	
14 Does the law require regular studies to determine species status?	III.4.c)			
15 Are studies required to identify and describe threats to Cross River gorillas and Nigeria-Cameroon chimpanzees?	III.4.c)			
16 What specific legal controls are in place to protect listed species? Does this include protection against zoonotic disease, alien invasive species, wildlife trade?	III.4.c)			
17 Does land-use planning consider conflict between humans and gorillas? Are there any specific preventive measures considered in law?			III.2.j	
18 Is the “attempt” to take a protected species also prohibited by law?	I.1.i)			
19 Are administrative and criminal penalty types and penalty levels defined for the crime of illegal take of protected species sufficient to deter crime?		13,14, 15,16		
20 Is there differential liability for public official and legal entities involved in the illegal take of protected species?		17		
21 Does criminal liability for illegal take of protected species extend to accomplices?		17		
22 Has a transboundary Takamanda-Okwangwo protected area complex been established by law?				■
23 Have Cameroon and Nigeria taken any steps to register the transboundary Takamanda-Okwangwo protected area complex as a World Heritage Site?				■
<b>Nigeria-only</b>				
24 Has Nigeria the Endangered Species Decree since 2014 and 2019?				■
25 Is there a new LAGA -type collaboration with an MOU in place between NGOs and the Nigerian Government?				■
26 Have the existing legal boundaries of the Afi Complex been reviewed and extended to include Olum Hills and Kagwagom-Irruan area?				■
27 Have the Mbe Mountains been legally designated and officially gazetted as a community forest or wildlife sanctuary?				■

Legal Inquiry	CMS	CMS Legal Recommendations	Gorilla Agreement	CRG Revised Regional Action Plan
28 Has the Cross River National Park (CRNP): Okwangwo Division Management plan been ratified by the National Parks Board?				■
Cameroon-only				
24 Has Cameroon revised the 1994 Forestry and Wildlife Law since 2014 and 2019?				■
25 Is there an inter-ministerial taskforce in place to address poaching and transboundary trade in illegal timber in the Takamanda National Park (TNP)?				■
26 Has Mawambi Hills been protected under any formal designation, also involving local communities?				■
27 Is the Mbulu forest being protected under any formal designation, also involving local communities?				■
28 Has the gazettelement decree and boundary demarcation of Kagwene Gorilla Sanctuary (KGS) been corrected and implemented?				■
29 Has the proposed Ebo National Park (ENP) been approved and legally gazetted?				■
30 Has a management plan been developed for the Ebo National Park (ENP)?				■

## ANNEX VI.

### Legislative and Policy Online Sources

This study was based on desk research, relying on legal and policy documents available online and the collaboration of CMS focal points in Nigeria and Cameroon to gather additional information not available online. The study used seven primary sources for legal documents and eight additional secondary sources as listed in Annex Tables 3 and 4.

Annex Table 3. Primary Online Legal Sources

No.	Source	Online source
1	CMS Secretariat	<a href="https://www.cms.int">https://www.cms.int</a>
2	Gorilla Agreement	<a href="https://www.cms.int/gorilla/">https://www.cms.int/gorilla/</a>
3	Cameroon National Assembly	<a href="https://www.assnat.cm/">https://www.assnat.cm/</a>
4	Cameroon Prime Minister Office	<a href="https://www.spm.gov.cm/">https://www.spm.gov.cm/</a>
5	Cameroon Ministry of Forest and Wildlife	<a href="http://www.minfof.cm/">http://www.minfof.cm/</a>
6	Cameroon National Forest Development Support Agency	<a href="https://www.anafor.cm/">https://www.anafor.cm/</a>
7	Cameroon Service for Local Governance, the Environment and Forests	<a href="https://segef-cameroun.org">https://segef-cameroun.org</a>
8	Nigeria National Institute for Legislative and Democratic Studies	<a href="https://nilds.gov.ng/">https://nilds.gov.ng/</a>
-	Nigeria National Assembly	<a href="https://nass.gov.ng/">https://nass.gov.ng/</a>
-	Nigeria Ministry of Environment	<a href="https://environment.gov.ng/">https://environment.gov.ng/</a>
-	Nigeria Park Service	<a href="http://nigeriaparkservice.org/">http://nigeriaparkservice.org/</a>

Annex Table 4. Secondary Online Legal Sources

No.	Source	Online source
1	Legal Atlas	<a href="https://www.legal-atlas.net">https://www.legal-atlas.net</a>
2	Forest Legality	<a href="https://forestlegality.org/">https://forestlegality.org/</a>
3	Gazettes Africa by AfricanLII	<a href="https://gazettes.africa/">https://gazettes.africa/</a> (Nigeria)
4	EcoLex	<a href="https://www.ecolex.org/">https://www.ecolex.org/</a>
5	Nigeria Policy and Legal Advocacy Center	<a href="https://lawsofnigeria.placng.org/">https://lawsofnigeria.placng.org/</a>
6	International Center for Nigeria Law	<a href="http://www.nigeria-law.org/LawLibrary.htm">http://www.nigeria-law.org/LawLibrary.htm</a>
7	WCS Nigeria	<a href="https://nigeria.wcs.org/">https://nigeria.wcs.org/</a>
8	WCS Cameroon	<a href="https://cameroon.wcs.org/">https://cameroon.wcs.org/</a>

## ANNEX VII.

# Cameroon Legal Instruments

Annex Table 5. Cameroon's Policy and Legal Documents relevant to this assessment

CMS PARTY REPORTS		
Cameroon 2019 National Report to CMS prior COP13		Party Report
Cameroon 2011 National Report to Gorilla Agreement		Party Report
POLICY INSTRUMENTS		
1999 National Anti-Poaching Strategy		National Policy
2012 National Biodiversity Strategy and Action Plan		National Policy
2020 Forest and Wildlife Sector Strategy		National Policy
LEGAL INSTRUMENTS		
1978/023	Law on the Protection of National Parks	National Law
1994/001	Law on Forestry, Wildlife and Fisheries	National Law
1995/531/PM	Decree on the implementation of the Forest Regime	National Regulation
1995/446/PM	Decree laying down the procedures for wildlife management.	National Law
1996/06	Law No. 96/06 of January 18, 1996 revising the Constitution of June 2, 1972	National Law
1996/012	Law on the framework for the management of the environment.	National Law
1996/237	Decree No. 96/237/PM of 10 April 1996, laying down the procedures for the operation of the special funds provided for by Law No. 94/01 of 20 January 1994 on forests, wildlife and fishing.	National Law
1996/238	Decree fixing the remuneration for certain services rendered in application of the Forest and Wildlife Regime.	National Law
1999/001	Ordinance amending and supplementing certain provisions of the Law on Forestry, Wildlife and Fisheries	National Law
2000/004/PM	Decree establishing the Campo-Ma'an National Park	National Law
2000/005/PM	Decree establishing the Mbam and Djerem National Park	National Law
5/001-UEAC-097-CM-06	Law No. 5/001-UEAC-097-CM-06 of August 3, 2001 establishing the CEMAC (Communauté Économique et Monétaire de l'Afrique Centrale – Economic and Monetary Community of Central Africa) Customs Code	National Law
2001/181	Decree No. 2001/181 of July 25, 2001 on the organization of the National Gendarmerie	National Law
2001/0222/A/MINEF/	Ordinance on the elaboration and approval of forest management plans	National Regulation
2004/352/PM	Decree establishing the Mbéré Valley Park National Park	National Law
2005/007	Law No. 2005/007 of July 27, 2005 establishing the Criminal Procedure Code	National Law

2005/099	Decree on the organization of the Ministry of Forests and Wildlife	National Law
2005/495	Decree amending and supplementing the Decree on the organization of the Ministry of Forests and Wildlife	National Law
2005/2869/PM	Decree on the Implementation of Certain Provisions of the Convention on International Trade in Endangered Species of wild Fauna and Flora	National Law
2006/088	Decree No. 2006/088 of March 11, 2006 on the creation, organization, and operation of the National Anti-Corruption Commission	National Law
2006/647/MINFOF	Order setting sport hunting order	National Regulation
2006/648/MINFOF	Order setting the List of Animals of Classes A, B and C	National Regulation
2007/1018/MINFOF	Order on the organization of hunting in the territories managed by the communities.	National Regulation
2008/0083/MINFOF	Order No. 0083/MINFOF of February 6, 2008 modifying and completing some provisions of Order No. 0648/MINFOF of December 18, 2006 listing the animals included in protection classes A, B, and C	National Regulation
2009/857/D/MINFOF	Decision on the organization of bushmeat commercialization	National Regulation
2009/858/A/MINFOF		National Regulation
2012	MINFOF Procedures	National Procedures
2013/171	Decree on EIA	National Law
2014/ 413	Presidential Decree No. 2014/ 413 of October 22, 2014 on the creation, organization, and operation of Anti-Trafficking Airport Units (CAAT) within international airports in Cameroon	National Law
2014/3212	Decree establishing the Wildlife Sanctuary of Tofala Hill	National Law
2016/649	Order on the distribution of animal species whose killing is authorized as well as the latitude of killing per type of sports hunting permit	National Regulation
2016/007	Law on the Penal Code	National Law
2016/319	Decree on the regulatory part of the Penal Code defining the contraventions	National Law
2018/0163	DECISION N° 0163/D/MINFOF/SETAT/SG/DFAP/SDAP of May 17, 2018 on the creation, organization and functioning of an Anti-Poaching Unit in the South-West	National Regulation
2020/031/CAB/PM	Order on the organic framework for the implementation of the Presidential Plan for Reconstruction and Development of the North-West and South-West Regions.	National Law
2020/1291/D/MINOR/ DFAP	Decision establishing the central unit for the fight against poaching	National Regulation
<b>NATIONAL PLANS AND PROJECTS</b>		
2005 National Action Plan for the Conservation of Great Apes		National Plan
Integrated and Transboundary Conservation of Biodiversity in the Basins of the Republic of Cameroon (GEF 2017-2023)		National Project

## ANNEX VIII.

# Nigeria Legal Instruments

Annex Table 6. Nigeria's Policy and Legal instruments relevant to this assessment

CMS PARTY REPORTS		
Nigeria 2019 National Report to CMS prior COP 13		Party Report
Nigeria 2011 National Report to Gorilla Agreement		Party Report
Nigeria 2019 National Report to Gorilla Agreement		Party Report
POLICY INSTRUMENTS		
National Policy on Environment		National Policy
Nigeria's Agenda 21		National Policy
LEGAL INSTRUMENTS		
1916	Criminal Code Act	National Law
1956	Forest Law	National Law
1956	Forest Regulation	National Regulation
1959	Firearms Act	National Law
1984/20	Miscellaneous Offences Act	National Law
1985/11	Endangered Species (Control of International Trade and Traffic) Act	National Law
1988	Federal Environmental Protection Agency Act	National Law
1992/81	Nigerian Tourism Development Corporation Act	National Law
1992/88	Nigerian Urban and Regional Planning Act	National Law
1992/86	Environmental Impact Assessment Act	National Law
2017	EIA Procedural Guidelines	National Regulation
2017	Strategic Environmental Assessment (SEA) Guidelines	National Regulation
unknown	EIA Guidelines for Solar Energy Projects	National Regulation
unknown	EIA Guidelines for Wind Energy Projects	National Regulation
unknown	EIA Guidelines for Hydropower Projects	National Regulation
unknown	EIA Guidelines for Biophysical Impact Assessment (BIA)	National Regulation
1999/46	National Park Service Act	National Law
2007/20	Minerals and Mining Act	National Law
2007/25	National Environmental Standards and Regulations Enforcement Agency (Establishment) Act	National Law
2011/16	National Environmental Regulations (Protection of Endangered Species in International Trade)	National Regulation
2016	Endangered Species (Control of International Trade and Traffic) Act 2016 Amendment	National Law
2010/3	Cross River State Forestry Commission Law	Sub-national Law
2010	Cross River Wildlife Law	Sub-national Law

2009	Cross River State Logging Ban	Sub-national Law
2009	Cross River State Anti-Deforestation Task Force	Sub-national Law
Cooperation Framework Agreement Between the Government of The Republic of Cameroon and The Government of The Federal Republic of Nigeria on Transboundary Ecosystems Conservation and Sustainable Management of Forestry and Wildlife Resources (draft)		Bilateral agreements (draft)
<b>ENFORCEMENT DATA</b>		
Afi Mountain Wildlife Sanctuary 2019 Annual Report		Enforcement Report



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