environmental investigation agency

AFRICA NATURE INVESTORS

Wildlife

Combating Wildlife Crime in Nigeria

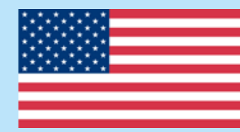
An analysis of the Criminal Justice Legislative Framework

August 2021

CONTENTS

Acknowledgements	3
Glossary	3
Executive Summary	4
Key Recommendations	8
Introduction	10
Legislation and wildlife crime	13
Strong prosecutions	22
Trial without delay	25
Sentencing	25
International cooperation	26
References	32

ACKNOWLEDGEMENTS



We would like to thank our donor, the Bureau of International Narcotics and Law Enforcement Affairs within the U.S. Department of State, which funded the production of this report.

In addition, we would like to thank all of the many individuals, government agencies and non-governmental organisations that contributed to this report, including but not limited to representatives from the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) Secretariat, the Customs Authority of Nigeria, the Economic and Financial Crimes Commission (EFCC), the Federal Department of Forestry, the Federal and Adamawa State Ministries of Justice, the Federal Ministry of Environment, the National Environmental Standards and Regulations Enforcement Agency (NESREA), the Nigerian Conservation Foundation (NCF), the Nigerian Financial Intelligence Unit (NFIU), the Offices of the Director of Public Prosecutions for Adamawa, Jalingo and Taraba States, the United Nations Office on Drugs and Crime (UNODC), WildAid and the Wildlife Conservation Society (WCS).

EIA and Africa Nature Investors Foundation (ANI) also wish to thank our numerous other supporters whose long-term commitments to both organisations' missions and values helped make this work possible.

Front cover: African savanna elephants (*Loxodonta africana*) at a water hole in Yankari Game Reserve, Nigeria. **Photo ©Wildlife Conservation Society Nigeria, 2021**

Opposite page: Pangolins are the most trafficked mammal in the world

CITATION

Shamini Jayanathan, Barrister-at-Law, Arcturus Consultancy Ltd. May 2021. Combating Wildlife Crime in Nigeria: An Analysis of the Criminal Justice Legislative Framework. Africa Nature Investors Foundation and Environmental Investigation Agency (UK).

This report was funded by a grant from the United States Department of State. The opinions, findings and conclusions stated herein are those of the author[s] and do not necessarily reflect those of the United States Department of State

ABOUT ANI

Africa Nature Investors (ANI) Foundation is a non-governmental organisation based in Nigeria dedicated to applying best practice conservation strategies to West Africa including tackling the illegal wildlife trade in Nigeria.

ABOUT EIA

We investigate and campaign against environmental crime and abuse.

Our undercover investigations expose transnational wildlife crime, with a focus on elephants and tigers, and forest crimes such as illegal logging and deforestation for cash crops like palm oil. We work to safeguard global marine ecosystems by addressing the threats posed by plastic pollution, bycatch and commercial exploitation of whales, dolphins and porpoises. Finally, we reduce the impact of climate change by campaigning to eliminate powerful refrigerant greenhouse gases, exposing related illicit trade and improving energy efficiency in the cooling sector.

EIA UK

62-63 Upper Street,
London N1 0NY UK
T: +44 (0) 20 7354 7960
E: ukinfo@eia-international.org
eia-international.org

Environmental Investigation Agency UK
UK Charity Number: 1182208
Company Number: 07752350
Registered in England and Wales

GLOSSARY

ACJA - Administration of Criminal Justice Act

AG - Attorney General

AGF - Attorney General of the Federation

ANI - Africa Nature Investors Foundation

CBB - Code of Conduct Bureau

CCG - Complex Case Group

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

DPP - Office of the Director of Public Prosecutions [Nigeria]

ECOWAS - Economic Community of West African States

EFCC - Economic and Financial Crimes Commission [Nigeria]

EIA - Environmental Investigation Agency UK

END - Eliminate, Neutralize, and Disrupt Wildlife Trafficking

ESA - Endangered Species Act 1985 (as amended in 2016)

FCT - Federal Capital Territory

GIABA - Action Group against Money Laundering in West Africa

ICCWC - International Consortium on Combatting Wildlife Crime

ICPC - Independent Corrupt Practices and Other Related Offenses Commission

INL - U.S. Department of State, Bureau of International Narcotics and Law Enforcement Affairs

MLA - Mutual Legal Assistance

MMIA - Murtala Mohammed International Airport of Lagos

MOU - Memorandum of Understanding

NACIWA - Network of National Anti-Corruption Institutions for West Africa

NCF - Nigerian Conservation Foundation

NESREA - National Environmental Standards and Regulations Enforcement Agency [Nigeria]

NFIU - Nigeria Financial Intelligence Unit

NIAP - National Ivory Action Plan

NPS - National Park Service

SWCO - Special Wildlife Crime Office

UNODC - United Nations Office on Drugs and Crime

UNTOC - United Nations Convention against Transnational Organised Crime

WCO - World Customs Organization

WCS - Wildlife Conservation Society

I. Executive summary

1. This report, commissioned by the Environmental Investigation Agency UK (EIA) in partnership with Africa Nature Investors Foundation (ANI) and supported by the U.S. Department of State, Bureau of International Narcotics and Law Enforcement Affairs (INL), is the first of its kind to undertake an in-depth legislative analysis of the federal wildlife-related laws of Nigeria alongside those of six states identified as key for addressing wildlife crime in Nigeria, namely Adamawa, Kano, Lagos, Rivers, Cross River and Taraba States. It builds on recommendations made by the EIA in its report of 2018 regarding Nigeria's progress on its National Ivory Action Plan (NIAP) which included the need to conduct an assessment under the auspices of the International Consortium for Combatting Wildlife Crime (ICCWC). This report's focus on legislation will complement such an effort that will in due course be undertaken by the UN Office on Drugs and Crime (UNODC).

2. Nigeria is a federation of 36 states and one Federal Capital Territory (FCT Abuja). Each of the 36 states is a semi-autonomous political unit that shares powers with the federal government as provided under the Constitution. Each state has its own legislative body and its own Attorney General (AG) and Director of Public Prosecutions (DPP) and many have their own game reserves and laws concerning wildlife within. Those laws are not aligned with other states or with federal-level laws governing protected areas. In addition, many national authorities hold a mandate over wildlife crime, including investigation and prosecution powers. This creates a situation where there are no clear lines of oversight, coordination or management of wildlife crime investigation or prosecution. The ability of criminal elements to exploit weaknesses and loopholes in legal frameworks, including the grey areas that exist where multiple agencies overlap in mandate as is the case in Nigeria, has long been recognised as a significant factor in the failure of countries to meet the challenge of curbing such crimes.

3. It is clear that the challenges of improving Nigeria's ability to counter wildlife trafficking from and to its borders are immense. The key will lie in cooperation between the various agencies, which must strive to agree a unified approach to the handling of crimes involving protected species. These crimes must be prioritised in the short term to address the unenviable reputation that Nigeria has acquired in this context. Targeted and surgical interventions will be required to build Nigeria's capacity for a short, sharp and impactful response to these crimes. In the longer term, the resources required are substantial if Nigeria is to create a coherent legal framework to address these and other emerging crimes against the planet's biodiversity.

Above: White-bellied pangolin (*Phataginus tricuspis*) in Cross River National Park, Nigeria

"It is clear that the challenges of improving Nigeria's ability to counter wildlife trafficking from and to its borders are immense. The key will lie in cooperation between the various agencies, which must strive to agree a unified approach to the handling of crimes involving protected species."

Key findings

Legislation

4. At the federal level, the laws governing international wildlife trafficking in Nigeria are relatively weak as compared to jurisdictions in East and Southern Africa. The draft law attached to Nigeria's 2018 NIAP progress report (the National Wildlife Species Protection Act – Endangered Species (Control of International Trade and Traffic) Amendment Act 2015) represents an improvement and support to pass it should be a priority. It does need some review alongside the draft Forestry Law and the draft National Park Act to ensure harmonisation in terms of criminal offences at the very least. Further, the offences it contains, while an improvement, could be further extended to capture the full range of relevant offences and vital investigative and ancillary powers.[1] As it stands, the best laws for prosecuting cases involving large-scale seizures are to be found not in the wildlife-specific laws but customs and money laundering laws.

5. At the state level, the disparity between states and their wildlife-specific laws is significant. However, the process of addressing the required changes would likely take years, if not decades, to push through across all 36 states. The focus should therefore be on the federal laws and, given that the issue of obtaining a 'fiat' or permission from the federal-level AG for a state prosecutor to manage a federal case is seen as relatively straightforward, it is quite possible for state-level prosecutors to navigate the existing federal laws (and new ones) to manage cases involving key species. The starting point is to raise awareness of those laws.

6. In parallel, where appetite and resources permit, it would be desirable to scope and undertake the harmonisation of state-level laws to achieve parity with each other and at the federal level. This can be through amendment, repeal and/or passage of new state-level laws (see summary of recommendations below).

7. Many agencies – in particular, Nigeria Customs Service (Customs), National Park Service (NPS) and the National Environmental Standards and Regulations Enforcement Agency (NESREA) – hold the power to 'compound' rather than prosecute an offence, i.e., on admission of the accused and payment of a fine, these agencies discontinue any further action. The power to compound is a potential incentive for corrupt practices. However, it is equally true that the lack of funding from central government to, for example, the NPS or the state-level park services is such that compounding addresses is a necessary requirement for the operation of some of these authorities. Rather than seeking wholesale removal of this power, e.g. through a standalone amendment law, discussions should be had with the relevant agencies to agree upon a standardised approach to compounding. For instance, compounding in any case involving a protected species should never be allowed or this could be framed less stringently and specific offences relating to protected species could be identified as ineligible for compounding and set out in an agreed MoU between agencies or within a policy document for each agency.

Prosecutions

8. Every prosecutor interviewed in the course of this report stated they had never seen a prosecution of wildlife crime either at the federal level or the state level. For some, the first time they ever considered offences against wildlife was in the course of being interviewed for this report. Awareness of the applicable federal laws and state laws was virtually nil. Coordination with Customs, NESREA, the police, NPS or state-level reserve officers was unheard of in the context of wildlife crime. The customs authorities, responsible for a significant number of detections at Nigeria's ports and borders, had not conducted a single prosecution internally until 2019,[2] but had instead handed matters over to NESREA without oversight, follow-up or any further engagement. This is despite having an in-house prosecution department with power to prosecute not just under its own law but any offence connected with a customs violation and comprising five officers in Lagos and at least one, often two or three, in each state.

9. The disparity in laws, coupled with a lack of awareness of the existing laws both at state and federal level means that the use of fiats is not even considered by state prosecutors. There are also overlapping mandates between relevant agencies and so a targeted response, at least in the short term, is merited. It is recommended that the focus should be upon making the best use of the existing legal framework using a multi-agency coordinated approach– as stated above, the best laws for prosecuting cases involving large-scale seizures are to be found not in the wildlife-specific laws but customs and money laundering laws. Thus, support should be provided to key agencies with the mandate to enforce such laws, particularly the Customs prosecution department and the Economic and Financial Crimes Commission (EFCC), while bringing in state and federal prosecutors as well as NESREA alongside to build, in parallel, capacity and awareness of these crimes. This might be done in the following way:

- identify and prioritise states for intervention and support according to prevalence of wildlife crime and/or the proximity to key ports and points of entry and exit into and out of Nigeria. Criteria for selection will have to be determined with input from relevant stakeholders;

- support the HQ-level Customs offices and the prosecution units of EFCC,

- NESREA, NPS and relevant state DPP's offices to prosecute wildlife crime and related offences, including to codify their decision to charge and adopt a process of written and continuous review. The Federal DPP has such a code and so could be looked upon as a facilitator of such a process. This 'code' would identify the thresholds at which charges could be laid and provide guidance on other prosecutorial functions such as selection of charges, inter-agency consultation, plea bargaining considerations, and more. The initial focus should be at HQ-level Customs and other key agencies sending nominated officers to work on this exercise. For state prosecutors, support may then be deployed for state-level formal adoption;

- in the short term, particular focus should be on a coordinated multi-agency approach involving Customs, EFCC, NESREA and potentially other agencies. Customs has been largely responsible for the large-scale seizures reported in recent years including the large-scale seizure of ivory, pangolin and other wildlife species in January 2021. Engagement with EFCC and the Nigerian Financial Intelligence Unit (NFIU) is also essential to strengthen investigations and prosecutions of money laundering and corruption associated with wildlife crime, while building necessary parallel capacity in other agencies such as NESREA and the federal DPP's office. This is because the laws applicable to international wildlife trafficking can extend to money laundering, tax evasion, fraud and corruption offences. The federal- and even state-level DPPs offices would be a better home for such prosecutions than even Customs or NESREA. In the short term however, mentoring of investigators and prosecutors in the key agencies mentioned above would be welcomed, perhaps with the use of a pilot programme focusing on wildlife crimes;

- the support to prosecutors as appropriate (Customs, EFCC, DPP, NPS and NESREA (which is currently home to 16 prosecutors)) would further focus upon navigating the existing laws applicable to wildlife trafficking and to the creation of a prosecution toolkit for such crimes. This must also include appreciation of the relevant evidential laws particularly in relation to admissibility of digital evidence and the disposal of exhibits prior to conclusion of trial (i.e., where subject to decay). Training on plea bargaining provisions and active case management provisions under the Administration of Criminal Justice Act 2015 should be a key component, as should discussion and agreement regarding court venue (the High Court may be a better venue for all such cases, given its original jurisdiction over criminal matters[3] and the level of experience required of judges in this court). Any limits on jurisdiction over wildlife legislation should be identified and potential options to overcome such limitations through legislative amendments should be explored;

- in particular, support should be provided (in the short to medium term) to the Customs prosecution department on prosecution-led investigation and compilation of case files for in-house prosecutions with advocacy training. In addition, there is appetite for investigator training and the development of codes of conduct governing search and seizure, interview and more – the UK's Police and Criminal Evidence Act 1984 may act as a potential source of material to aid this development, in particular Codes A to H. Such a code for internal use within Customs could be developed in parallel to prosecution training outlined above in order to build long-term capacity and ensure that all relevant parties to any investigation are aware of the relevant processes and safeguards;

- with plans afoot to establish a specialist wildlife crime office (SWCO), it is essential that prosecution services are included whether they sit within the Federal DPP's office, the Customs authority, EFCC or NESREA. This can include a move to second prosecutors from these agencies into a 'case progression' unit with the SWCO – in this way, all agencies can be seen to have a stake in any seizure and capacity can be built in parallel towards achieving success at trial;

- training of Customs, NESREA, EFCC and DPP prosecutors alongside the Central Authority should be provided in order to support mutual legal assistance and extradition applications;

- support to build a witness support fund should be provided – this is an issue raised by state- and federal-level prosecutors alike. This may take the form of providing assistance in articulating and quantifying the need so that a request can be made to central government. Alternatively, liaison with NGOs can be considered to support priority cases in this way. The issue of corruption and how such funds would be administered would be a concern but as the 2012 initiative undertaken by the UK Crown Prosecution Service clearly articulated – 'no witness, no justice'.

Trial without delay, sentencing and the judiciary

10. The Administration of Criminal Justice Act 2015 and the federal-level practice direction on active case management (aimed at speeding up criminal trial) has yet to filter down to the states' high courts and magistrates' courts. The culture of adjournments is rife across the country, stymieing even the best investigation and prosecution of any case.

11. Further, awareness of wildlife crimes among the judiciary, as with prosecutions, is virtually nil. There is a need for support to the judiciary at both the federal and state levels (in priority areas) for training, awareness and more detailed scoping on the functioning of these courts with a view to identifying key interventions. Digitisation is often cited as a necessary requirement along with internet access (this can be said for prosecution offices too) to enable both speedy sharing of files and information and to simply provide access to relevant laws and procedures.

12. There is no sentencing practice that can be identified in the context of wildlife crime due to the fact that so few cases have been prosecuted. However, Nigeria has a strong framework in relation to sentencing and, with the passage of the federal-level practice directions on sentencing in 2016, it is one of the few countries on the continent that has set out prescriptive sentencing guidelines. However, this only applies to a limited category of offences and within the FCT. Another practice direction was also issued in 2015 focussing upon corruption and related offences for all High Courts. While 'environmental impact' is considered in both practice directions as a factor for sentencing, and while the 2016 practice direction provides for 'offences against the State', which arguably could include wildlife offences, it would be desirable to clearly articulate a sentencing practice within the context of wildlife (and even forestry) crime. Both practice directions provide a precedent that can be utilised and it is recommended that engagement with the Chief Judge of the Federal High Court be undertaken with a view to extending this approach to wildlife trafficking cases and that Chief Judges in key states be engaged to consider adoption of the same. This would ensure a consistent (and deterrent) approach to sentencing and, in particular, could address the issue of foreign nationals and deportation with a clear guideline that imprisonment must be served before a deportation and not in lieu.

13. The lack of any central database for previous convictions is another hurdle – at the state level, prosecutors advised that unless the accused had been sentenced before in that particular court room and was recognised by someone in that court as having been convicted there, there was little prospect of identifying recidivist offenders. This is particularly crucial for certain laws where sentencing is elevated on the basis of a second conviction. Creation of even a limited database for use by the agencies involved in investigation of such crimes would be highly beneficial if that information can be properly and securely shared at the right time with the right individuals. The Nigeria CITES Management Authority formed a Joint Task Force in Combatting Illegal Trade of Wildlife Resources[4] comprising several agencies such as the police, INTERPOL, Nigeria Customs Service, Nigeria Immigration Service, NESREA, the Ministry of Justice and other agencies through which proper awareness, dissemination and exchange of information through which proper awareness, dissemination and exchange of information can be facilitated. This Task Force, however, is not tailored for operational inter-agency law enforcement collaboration to support investigations and prosecution of wildlife trafficking in the country. A further agreement was reached in 2020 for stakeholders to create a database of seizures (and to ensure all relevant agencies had sight of any such seizures); this could and should be extended to include information about both convictions and arrests of accused persons.

International cooperation

14. In terms of international cooperation – extradition and mutual legal assistance – Nigeria has a strong legislative framework for both. However, as with domestic prosecutions, the use of these powers in relation to international wildlife trafficking has not been utilised. The advent of a new law on mutual legal assistance demands that the central and competent authorities receive training/sensitisation and practical support in putting these measures into place.

Key recommendations

Legislation

1. To prioritise and review the draft Endangered Species (Control of International Trade and Traffic) Amendment Act 2015 in order to:

- address the range of offences provided within the draft;
- ensure a sufficient range of investigative, sentencing and ancillary powers are available;
- ensure all relevant offences qualify for extradition and mutual legal assistance;
- to harmonise, at a minimum, the range of offences with those contained within the draft Forestry Act and draft National Park Services Act.

2. Where appetite and resources permit, to scope and undertake harmonisation of state-level laws and federal laws in order to achieve parity, prioritising states particularly impacted by transnational wildlife trafficking. This could take the form of amendment of existing laws, repeal and passage of a new law or repeal of the offences and penalties provisions only. Given the Constitutional dominance of federal laws, the focus on state-level laws may be upon the categorisation of species and the extent to which this is relevant to particular state-specific offences that are not captured in the federal laws.

3. To seek agreement on the power of certain agencies to 'compound' offences, e.g., through identification of a threshold above which such a power would not be exercised, or to seek wholesale revocation of this power in relation to protected species.

Investigations*

4. To include the federal prosecution authority within the SWCO, expected to be established soon.

5. To support the development of a Memorandum of Understanding (MoU) as to investigative and prosecutorial ownership of major seizures made by authorities (usually Customs) in Nigeria with possible secondment of prosecutors from NESREA, EFCC, NPS and Customs to either the SWCO or a 'case progression unit/prosecution unit' within Customs which, to date, is responsible for the majority of seizures. This would be with a view to ensuring prosecution-led coordinated multi-agency investigations from an early stage.

6. Within Customs, there is also appetite for investigator training and the development of codes of conduct/protocols for the exercise of certain powers of investigation, such as search and seizure, arrest, detention and interview. The development and training of these tools could be done in parallel to the prosecution training in order to enhance the investigation and prosecution-led case building capacity within customs. Lessons learned from this could be extended to other agencies, such as NESREA, depending on capacity.

* Note: this report did not consider investigative capacity, only mandates under legislation.

Prosecutions

7. To build awareness among prosecutors as to the relevant and applicable laws both at the federal and state level and within the relevant agencies themselves. Prioritising states for such support could be based on prevalence and/or proximity to key points of entry/exit. For state-level prosecutions, the issue of fiat might be explored for certain thresholds e.g., could an MoU be created to enable an automatic fiat in certain cases?

8. To build capacity for prosecutions within the authorities that hold a prosecution mandate alongside the Federal DPP and the Office of Attorney General of the Federation (AGF). This is to build the quality of prosecution-led investigations. With Customs being the main authority responsible for detection and seizures, and given that it holds a prosecutorial mandate alongside other key agencies, the short-term recommendation is to develop a coordinated multi-agency approach and to target the building of prosecution capacity within Customs, EFCC, NESREA and others in partnership. This will involve codifying the decision to charge, developing strong prosecution policies to ensure consistency and transparency in decision-making – something recommended by every prosecutor, whether to adopt or, where it exists, to implement. Further support in developing drafting and advocacy skills is also recommended. The development of prosecutorial guides on wildlife crime, international cooperation and the implementation of existing federal-level practice directions would be included.

9. Support for a witness-support fund, which will entail quantifying the costs of witness attendance at court, and consideration of how such a fund would be administered.

Trial and sentencing

10. Support to the judiciary and prosecution services in implementing the Administration of Criminal Justice Act 2015 and the federal-level practice direction on active case management in the Federal Capital Territory with a view to decreasing trial times and adjournments. The principles of active case management contained with the practice direction should be extended across the country – scoping of appetite and methodology should be explored with the judiciary.

11. Sensitisation of the judiciary at the federal and state levels regarding wildlife crime.

12. Development of an addendum to the Federal Capital Territory Courts (Sentencing Guidelines) Practice Direction of 2016 to include international wildlife trafficking alongside discussion with both federal- and state-level Chief Judges regarding adoption for all federal high courts and relevant state high courts.

13. Support for digitisation of case files in priority courts identified as wildlife crime hotspots in order to enhance trial without delay.

14. Support for the development of a central database for previous arrests and convictions, a matter relevant for sentencing powers over recidivist offenders.

International cooperation

15. Training of central and competent authorities (particularly those within Customs, NESREA, NPS and the DPP) in relation the new Mutual Legal Assistance in Criminal Matters Act 2019, and extradition procedures.

©Wildlife Conservation Society Nigeria, 2021

©ariyo olasunkanmi / Shutterstock.com

Above: Apapa Port in Lagos - a common exit point for illegal shipments of pangolin scales and ivory leaving Nigeria

II. Introduction

1. In 2013, Nigeria was one of 11 countries identified as being of 'secondary concern' by the CITES Standing Committee on the basis of evidence identifying it as a transit point for illegal trafficking of elephant ivory and other wildlife products. In 2019, Nigeria's status was escalated to the category of highest concern owing to its increasing role in transnational ivory trafficking. In addition, as of May 2021, Nigeria is subject to compliance proceedings upon application of Article XIII of the CITES Convention.[5]

2. In response to the 2013 finding, Nigeria developed a National Ivory Action Plan (NIAP) in 2014 in an attempt to eradicate the illegal ivory trade in the country.[6] Twenty-six key priority actions were developed, with the following five key objectives:

- improve the available legal instruments and increase penalties to effectively address wildlife crime and illegal ivory trafficking;
- ensure cases of wildlife crime are effectively prosecuted and appropriate penalties are applied to deter wildlife crime offenders;
- increase the use of intelligence and investigation procedures to more effectively curb criminal networks involved in wildlife crime;
- improve coordination at the national and regional level to effectively control borders and prevent illegal trafficking;
- improve protection of the remaining elephant population in key range area in Nigeria.

3. Regulations passed in 2011 elevated the penalties applicable to import/export of endangered species to a maximum of three years' imprisonment – still not qualifying as 'serious crimes' under the UN Convention against Transnational Organised Crime (UNTOC). The desirability of having such matters dealt with as mere regulatory (or administrative) issues as opposed to recordable criminal offences has not been a priority. Accordingly, following the enactment of these regulations and the establishment of NESREA as the country's new CITES enforcement authority, Nigeria was deemed by CITES to be fully complying with the legislative requirements under the CITES legislation project and confirmed as a 'category 1' status country.[7]

4. Nevertheless, Nigeria has continued to emerge as the largest export and transit point in Africa for elephant ivory, rosewood and pangolin trafficking,[8] with a particular escalation between 2015-18 in relation to the export of pangolin scales. The majority of seizures of ivory leaving Africa through Nigeria have been made outside of the country[9] and it appears the main exit points for illegal shipments of pangolin scales and ivory in Nigeria are the Murtala Mohammed International Airport of Lagos (MMIA)[10] and Lagos Port. One fifth of regional container port volume is registered to Nigeria, highlighting how the country has well-established transport infrastructure and regional trading reputation.[11] Nigeria has long been recognised as a regional entrepôt for ivory sourced from countries such as the Republic of Congo, Cameroon and Gabon.[12] In 2020, the U.S. State Department added Nigeria to its list of 'Countries of Concern' under its Eliminate, Neutralise, and Disrupt (END) Wildlife Trafficking Act, indicating serious concerns of either high level or systemic government involvement.[13] This reflected major seizures in 2019 of pangolin scales and ivory in shipments originating from Nigeria.[14] The IUCN Red List of Threatened Species includes 174 animals and 208 plants found in Nigeria.[15]

5. In December 2018, a (self-assessed) progress report on the NIAP was delivered to the CITES Secretariat. One of the key findings was the progress made in legislative review that apparently culminated in the passage of the Endangered Species (Control of International Trade and Traffic) Amendment Act 2015 ("the Endangered Species Act").[16] This elevated the penalties relating to international trade offences, making a limited number of offences 'serious crimes' under the UNTOC. The law was appended to the NIAP report.

6. However, that law was never passed; an amendment passed in 2016 related only to an elevation of fines contained in the 1985 Endangered Species Act. Within the 1985 law, import/export is not expressly criminalised and the imprisonment term remains at a maximum of one year for recidivist offenders only. It would appear that while a new bill was drafted, it has never been enacted and so the statutory framework regarding offences relating to wildlife remains a mixture of federal statutes, which hold inherent contradictions and inconsistencies, and state laws, most of which date back to the 1950s/1960s.

7. Herein lies one of the key obstacles to the country's ability to implement a strong law enforcement response to wildlife trafficking. Nigeria is a federation of 36 states and one Federal Capital Territory (FCT) Abuja. Each of the 36 states is a semi-autonomous political unit sharing powers with the federal government as provided under the Constitution. Each state has its own legislative body but in the event of an inconsistency with federal laws, preference must be given to the latter (Article 4(5), Part II Constitution). This in turn will depend on, as a minimum requirement, the awareness of prosecutors of the existence of such laws. Each state also has its own Attorney General and DPP and many states have their own game reserves and laws concerning wildlife within.

8. However, to date, no analysis of those state laws, as set against the federal laws, has been undertaken nor has any assessment as to how conflicts in state versus federal laws are managed in practice or even the knowledge of federal-level operators (e.g., CITES management authorities, Customs, prosecutors, etc.) regarding federal and state laws – highly relevant to the issue of export permits for example. In the National Biodiversity Strategy and Action Plan 2016 to 2020, it was noted that biodiversity-related laws are 'obsolete, non-implementable and are totally ignored (or not regarded) by customary, sharia and other courts' – a damning indictment from Nigeria's own Ministry of Environment.

9. The ability of criminal elements to exploit weakness and loopholes in legal frameworks – including the grey areas that exist where multiple agencies overlap in mandate as in Nigeria – has long been recognised as a significant factor in the failure of countries to meet the challenge of curbing such crimes. Measures suggested in the West and Central Africa Crime Threat Assessment (2016),[17] included reviewing and rationalising the national legislation and regulations and clarifying the mandates of enforcement agencies, which in Nigeria include the NPS, NESREA, Customs, the police, Interpol, prosecution services and more. Recommendations contained in the later 2020 World Wildlife Report by UNODC echod previous recommendations regarding strengthening prosecutions and inter-agency collaboration such as implementing a code for charging, the development of stronger case-management systems and empowering prosecutors – whether they be at federal or state level in Nigeria – to own their role as gatekeepers of the criminal justice system and to better direct investigations.[18]

10. However, the World Wildlife Report 2020 did not propose any recommendations relating to the judicial handling of such cases, vital in terms of enhancing the deterrent effect of any criminal justice system. Out of 53[19] cases of ivory seizures between 2011-18, according to the 2018 NIAP progress report:

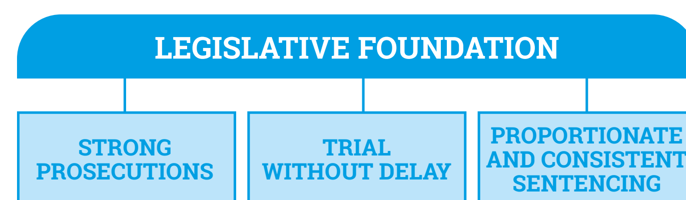
- three convictions had been obtained, all in 2013, where the penalty imposed was six months' imprisonment with the option of a 100,000 Nigerian naira (₦) fine (approximately $260);
- in relation to at least three suspects, cases were recorded as merely 'ongoing' – it is unclear from the report whether this means the investigation has yet to conclude or whether the case is held up in the court system;
- three cases were still 'pending' in the court system, all dating back to 2013;
- eight cases were 'settled out of court' through payment of an administrative fine;
- the bulk of cases (25) were 'abandonment cases' where bags of ivory had been found, mostly at airports, with no further action or investigation.

11. The low conviction rate, the imposition of small fines as an alternative to a short term of imprisonment and cases still pending in the courts from 2013 speak to the need to not only enhance prosecutions but also improve the rate of trial times, to create sentencing guidelines (binding and prescriptive) and to ensure that charging decisions are made on an objective and transparent basis, possibly removing the power of 'compounding 'offences which allow administrative fines as an alternative to prosecution without any oversight or accountability as to why such a course was taken. In relation to possession of 53kg of raw elephant tusks, an administrative fine equivalent to $13,000 was paid in the absence of any conviction.[20] Such an approach invites corruption and enables traffickers to pay their way out of any real consequence, with such fines regarded as just another business expense. However, to advocate for wholesale removal of this power may have the hidden cost of depleting the capacity of certain agencies for which government funding is sorely lacking and so needs careful consideration.

Methodology and scope

12. It is important to note that legislation required to adequately deter wildlife crime is not limited to the issue of wildlife-specific criminal offences or regulatory requirements for CITES permits. There are a multitude of criminal offences within the Nigerian legal framework which directly and indirectly apply to wildlife crimes, including penal code offences, customs laws and money laundering. In addition to wildlife-specific laws and other criminal offences, general criminal procedure and laws establishing the mandate of the national prosecution service and the organisation of the judiciary must also be considered in assessing the ability of a country to adequately deter such crimes. In any analysis of any system relating to any type of crime, the siloing of criminality into themes cannot achieve the desired outcome, which is to deter crime by ensuring the criminal justice response as a whole is effective, fair and fast.

13. In order for a criminal justice system to adequately deter crimes, in any arena, the following components are key:



14. This report analyses the capacity of Nigeria's legislative frameworks to meet those components. The following federal laws, resolutions and decrees were therefore considered:

- the Constitution of Nigeria 1999 (as amended 2011);
- the Administration of Criminal Justice Act 2015;
- the Endangered Species (Control of International Trade and Traffic) Act Cap E9 as amended by the Endangered Species (Control of International Trade and Traffic) Amendment) Act 2016 ("ESA" or "Endangered Species Act");
- the Protection of Endangered Species in International Trade Regulations 2011 ("ESA Regulations");
- the National Environmental Standards and Regulations Enforcement; Agency (Establishment) Act 2007
- the National Park Services Act 1999 as amended;
- the Customs and Excise Management Act 1959;
- the Evidence Act 2011;
- the Money Laundering (Prohibition) Act 2011 as amended;
- the Police Act 1979;
- the Federal High Court Act 1973;
- the National Judicial Institute Act 1991;
- the Federal High Court (Criminal) Practice Direction 2013;
- the Court of Appeal (Criminal) Practice Direction 2013;
- the Supreme Court (Criminal) Practice Direction 2013;
- the Federal Capital Territory Courts (Sentencing Guidelines) Practice Direction 2016;
- the Federal High Court Corruption and Other Related Offences, Practice Direction and Sentencing Guidelines 2015;
- the Customs and Excise Management Act 1959;
- the National Environmental (Control of Alien and Invasive Species) Regulations 2013;
- the Extradition Act 2015 (as amended);
- the Mutual Legal Assistance in Criminal Matters Act 2019;
- the Cybercrimes (Prohibition, Prevention, etc.) Act 2015.

In addition, the following state laws were also considered:

- Cross River State Forestry and Wildlife Law No. 3 of 2010;
- Kano State Wild Animals Law 1963 (as amended in 1975);
- Taraba State Wild Animals Law 1963 Cap 143;
- Lagos State Wildlife Preservation Law 1959 as amended in 1972;
- River State Animals Preservation Law Cap 140 1963;
- Adamawa State Wildlife Law Cap 143 of 1963.

15. Following desk-based research of the above, relevant published reports and interviews were conducted with key stakeholders which included:

- the former Attorney-General of Adamawa State and current Special Prosecutor to the EFCC;
- Assistant Chief State Counsel, Complex Casework Group, Department of Public Prosecutions, Federal Ministry of Justice;
- the Director of Public Prosecutions, Jalingo, Taraba State
- Senior State Counsel with the Adamawa State Ministry of Justice;
- the Head of CITES and Wildlife Management, Federal Department of Forestry;
- Assistant State Counsel in the Central Authority of the Ministry of Justice.
- Senior State Counsel in Kano State, Ministry of Justice;
- the World Customs Office focal point with the Customs Authority of Nigeria;
- former Criminal Justice Advisor to the British High Commission, Nigeria;
- representatives from Africa Nature Investors.

16. In addition, one-to-one follow-up meetings were organised to secure technical feedback from key stakeholders, including:

- the Ministry of Environment of Nigeria;
- the Office of The Director of Public Prosecutions, Adamawa State;
- EFCC;
- Customs Authority of Nigeria;
- NESREA;
- NFIU;
- NGO representatives from the Nigerian Conservation Foundation, the SW/Niger Delta Forest Project, WildAid and the Wildlife Conservation Society.

III. Legislation and wildlife crime

International agreements

1. Article 12 of the Constitution provides that: 'No treaty between the Federation and any other country shall have the force of law to the extent to which any such treaty has been enacted into law by the National Assembly'.

2. A treaty is an international agreement concluded between countries in written form and includes any instrument by which an obligation under international law is undertaken by Nigeria and any other country and includes international organisations.[21] Nigeria adheres to a dualist approach to the application of international agreements, namely that any such international agreement will have no force of law whatsoever in Nigeria unless enacted into domestic legislation, as held by the Supreme Court in the case of Abacha and Ors v. Fawehinmi.[22]

3. Accordingly, the impact of any international conventions agreed by Nigeria will largely depend on the existence, and quality, of any domestic laws implementing the same.

Convention on International Trade in Endangered Species (CITES)

4. Nigeria is a signatory to CITES as of 1974. There were no reservations. Domestication of this agreement came in the form of the Endangered Species (Control of Trade and Traffic) Act in 1985.[23] This was later amended to the extent that certain fines were elevated. Nigeria was assessed by the CITES legislative project in 2011 as having achieved Category 1 country status in terms of legislative compliance with CITES.

UN Convention against Transnational Organised Crime

5. Nigeria has been a Party to UNTOC since 2000, and later ratified the Convention in June 2001. In terms of domestication, there is no standalone law governing organised crime. However, the Money Laundering (Prohibition) Act of 2011 as amended makes participation in an organised criminal group, environmental crimes and 'any other criminal act' specified in any other legislation in Nigeria predicate offences for the purposes of money laundering prosecutions.

UN Convention against Corruption

6. Signed in December 2003 and ratified in December 2004, several laws have been passed, including but not limited to:

- the Corrupt Practices and Other Related Offences Act 2000;
- the Economic and Financial Crime Commission (Establishment) Act;
- the Money Laundering (Prohibition) Act 2011;
- Dishonoured Cheques (Offences) Act 2004;
- Fiscal Responsibility Act 2007;
- Public Procurement Act 2007;
- Nigerian Extractive Industries Transparency Initiative Act 2007;

- Nigerian Financial Intelligence Unit Act 2018;
- Advanced Fee Fraud and Other Related Fraud Offences Act 2006;
- the Constitution itself also contains a code of conduct for public officials within its 5th Schedule.

7. Nigeria is also a member of numerous regional, inter-regional and international bodies and initiatives such as the African Union Convention against Corruption, the Economic Community of West African States (ECOWAS) Protocol against Corruption, the inter-government Action Group against Money Laundering in West Africa (GIABA) and the Network of National Anti-Corruption Institutions for West Africa (NACIWA). The NFIU is also a member of the Egmont Group.

8. A number of authorities also exist with a mandate to prevent or investigate corrupt practices, including the Independent Corrupt Practices and Other Related Offences Commission (ICPC), EFCC, the Code of Conduct Bureau (CCB) and NFIU.

9. Between 2014-16, only 30 convictions were secured out of 190 prosecutions instigated from 1,817 corruption investigations.[24] As of 2019, the country ranked 146th out of the 180 countries listed in Transparency International's Corruption Index with Somalia, at 180th being the most corrupt, and Denmark the least.[25]

Convention on Biological Diversity

10. Signed on 13 June 1992 and later ratified on 29 August 1994, Nigeria has implemented a number of laws and regulations governing this sector. In 2006, the National Biodiversity Strategy and Action Plan was developed to establish urgent measures to conserve resources and biodiversity and the Department of Forestry (which sits within the Federal Ministry of Environment) established numerous initiatives for the protection and management of wetlands and arid zones. However, constraints in financial resources, technical expertise and appropriate technologies are a significant factor in Nigeria's ability to implement its Biodiversity Action Plan. This plan was revised and issued in 2016-20 (currently under review) and includes, as one of its targets, a commitment towards effective legislation and enforcement. Relevant laws and regulations include many of the laws identified above as well as legislation governing fisheries, forestry, oil in navigable waters and the establishment of NESREA. In addition, the National Policy on the Environment 2016 affirmed the commitment to make biodiversity and wildlife conservation a 'development priority'.[26] However, the Strategy and Action Plan makes no provision for a full legislative review regarding the protection of wildlife, the focus primarily being on access and benefit sharing laws and policies, stating only that "effective legislation … will be given 'adequate attention" [sic].

Other relevant international agreements[27]

11. Other international agreements of interest include:

- African Convention on the Conservation of Nature and Natural Resources, (Algiers), 1968;
- International Convention for the Prevention of Pollution from Ships 1973 and the 1978 Protocol (MARPOL);
- Convention on Fishing and Conservation of the Living Resources of the High Seas, 1958;
- Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matters, 1972 and Protocol of 1996;
- UN Convention on the Law of the Sea, 1982;
- the RAMSAR Convention on the Conservation of Wetlands of International Importance, especially as Waterfowl Habitat, 1971;
- the Convention Concerning the Protection of the World Culture and Natural Heritage, 1972 (two UNESCO sites namely the Osun-Osogbo Sacred Grove and the Sukur Cultural Landscape);[28]
- Convention on the Conservation of Migratory Species of Wild Animals, 1973;
- UN Framework Convention on Climate Change, 1992;
- Convention to Combat Desertification 1994.

Bilateral agreements

12. Of particular significance was a commitment between Nigeria and China to strengthen bilateral relations to tackle the illegal wildlife trade on 10 September 2019 in Abuja. The impact of this could not be ascertained at the time of writing.

Domestic legislative framework

1. Nigeria's federal framework potentially poses significant challenges in ensuring that federal offences identified at the state level are prosecuted under the correct legislation, with communication between state and federal prosecutors occurring in a timely way. There are some differences between the offences and penalties available which may cause confusion and inconsistency in the approach taken. Furthermore, different actors hold prosecution powers - there is no agreed protocol or inter-agency agreement regarding which agency should conduct a particular prosecution. Much therefore depends on which agency detects the offence and whether it is kept in-house or passed on.

2. It is helpful to start by comparing the key federal-level laws before a comparison is undertaken in relation to the state laws concerning wildlife. The following federal laws are of particular significance:

- the Endangered Species (Control of Trade of International Trade and Trafficking) Act, as amended in 2016;
- Protection of Endangered Species in International Trade Regulation 2011;
- the Customs and Management Act 1959 (and the Export Prohibition List);
- the National Park Services Act 1999;
- the Money Laundering Act 2011 as amended

3. In addition, the north and south of Nigeria have different penal codes and Lagos alone has its own general criminal code:

- the Criminal Law Cap C17 (Lagos State);
- the Criminal Code Act Cap 77 (applicable to Southern states);
- the Penal Code (Northern states) Federal Provisions Act Cap P3.

4. Within these penal codes, there are no offences specifically relating to wildlife or forestry crimes. However, the Criminal Code Act applicable to the south does cite a number of customs-related offences deemed federal offences. These offences relate to concealing items that might be liable to forfeiture under any customs-related law. However, the penalty applicable in the south is different to the penalty for a similar offence in the north (seven years' imprisonment in the south with no option of a fine; seven years and/or a fine in the north).[29] In the Customs and Management Act (a federal law), the penalty relating to smuggling is one of five years' imprisonment with no option of a fine. In addition, offences relating to forgery are also contained in the Penal Codes relating to the northern and southern states; although phrased differently, the penalty of three years is the same and could be applied to the falsification of permits, licenses and other written authorities. Finally, some states have enacted their own separate penal codes as in Adamawa.

5. How a prosecutor might choose which law to use appears to depend largely on which agency detects the offence and the prosecutor's own awareness of these different provisions.

Federal laws - a comparison

6. For the purposes of comparison between the most relevant federal laws and headline offences of import/export, trade/dealing, possession and hunting of protected species, see Table 1 on page 16.

7. What is clear from the table is that laws at the federal level addressing the same criminality, e.g., export of endangered species, carry different penalties and much will depend on the awareness of the prosecuting authority as to which law should be applied. The 1985 Endangered Species Act as amended fails to expressly criminalise import/export offences (or hunting/prohibited methods of hunting of such species) and there is debate as to whether regulatory offences under the Endangered Species Regulations of 2011 are criminal or administrative matters only. When the power of an agency to 'compound' an offence is then added to the range of options, this may explain the low rate of prosecutions and the even lower rate of convictions observed in the NIAP report of 2018.

8. Finally, the National Parks Services Act is concerned only with offences that occur within national parks. Wild animals found outside of national parks are not deemed to be the property of the Federal Government of Nigeria and even when found near a national park, there must be some evidence it was found in a normal migratory route or pattern to or from the national park. Accordingly, when it comes to investigation and detection of offences, the NPS is very much limited to offences within those boundaries. Offences falling outside a national park will have to be considered in the context of the relevant state or federal law.

Below: Live pangolins for sale at a Lagos market

Table 1: Comparison of key provisions under relevant federal laws

	Endangered Species Act Cap E9 amended in 2016.	Endangered Species Regulations 2011	Customs and Management Act 1959	National Park Services Act 1999	Money Laundering Act 2011 section 15
Import/Export or Re-export	**Not expressly criminalised.** **If interpreted as 'in otherwise deals':** ₦5,000,000 for both Schedule 1 species, 12 months for recidivist offender. ₦1,000,000 for Schedule 2. Six months for recidivist offender. **s5(1)(a) and s5(1)(b**	**CITES Appendix I II and III or Schedules of the Act/Regulations:** ₦5,000,000 and/or three years. **Corporate liability:** seven years and/or ₦20,000,000 fine. **s 3(1) and s7**	**Import or export of goods subject to 'any prohibition':** five years, no option of a fine. **s47, s64**	N/A	**Removing proceeds of crime from the jurisdiction / Transfer of proceeds of crime to another:** seven to 14 years. **Corporate bodies:** fine of at least equal value and withdrawal of any license.
Sale/trade or dealing	₦5,000,000 for Schedule 1 species. 12 months for recidivist offender. ₦1,000,000 for Schedule 2 species. Six months for recidivist offender. **s5(1)(a) and s5(1)(b)**	**Offer or expose for sale any CITES Appendix I, II or III/ the Schedules of the Act or Regs:** ₦5,000,000 and/or three years. **Corporate liability:** seven years and/or fine of ₦20,000,000. **s7(3)**	N/A	N/A	**Convert, transfer, use a criminal proceed:** seven to 14 years. **Corporate liability as above**
Possession	₦5,000,000 for Schedule 1 species. 12 months for recidivist offender. ₦1,000,000 for Schedule 2. Six months for recidivist offender. **s5(1)(a) and s5(1)(b)**	**CITES Appendix I, II or III/ the Schedules of the Act or Regs:** ₦5,000,000 and/or three years. **Corporate liability as above** **s7(3)**	N/A	**If deemed 'capture':** three months to five years, no option of a fine. **s37(2)(a)**	**s15 possession of a criminal proceed:** seven to 14 years. **Corporate liability as above**
Hunting	Hunting of Schedule 1 and 2 species is prohibited under s1, but no penalty is prescribed.	N/A	N/A	**Hunting an endangered, protected or prohibited species or hunting a mother of a young animal or large mammal species in a national park:** three months to five years, no option of a fine. **Hunting a non-protected species:** ₦10,000-50,000 and/or one to five years. **Corporate liability is met with a fine.** **s30 and s37(2)**	N/A
Prohibited methods of hunting	Prohibited methods prescribed but no penalty assigned.	N/A	N/A	**s30 use of a snare, net, trap, bait, decoy, hide, blind or calling device or any dazzling or artificial light or radio or any aircraft below 200 metres:** ₦10,000-50,000 and/or one to five years. **s31 Using a firearm, spear, bow, poison, explosive:** ₦5,000-25,000 and/or six months to five years. **Corporate liability is met with a fine.**	N/A

State laws - a comparison

9. The states considered in this report were: Adamawa, Kano, Lagos, Rivers, Cross River and Taraba State. Each state had its own way of categorising the levels of protection for certain wildlife species, as illustrated in Table 2 below:

Table 2: Wildlife protection under state laws

	Schedules/Categories
Adamawa	1st, 2nd and 3rd Schedule identical in content to Taraba (Prohibited, Specially Protected and Protected).
Cross River	Fully protected species - one schedule only.
Kano	1st, 2nd and 3rd Schedule (Prohibited, Specially Protected and Protected).
Lagos	1st and 2nd Schedule referencing international trade.
River	1st and 2nd Schedule - animals not to be hunted without a permit. 3rd Schedule - game birds not to be hunted without a permit.
Taraba	1st, 2nd and 3rd Schedules identical in content to Adamawa (Prohibited, Specially Protected and Protected).

10. The differences in the composition of the schedules between states means that a species of animal will be afforded higher protection in one game reserve as compared to another in a different state. For example, giraffes are considered a 'First Schedule' species in Taraba and Adamawa State but are not protected at all in Cross River State; while pangolins are afforded the highest level of protection in Cross River, River and Lagos State, they are not recognised at all in Taraba, Adamawa or Kano State. Elephants were afforded protection in all states, although some offered protection only to forest elephants and others gave different levels of protection based on the maturity of the animal. However, in all of these states, the sale, purchase or transfer of any trophy of a species (such as pangolin scales) is criminalised without reference to where that activity took place, e.g., outside of a game reserve, and so the penalty will depend on the category of protection.

State-level offences and penalties

11. The penalties in all of the states, particularly in relation to species listed under the federal laws, are in no way comparable, with most of the state laws having been drafted in the 1950s and 1960s. None of the laws cover the issue of import, export or transit but many cover the issue of transfer, sale and purchase of trophies. Curiously, some of the states also have provisions relating specifically to the sale of powdered rhino horn, although the penalties are extremely light; other states make no mention at all (see Table 4 on page 20). Key offences relating to protected species (however classified) are as follows and cut across all six states.

Ancillary powers

12. Table 3 below illustrates additional ancillary powers for federal- and state-level enforcement officers (not the police), as set out in the law, within the relevant park or reserve authority as well as the power of the courts regarding forfeiture upon conviction and, for some states, rewards to informants. The power to 'compound' an offence refers to the power of enforcement officers to decide to forfeit a prosecution in favour of a fine paid directly to the authority concerned.

13. The way in which these laws play out in the criminal courts in Nigeria is further examined in the following sections. What is clear, however, is that the disparity between states' wildlife laws and federal laws needs resolving, notwithstanding the Constitution[30] which provides for dominance of laws made by the National Assembly where inconsistency exists. Awareness of the relevant federal laws should be promoted and the navigation of conflicting laws, powers and mandates could be explored and agreed by way of MoU between the agencies (such as via the taskforce mentioned in section I paragraph 12 above). The longer-term task of amending the laws to achieve parity could be undertaken in parallel.

Above: At the federal level, the laws governing international wildlife trafficking in Nigeria are relatively weak as compared to jurisdictions in East and Southern Africa

Table 3: Powers of certain federal- and state-level enforcement agencies

	Adamawa	Cross River	Kano	Lagos	River	Taraba	Customs	NPS	NESREA
Power to compound		X					X	X	
Power to prosecute	X	X	X			X	X	X	X
Power of arrest	X	X	X	X	X	X	X	X	X (regulations)
Power to search and seize/inspect/ investigate	X	X	X	X	X	X	X	X	X
Forfeiture upon conviction	X	X	X	X	X	X	X	X	X
Reward to informants (court ordered)	X	X	X	X	X	X			

Table 4: A comparison of state-level offences and penalties

	Adamawa	Cross River	Kano	Lagos	River	Taraba
Hunt/kill/ capture	**s53 (1) 1st Schedule species:** ₦5,000 and/or three years **2nd or 3rd Schedule species:** ₦1,000 and/or six months	**s85 1st Schedule species:** ₦100,000 and/or two years.	**s53 (1) and s5 1st Schedule species:** ₦1,000 and/or three years **2nd or 3rd Schedule species:** ₦200 and/or six months	**s1 1st Schedule species or the young or mothering 1st or 2nd Schedule species:** ₦100,000 and/or six months for one animal ₦250,000 if more than one animal	**s3 1st or, in relation 2nd Schedule species, a young animal or a female accompanying her young:** ₦20,000 for two or more animals ₦10,000 per animal. six months in default of non-payment **S42nd Schedule: 2,000 for two; accompanying her young:** ₦20,000 for two or more animals ₦10,000 per animal. Six months in default of non-payment **S42nd Schedule:** ₦2,000 for two ₦1,000 per animal or three months in default **s5 Game birds (3rd schedule):** ₦1,000	**s53 (1) 1st Schedule species:** ₦5,000 and/or three years **2nd or 3rd Schedule species:** ₦1,000 and/or six months
Possession	As above	As above	As above	**s3 Any trophy:** ₦45,000 and/or three months	**s8:** ₦5,000 or three months imprisonment/ hard labour in default	As above
Offences in a protected area ("reserve" or "sanctuary") e.g. hunting, using a snare or trap.	**s27 and s53(2):** ₦1,000 and/or two months	**s80(2) and s83(1):** ₦100,000 and/or six months **s80(2)** where the offence also involves a protected plant or animal within that protected area, the prison term is elevated to one year	**s27 and s53(2):** ₦200 and/or six months	**s25 General offences:** ₦45,000 (no reference to particular protected areas)	**s19 and s37:** ₦10,000	**s27 and s53(2):** ₦1,000 and/or two months
Possession of, or manufacture from a trophy	**s36 and s53(1) - 1st Schedule species:** ₦5,000 and/or three years **2nd Schedule species:** ₦1,000 and/or six months	**s85(1) 1st Schedule species:** ₦100,000 and/or two years **Other species:** No penalty prescribed	**s36 and s53(1) -: 1st Schedule species:** ₦1,000 and/or three years **2nd Schedule species:** ₦200 and/or six months	As above	**s8:** ₦5,000 or three months imprisonment/ hard labour in default	**s36 and s53(1) - 1st Schedule species:** ₦5,000 and/or three years **2nd Schedule species:** ₦1,000 and/or six months
Unauthorised sale, transfer or purchase of a 'trophy' or 'part'	**s39 and s53(3):** ₦200 and/or two months. No distinction between species	**s85(1) 1st Schedule species:** ₦100,000 and/or two years **Other species:** No penalty prescribed	**s39** but no penalty prescribed	**s3 Any trophy:** ₦45,000 and/or three months	**s8:** ₦5,000 or three months imprisonment/ hard labour in default	**s39 and s53(3):** ₦200 and/or two months. No distinction between species.
Possession, sale, transfer or purchase of powdered rhino horn.	**s50 and s53(3):** ₦200 and/or two months.	N/A	**s50 and s53(3):** ₦60 and/or two months	**s25:** ₦45,000	**s11 and s37:** ₦10,000	**s50 and s53(3):** ₦200 and/or two months.

©Wilson Ogoke

IV. Strong prosecutions

Above: Federal High Court in Abuja, Nigeria

1. Nigeria, being a federalist state, operates two systems of prosecution – federal-level prosecutions which may only prosecute offences legislated by the National Assembly and state-level prosecutions which largely prosecute those offences legislated by their state governments in relation to offences not on the concurrent list of the Constitution. However, while wildlife crimes are not on the concurrent list of the Constitution, the National Assembly is given the power to pass laws concerned with the environment and wildlife under Article 20 and offences in general under Schedule 2. Generally speaking, a state-level prosecutor may prosecute a federal offence upon obtaining a fiat from the Federal AG's office i.e., permission to so do. This is seen as fairly simple to do.

2. In addition, Nigeria Police Force also holds a prosecutorial function and may exercise this throughout the country. Other agencies may also hold delegated powers of prosecution, such as Customs, the wildlife reserve authorities under state law, NESREA, NPS and EFCC.

3. In the NIAP 2016-20, one of the key achievements noted was the inter-agency cooperation among national law enforcement agencies, namely Customs, Nigeria Police Force, INTERPOL, National Central Bureau Abuja, NPS, Immigration and NGOs. Further, the NIAP reported that specialised prosecutors were appointed at the trainings delivered thus far at both the state and federal level. None of the prosecutors interviewed in this report were aware of a specialised prosecutor in their department.

Federal-level prosecutions

4. The Department of Public Prosecutions (DPP) owes its power of prosecution to the Office of the Attorney General of the Federation (AGF). Established under the Constitution,[31] the Administration of Criminal Justice Act 2015 further consolidated the existing power of the Attorney General to delegate powers to legal practitioners both within and outside of his Office.[32] Like so many jurisdictions across the world where the DPP and the AG operate together, the inevitable tension between the executive function (which is the AGF) and the prosecutorial function which should be independent, objective and separate from the executive, has led to a debate regarding the separation of these two offices. A proposal has been drafted and is currently under discussion.

5. Prior to the passage of the Administration of Criminal Justice Act in 2015, police prosecutors were not necessarily legally qualified. The 2015 Act bought about a positive change in that only those who were legally qualified could hold that power of prosecution. The phasing out of police prosecutors has begun across many states.

6. At present, both the DPP and police conduct prosecutions as well as other authorities, such as Customs. The DPP also has power to guide, direct and give advice regarding police investigations.[33] There are two specialist groups within the DPP, namely the Complex Case Group (CCG), established with the support of the British Government and now numbering approximately 30 prosecutors to focus on terrorism-related matters, and the National Maritime Prosecutions Team, established with the support of the UNODC and the British Government.

7. The AGF holds the power to discontinue or order a withdrawal of any proceedings. Likewise, the AGF holds the power to call for a file and take over the prosecution from the police.[34] If they do so, the police or other agency must immediately send the case file as requested.[35]

The DPP and police prosecutions

8. In day-to-day operations, there is no oversight of police prosecutions in the magistrates' court (there appears to be some oversight over the rare police prosecutions that go to the High Court). In relation to investigations, unless the AGF or DPP is invited to give advice or in some way becomes aware of a particular matter,[36] there is no mechanism for reviewing a police decision in the absence of a complaint. Further, it is open to the police to refuse to investigate on the basis it is not considered to be in the public interest, a right is enshrined in section 112 of the Administration of Criminal Justice Act. But while the DPP has a code of conduct that includes criteria regarding evidential and public interest considerations in relation to the decision to charge, this is not binding on the police and there is no mechanism to establish how this discretion is exercised. In the context of wildlife crime, which may not be viewed as particularly serious, this is a concern, as is the fact that the DPP does not apparently have any measures for recording its exercise, which may enable corrupt practices to take root.

The DPP and other prosecution authorities

9. As with the police, there is no mechanism for oversight, liaison or referral over prosecutions conducted by Customs, NESREA or any other agency with a prosecutorial mandate. The few prosecutions cited in the NIAP report were not known to the AGF or the DPP at the federal level. Whether such prosecutions are conducted on the same policy basis is unknown.

10. To date, the Federal DPP has not had sight of a single international wildlife trafficking prosecution, despite having jurisdiction to prosecute offences under the

Endangered Species Act, the National Parks Act and other federal-level laws relevant to wildlife trafficking (e.g., money laundering, etc.) (DPP Federal prosecutor, personal communication, October 2020). The reasons include the lack of engagement and cooperation with links between the relevant law enforcement agencies and the DPP/AGF, described as "very, very weak". Another likely reason is that such offences are not regarded as particularly serious and may be diverted away from even consideration of prosecution by the arresting authorities.

11. Customs has a prosecution unit in-house, as does NESREA. The Customs authority holds approximately 50-60 prosecutors, whereas NESREA has just 16. In terms of the large-scale seizures reported in recent years in Nigeria, Customs appears to the be the lead agency, but prosecutions have not been conducted from within for reasons that are difficult to ascertain. Until capacity and willingness within the federal DPPs office is cemented, it is recommended that capacity, at least in the short term, is focused on building a prosecution-led multi-agency approach involving the Customs authority as well as other agencies where a prosecution mandate exists including EFCC, NESREA and at the federal- and state-level offices of the DPP.

State-level prosecutions

12. All 36 states in Nigeria have their own AG and their own DPP, deriving their power from the Constitution at Article 211, which specifically allows the Attorney General of a state to institute, undertake, take over and discontinue any criminal proceedings undertaken by him or any other authority. In exercising this function, he may do so through officers within his department. In passing their own enabling legislation (similar to the Administration of Criminal Justice Act 2015) in many, but not all states, that prosecutorial function has been delegated to state-level prosecutors. They are not bound by federal-level policy or practice directions governing the exercise of the prosecutorial function In Adamawa State, for example, the code for charging is not codified and prosecutors learn how to make decisions to charge on the job. Codifying the practice would be "very helpful", according to the former Attorney General of Adamawa State and a current prosecutor within the Adamawa DPP's office. In Kano State, on the other hand, the charging standard has been codified.

13. In discussions with prosecutors across Taraba, Kano, Adamawa and Lagos states, not a single wildlife prosecution had been seen; until those prosecutors were contacted for this report, wildlife offences were not even something any of them had considered. This reflects the thin list of prosecutions presented in the NIAP report. In discussions with the customs authority (World Customs Organisation, or WCO focal point, Ms A. Animashawun, personal communication, November 2020), there are approximately 60 customs prosecutors around the country. However, no prosecutions of wildlife cases have been undertaken by customs despite this agency being most commonly involved in seizures at ports and airports. It appears that seizures and information have been handed to NESREA and there has been little, if any, follow up from that point. Customs seemed unaware of the outcome of those cases.

14. This separation between state and federal prosecutors presents a significant challenge in ensuring firstly that wildlife related cases that might merit both state-level and federal-level prosecutions are consistently handled, ideally with some level of consultation. Where an offence falls under both state and federal laws, the preference should be towards a prosecution under federal laws in relation to endangered species (however they are defined). Where there is a conflict, the federal law should always be utilised. This in turn will depend on the awareness of state-level investigators and prosecutors and their willingness also to hand over such matters for consultation and agreement as to ownership of that prosecution. While the Constitution makes clear that federal law trumps state laws, it is not known how this is applied in practice in relation to wildlife matters. What can be said with certainty is the number of prosecutions to date of such matters in the states considered in this study is virtually nil, according to discussions with prosecutors in Lagos, Taraba, Kano and Adamawa States.

15. The provisions for plea bargaining are quite extensive and well-articulated in Section 270 of the Administration of Criminal Justice Act (ACJA) with 18 well-articulated and unequivocal subsections. Section 270(3) expressly provides that the plea bargain is applicable where the prosecutor is of the view that the offer or acceptance of a plea bargain is in the interest of justice, the public interest, public policy and the need to prevent abuse of legal process. Section 270 expressly sets out factors that must be taken into consideration in determining whether to go through a plea bargain. The plea bargain agreement must be acceptable to the judge before he proceeds to endorse it, after ascertaining that the accused has admitted the allegation in the charge to which they have pleaded guilty and they had voluntarily entered into the agreement without undue influence. In determining whether the plea bargain is in the public interest, the prosecutor shall consider the factors in Section 270(5) (ii-iv).

16. In the context of wildlife crime, this has never been utilised by prosecutors at federal or state level. Guidance on its operation in this context can and should be discussed and delivered. In Kano State, the Attorney General has already embarked on training on the 2015 Act and the plea-bargaining provisions have been utilised, although mainly in relation to offences involving breach of trust. Guidance on how these guidelines might be utilised to incentivise accused persons to assist in an investigation would be of benefit in terms of investigations and prosecutions of those further up the criminal chain.

17. Finally, given that the High Court has original jurisdiction to hear a wide range of criminal matters (at both the state and federal levels), the merits of ensuring wildlife cases are heard in the High Court should be explored with prosecution and judicial authorities.

©Wilson Ogoke

V. Trial without delay

1. The principles of trial without delay are contained in section 110 of the Administration of Criminal Justice Act 2015. Time limits are set for commencement of trial (30 days from the date of filing of charges) and it is incumbent upon the magistrate to ensure that the trial is completed within a reasonable time. Article 294 of the Constitution requires a decision not later than 90 days after conclusion of evidence and final address. Failure to do so risks the judgment being declared null and void, according to the Supreme Court.[37] Other principles such as the Bangalore Principles of Judicial Conduct 2002 also direct case resolution in a timely fashion. A number of federal-level practice directions governing active case management in the superior courts have been enacted.

2. Nevertheless, the problem of delay in the court system was raised as a significant concern by all stakeholders contacted in this study. Witness fatigue bought on by multiple adjournments and the lack of Government funding to meet witness expenses was a significant problem. In addition, the lack of basic resources such as photocopying and scanning facilities in prosecution and judicial offices meant that in some states, issues such as drafting legal arguments and copying documents for disclosure were not completed in time or, if a prosecutor chose, were conducted at personal expense in commercial business centres where security and confidentiality cannot be certain. While video technology seems to have been embraced in some of the federal-level courts, state courts were described as "analogue" with little or no digitisation of court files, affecting timely service and sharing of information both between prosecutors at the state and federal level and between prosecutor and investigator.

3. The recording/data collection of criminal matters and their progress through the magistrates' courts and the high courts were not accessible for the purposes of this report but, according to interviews, did vary between states in terms of information captured or even whether such information was captured at all.

VI. Sentencing

1. Given the lack of prosecutions of wildlife crime in Nigeria, there are no sentencing practices or judicial rulings to analyse in terms of assessing whether Nigeria takes a consistent and proportionate approach to sentencing of such matters. The few cases that resulted in conviction as identified in this report resulted in low terms of imprisonment with fines imposed as an option.

2. With the advent of the Administration of Criminal Justice Act 2015, Nigeria's approach to sentencing was further refined. The aims of sentencing – prevention, restraint, rehabilitation, deterrent, retribution and restitution – are clearly articulated within the statute[38] and, in repealing state-level procedural laws, this law should be followed at the state level. Suspended sentences and community service are all options where the term

of imprisonment might fall under three years, which is the case for the wildlife-specific legislation at both the federal and state levels. Further, under section 439, a court may recommend to the Ministry of Interior the deportation of foreign nationals in lieu of imprisonment.

3. The Federal Capital Territory Courts Sentencing Guidelines of 2016 further bolstered these provisions in giving prescriptive sentencing guidelines and further articulating the approach to be taken in the sentencing exercise. This followed the passage of a Federal High Court practice direction on corruption and related offences. However, the 2016 guidelines are limited to the following:

- corruption and related offences (essentially repeating the 2015 practice direction);
- offences against person;
- offences against property;
- homicide-related offences;
- offences against public order;
- offences against morality;
- offences against the State.

4. Wildlife- and forestry-related offences are not expressly included, although they might be captured under offences against the State. Environmental impact is one of the factors listed as relevant to the sentencing exercise. However, given that the precedent has been set in Nigeria for prescriptive and binding sentencing guidelines, the development of specific wildlife (and possibly forestry) guidelines would be of benefit. There may be scope to engage with the Chief Judge of the federal-level High Court to create an addendum to include offences relating to protected species and to explore extending this approach across all high courts through discussions with the chief judges in priority states.

5. In the shorter term, awareness-raising among magistrates and the high court should be carried out with regard to the seriousness of such crimes, sentencing considerations and the applicable laws.

VII. International cooperation

1. Nigeria is party to a number of international agreements directly and indirectly concerned with mutual legal assistance and extradition. However, Nigeria is a dualist state, as described in the introduction above – any international agreements must be domesticated into law by the National Assembly; when it comes to extradition it is possible for the President to gazette such agreements by way of statutory order, thus giving those agreements the force of law.[39] In practice, some international agreements have been used without this technical passage into force and these have been so far unchallenged.

2. The following are considered the most relevant agreements and laws regarding extradition and mutual legal assistance in Nigeria.

Domestic legislation

- the Constitution of the Federal Republic of Nigeria 1999[40]
- Extradition Act Cap E25 of 2004 as amended 2018[41]
- Extradition Act (Modification Order) Order 2014[42]
- Federal High Court (Extradition Proceedings) Rule 2015
- Foreign Judgment (Reciprocal Enforcement) Act Cap F35 2004
- Mutual Legal Assistance in Criminal Matters within the Commonwealth (Enactment and Enforcement) Act Cap M24 2004.

International agreements

- Economic Community of West African States (ECOWAS) Convention on Extradition 1994
- ECOWAS Convention on Mutual Legal Assistance 1982 and subsequent protocols particular to customs and corruption (the ECOWAS Convention applies to Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone and Togo)
- UN Convention Against Transnational Organised Crime
- UN Convention against Corruption
- London Scheme on Extradition within the Commonwealth
- (Harare) Commonwealth Scheme for International Cooperation in Criminal Matters.

Bilateral agreements

3. Bilateral arrangements exist with South Africa,[43] UAE,[44] USA[45] and Liberia.[46]

Extradition

4. For the purposes of extradition, the Extradition Act demands dual criminality and further that there is either:

©Nigeria Customs Service-via Facebook

- a treaty or agreement made by Nigeria and any other country which has been published, by the President, by order in the Federal Gazette; or
- the country is one that falls within the Commonwealth and may include dependent territories provided the President publishes, by order in the Federal Gazette, a designation of that dependent territory as forming part of that Commonwealth Country.

5. The offence in question must be a 'returnable offence' - held to be one that must carry at least two years' imprisonment[47,48] although individual treaties may specify particular offences carrying lower sentences as qualifying for extradition. The two-year requirement is consistent with both the London Scheme and the ECOWAS Convention on Extradition.[49,50] The offence(s) in question need not be identically worded or categorised under Nigeria's laws; rather, it is the conduct in issue that must be punishable under Nigerian law.[51]

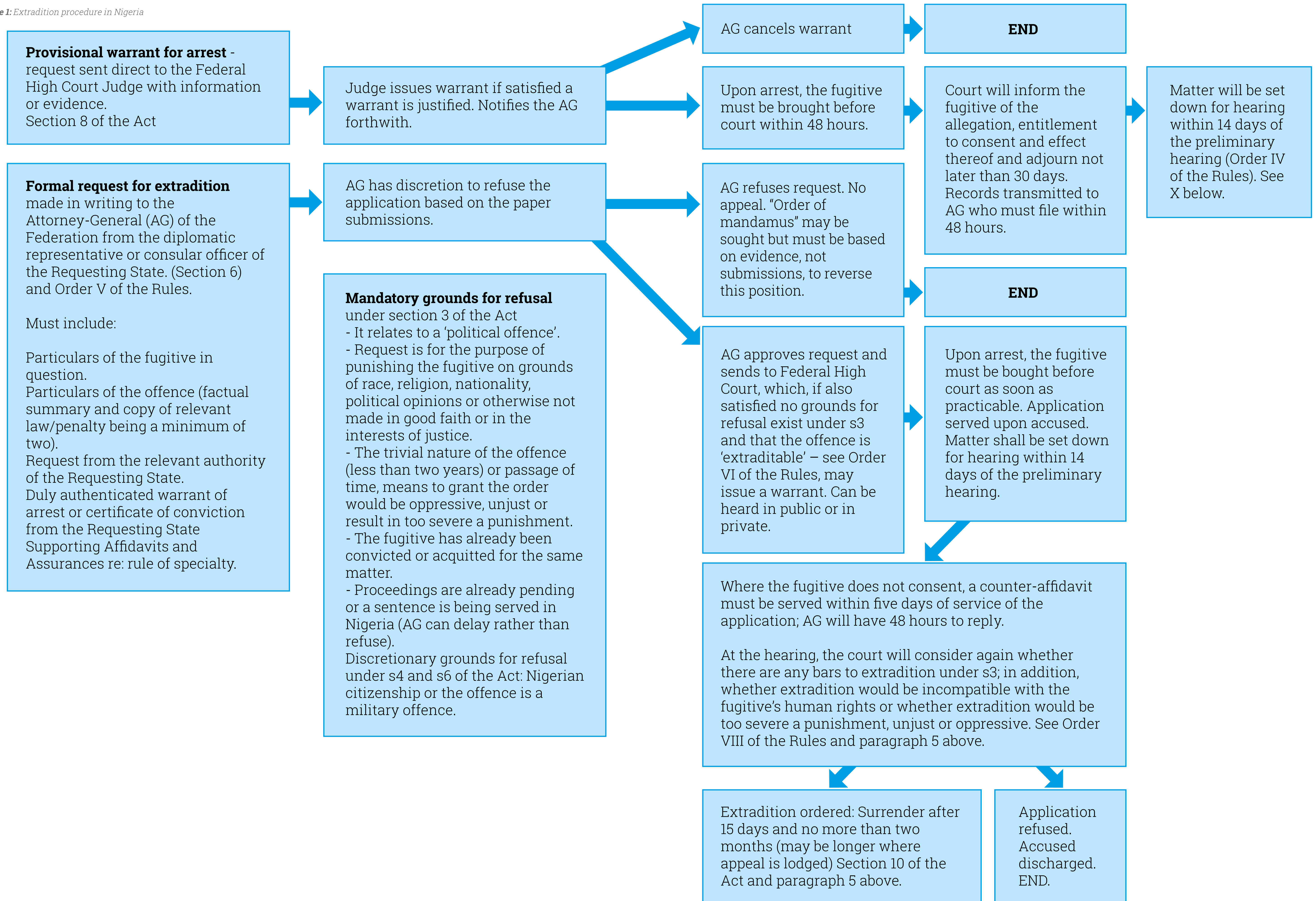
Procedure

6. With the passage of the Federal High Court (Extradition Proceedings) Rules 2015, Nigeria's procedural framework is well structured to ensure a swift resolution of extradition applications. Time limits are clearly set out (e.g., the extradition hearing shall be heard within 14 days of the preliminary hearing post arrest) with a maximum of two adjournments per party allowed.[52] Although proceedings are held in open court, the court may make orders regarding reporting restrictions and withholding of information from the public and all evidence is heard by affidavit – no oral evidence is permitted unless the court requires clarification of a particular issue, thus mitigating the risk of delays due to non-attendance of witnesses and lengthy examination-in-chief/cross-examination.[53] Provisions are also made for the parties to make admissions, again enabling shortened proceedings. Fugitives may where necessary appear at the preliminary hearing by live audio-visual link, further demonstrating a pragmatic approach to enabling efficient court processes.[54] Once extradition is ordered, surrender shall take place not less than 15 days after the date of the order or where a writ of habeas corpus has been issued, whichever is the latter.[55] Where surrender has not taken place within two months of the order/decision mentioned above, the fugitive may be discharged from custody, although this does not act as a bar on future proceedings in relation to the same criminal matter.[56] Bail may be granted during proceedings.[57]

7. The standard of proof required at an extradition hearing is one establishing a prima facie case – not "beyond reasonable doubt".[58] The procedure is illustrated in Diagram 1 on page 24, with one route identified as via the issue of provisional warrants and the second via formal application through diplomatic channels to the Central Authority, namely the Attorney General. The reference to 'Rules' and 'Act' refer to the Extradition Act and the 2015 Rules referenced above.

Top: Nigeria Customs seized 8,492kg of pangolin scales in March 2018 - yet pangolin scales several times that quantity are illegally exported from Nigeria, undetected, each year

Figure 1: Extradition procedure in Nigeria



Wildlife offences and extradition in Nigeria

8. Few offences relating to wildlife crime are considered returnable offences under the Extradition Act. The overall status of wildlife trafficking federal offences and extradition are best illustrated in Table 5 below.[59] No state laws relating to wildlife qualify either as extraditable matters or as serious crime. Ancillary offences such as corruption are not included.

Mutual legal assistance

9. In 2019, the President of the Federal Republic of Nigeria signed into law the Mutual Legal Assistance in Criminal Matters Act, repealing the previous law and widening the scope of application beyond Commonwealth countries.

10. As with extradition, mutual legal assistance may only be conducted with countries who have been designated by the President in the Federal Gazette under an agreement regarding mutual legal assistance. In the absence of this, it is still possible for a foreign state to make a request to the Attorney General of the Federation (the Central Authority for these purposes) who may, with the consent of the President, give a special direction in writing that the Act shall apply or otherwise enter into a special arrangement but only in respect of offences that in Nigeria would qualify as a serious offence.[60]

11. Serious offences include those where the minimum term of imprisonment is not less than one year as well as offences concerning money laundering and illicit trafficking of stolen and other goods; accordingly, this may include crimes provided under the Endangered Species Regulations, the customs laws and the money laundering legislation, although there is some debate as to whether regulatory offences are criminal' offences or administrative offences. This difference may be crucial in determining the application of Nigeria's laws on international cooperation. Under the Endangered Species Act 1985 as amended, only recidivist offenders would potentially qualify and in the absence of any central database for previous convictions, the chances are remote.

12. The types of assistance that Nigeria can avail under its laws are as follows:

- provision and obtaining of evidence and statements;
- location and identification of witnesses and suspects;
- provision and production of relevant documents, records, items, etc;
- facilitation of voluntary attendance of persons to assist in investigations/give evidence;
- effecting temporary transfer of persons in custody to assist in investigations/give evidence;
- identification, tracing, freezing, restraint, forfeiture and confiscation of proceeds of crime;
- restraint of dealings in property/freezing of assets that may be recovered, forfeited or confiscated in respect of offences;
- return and disposal of property;
- obtaining and preserving computer data;
- intercept of postal items;
- intercept of telecommunications;
- recovery of pecuniary penalties for a serious offence as defined in Nigeria or in the Requesting State;
- covert electronic surveillance;
- search and seizure;
- examination of objects and premises;
- joint investigation teams;
- any other assistance that is not contrary to the law of the Requesting State.

Table 5: Scope for extradition and international cooperation

Offences in relation to protected species	Domestic law offences	Penalty	Extraditable under domestic law?	Serious Crime under UNCTOC?
Hunting of a protected species	ESA Not fully criminalised	None	No	No
	s30 and s37(2) NPA	three months to five years, no fine.	Yes	Yes
Possession of a protected species	ESA s5(2)a) Schedule 1 species	₦5,000,000, 12 months for recidivist	No	No
	ESA s5(2)b) Schedule 2 species	₦1,000,000, six months for recidivist	No	No
	s7 ES Regulations	₦5,000,000 and/or three years.	Yes	No
	NPA s37(2)(a) (deemed 'capture' in a national park)	three months to five years, no option of a fine	Yes	Yes
	ML(P)A s15 (d) possession of a proceeds of crime	Seven to 14 years' imprisonment.	Yes	Yes
Trade or dealing in a protected species	ESA s5(2)a)	₦5,000,000, 12 months for recidivist	No	No
	ESA s5(2)b) Schedule 2 species	₦1,000,000, six months for recidivist	No	No
	s7 ES Regulations	₦1,000,000, six months for recidivist	Yes	Yes
	ML(P)A s15 (converts, uses, transfers, conceals or disguises)	Seven to 14 years imprisonment.	Yes	Yes
Import/Export of a protected species	ESA Not expressly criminalised.	None	No	No
	s3(1) and s7 ES Regulations	₦5,000,000 and/or three years	Yes	No
	s47, s64 Customs and Management Act	Five years imprisonment	Yes	Yes
	s15 ML(P)A (removal from jurisdiction)	Seven to 14 years	Yes	Yes

13. Consequently, Nigeria has a strong legal framework for mutual legal assistance (MLA) which largely echoes, and even goes beyond, the types of assistance envisaged by the Harare Scheme, the ECOWAS Convention and the UN Conventions regarding transnational organised crime and corruption. However, the creation of joint investigation teams has not been utilised in the context of wildlife trafficking. Controlled deliveries are also a valuable form of assistance possible under this law, given the provision that enables Nigeria to provide "any other assistance not contrary to the laws of the Requesting State" under section 1(r). However, the Act states Nigeria shall refuse requests where the provision would contravene its own laws under section 19(l).

14. The Act is clear on the various requirements regarding letters of request sent to the Attorney General according to the types of assistance sought. However, there must be dual criminality and the offence must be a serious offence', i.e., carry a minimum one-year prison term. Further grounds for refusal are:

- the offence is of a political character;
- the provision of assistance would prejudice the sovereignty, security, public order or other essential public interest of Nigeria;
- the central authority in the Requesting State has failed to comply with the terms of the treaty or agreement;
- the offence is a military offence and does not constitute a criminal offence under the laws of Nigeria;
- there are substantial grounds for believing the request is for the purpose of investigating, prosecuting, punishing or otherwise prejudicing a person on grounds of race, religion, sex, ethnic origin, nationality or political opinions;
- the person has already been tried for the same matter in that foreign state or has already been punished for the same conduct;
- triviality of the request or the assistance could be obtained by other means;
- failure on the part of the Requesting State to give an undertaking that the matter will not be used for any other matter other than the criminal matter in respect of which the request was made (Specialty Rule);
- failure on the part of the Requesting State to return any item obtained from Nigeria on completion of the proceedings (unless the AG consents);
- risk of prejudice to a criminal matter in Nigeria;
- the assistance would be contrary to the written laws of Nigeria;
- risk of harm to any person inside or outside of Nigeria;
- the request poses an excessive burden on the resources of Nigeria;
- absence of reciprocity.

15. Within the Central Authority (AGF), there is a specialist unit that handles extradition and MLA requests. The unit currently numbers approximately 12 lawyers. The major challenges relate primarily to the execution by competent authorities in particular the police and state services who may lack both technical and resource capacity to respond and deliver on the range of assistance provided for in statute in a timely way. Communication is by post, not digital, which also slows matters down significantly and the cost of executing requests can sometimes be prohibitive e.g., the cost of simply photocopying vast quantities of documents.

16. There have been no formal requests regarding a wildlife trafficking matter, according to representatives in the Central Authority of Nigeria.

17. Training of police, customs officers and state services such as prosecution authorities is required; further, judicial training on the new MLA law and the practice directions regarding extradition were highlighted in discussions with the Central Authority (lawyer in the Central Authority Nigeria, personal communication, November 2020).

Transfer of sentenced persons

18. Nigeria has a number of bilateral treaties regarding the transfer of prisoners with the UK and Northern Ireland,[61] China's Macao Region[62] and Thailand.[63] There is no domestic law and the consent of the prisoner is not required. No such transfers have occurred in relation to wildlife-related crimes.

References

1. UNODC, 2021. Guide on Drafting Legislation to Combat Wildlife Crime. [PDF] Available at: https://www.unodc.org/documents/Wildlife/Legislative_Guide.pdf

2. Still ongoing as an investigation.

3. Sections 251(3) and 272 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). Available at: https://lawsofnigeria.placng.org/laws/C23.pdf

4. El Mohammed, S., 2020. Wildlife Day: Minister urges Nigerians to protect Species, Natures. [online] PRNigeria News. Available at: https://prnigeria.com/2020/03/06/wildlife-day-minister-nigerians-species/ [Accessed 2 June 2021].

5. CITES Secretariat, 2020. Application of Article XIII in Nigeria: Update on Progress to the Standing Committee. [PDF] CITES. Available at: https://cites.org/sites/default/files/eng/com/sc/2020-2021/Inf/E-SC2020-Inf-06.pdf

6. Federal Ministry of Environment, Department of Forestry, 2014. National Ivory Action Plan for Nigeria. [PDF] Cites.org. Available at: https://cites.org/sites/default/files/common/prog/niaps/Nigeria_NIAP.pdf

7. CITES Secretariat, 2011. CITES lifts suspension on Nigeria as the country intensifies law enforcement efforts | CITES. [online] CITES. Available at: https://cites.org/eng/news/pr/2011/20110826_nigeria.php [Accessed 2 June 2021].

8. UNODC, 2020. World Wildlife Crime Report: Trafficking in protected species. [PDF] New York. Available at: https://www.unodc.org/documents/data-and-analysis/wildlife/2020/World_Wildlife_Report_2020_9July.pdf

9. Environmental Investigation Agency UK, 2018. Taking Stock: An assessment of progress under the National Ivory Action Plan process. [PDF] EIA UK. Available at: https://eia-international.org/wp-content/uploads/EIA-report-NIAP-2018.pdf

10. Still ongoing as an investigation.

11. UNODC, 2018. West and Central Africa Wildlife Crime Threat Assessment. [PDF] Cites.org. Available at: https://cites.org/sites/default/files/eng/prog/enforcement/E-CoP18-034-Threat-Assessment.pdf

12. Milliken, T., Underwood, F.M., Burn, R.W. and Sangalakula, L., 2016. The Elephant Trade Information System (ETIS) and the Illicit Trade in Ivory: A report to the 17th meeting of the Conference of the Parties to CITES. [PDF] TRAFFIC. Available at: https://cites.org/sites/default/files/eng/cop/17/WorkingDocs/E-CoP17-57-06-R1.pdf

13. U.S. Department of State, Bureau of Oceans and International Environmental and Scientific Affairs, 2020. Report to Congress on Major Wildlife Trafficking Countries Eliminate, Neutralise and Disrupt (END) Wildlife Trafficking Act of 2016 P.L. 114-231, Section 201. [online] State.gov. Available at: https://www.state.gov/2020-end-wildlife-trafficking-report/ [Accessed 2 June 2021].

14. CITES Secretariat, supra note 5.

15. IUCN, 2020. The IUCN Red List of Threatened Species. [online] IUCN Red List of Threatened Species. Available at: https://www.iucnredlist.org/statistics [Accessed 16 October 2020].

16. Federal Ministry of Environment, Department of Forestry, 2018. Progress Report on Nigeria National Ivory Action Plan. [PDF] CITES, p.3. Available at: https://cites.org/sites/default/files/common/prog/niaps/Nigeria%20E-SC70-27-04-A25.pdf

17. UNODC, supra note 9.

18. UNODC, 2020. World Wildlife Crime Report: Trafficking in protected species. [PDF] New York, p.22. Available at: https://www.unodc.org/documents/data-and-analysis/wildlife/2020/World_Wildlife_Report_2020_9July.pdf

19. Total number of cases of ivory seizures between 2011-2018 sourced from EIA internal seizure records database.

20. Federal Ministry of Environment, Department of Forestry, 2018. Progress Report on Nigeria National Ivory Action Plan. [PDF] CITES, p.24. Available at: https://cites.org/sites/default/files/common/prog/niaps/Nigeria%20NIAP%20PROGRESS%20REPORT%20after%20SC69%20FINAL.pdf

21. United Nations, 1986. Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations. [PDF] Vienna, p.3. Available at: https://legal.un.org/ilc/texts/instruments/english/conventions/1_2_1986.pdf

22. (2001) 51 WRN 29. However, one exception does appear to apply to the National Industrial Court which enables the direct application of international labour law provided such agreements are ratified by Nigeria see: [Article 254(C) Constitution] and [Okeke, C. E. and Anushiem, M. I., 2018. Implementation of Treaties in Nigeria: Issues, Challenges and the Way Forward. Nnamdi Azikiwe University Journal of International Law and Jurisprudence, 9(2) 216-229. Available at: https://www.ajol.info/index.php/naujilj/article/view/168850

23. Endangered Species (Control of International Trade and Traffic) Act, 1985. Available at: https://lawsofnigeria.placng.org/laws/E9.pdf

24. UNODC, 2019. Country Review Report of Nigeria: Review by Côte d'Ivoire and Myanmar of the implementation by Nigeria of articles 5-14 and 51-59 of the United Nations Convention against Corruption for the review cycle 2016-2021. [PDF] UNODC. Available at: https://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2019_12_16_Nigeria_Final_Country_Report.pdf

25. Transparency International, 2019. Corruption Perceptions Index. [PDF] Transparency International. Available at: https://www.transparency.org/files/content/pages/2019_CPI_Report_EN.pdf

26. Federal Ministry of the Environment, 2016. National Policy on the Environment (Revised 2016). [PDF] Federal Ministry of the Environment. Available at: http://extwprlegs1.fao.org/docs/pdf/nig176320.pdf

27. Year indicated is year of the convention, not the year of Nigeria's signing or ratification.

28. Federal Decree 77 of 1979 (now the National Commission for Museums and Monuments Act, 2000) forms the legislative basis for protection of these sites in Nigeria. The Nigeria Cultural Policy of 1988, the Land Use Act of 1990 and specific site management plans support the implementation of the convention.

29. Sections 78 Criminal Code Act Cap 77 (Southern states) v s424 of the Penal Code Cap P3 (Northern states).

30. In particular Article 4(5) of the Constitution provides that inconsistency between laws should be resolved in favour of laws passed by the National Assembly.

31. Article 174 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). Available at: https://lawsofnigeria.placng.org/laws/C23.pdf

32. Section 106 of the Administration of Criminal Justice Act, 2015. Available at: https://policehumanrightsresources.org/content/uploads/2017/09/Administration-of-Criminal-Justice-Act-2015-2.compressed.pdf?x96812

33. See: <https://www.justice.gov.ng>.

34. Section 105 of the Administration of Criminal Justice Act, 2015. Available at: https://policehumanrightsresources.org/content/uploads/2017/09/Administration-of-Criminal-Justice-Act-2015-2.compressed.pdf?x96812

35. Section 105(3) of the Administration of Criminal Justice Act, 2015. Available at: https://policehumanrightsresources.org/content/uploads/2017/09/Administration-of-Criminal-Justice-Act-2015-2.compressed.pdf?x96812

36. In the absence of a request for advice from law enforcement, the AGF will often only become aware of a particular case when the victim complains directly to their Office (DPP Federal prosecutor, personal communication, October 2020).

37. Ifezue v Mbadugha & Anor (1984) 5 S.C. 314 at 316 ratio 5.

38. Section 401 (see also 310, 311, 313, 316, 317) of the Administration of Criminal Justice Act, 2015. Available at: https://policehumanrightsresources.org/content/uploads/2017/09/Administration-of-Criminal-Justice-Act-2015-2.compressed.pdf?x96812

39. Section 1(a) of the Extradition Act, 1966. Available at: http://www.vertic.org/media/National%20Legislation/Nigeria/NG_Extradition_Act.pdf

40. Section 251(1(i)) of the Constitution of the Federal Republic of Nigeria, 1999. Available at: https://www.constituteproject.org/constitution/Nigeria_1999.pdf

41. The 2018 Order amended the Extradition Act to give effect to the rule against double jeopardy and to provide for procedural safeguards to avoid extradition in cases of mistaken identity.

42. The 2014 Extradition (Modification Order) Act conferred exclusive jurisdiction on matter of extradition to the Federal High Court, in compliance with Article 251 of the Constitution.

43. Extradition Treaty between the Government of the Federal Republic of Nigeria and the Government of the Republic of South Africa (Ratification and Enforcement) Act, 2004 (2005). Available at: https://gazettes.africa/archive/ng/2005/ng-government-gazette-dated-2005-12-12-no-106.pdf

44. Treaty on Extradition between the State of the United Arab Emirates and the Federal Republic of Nigeria, 2016. Available at: https://www.unodc.org/documents/nigeria/publications/Anti-Corruption-Project-Nigeria/Cases_and_Materials_on_Extraditon_in_Nigeria.pdf

45. Extradition (United States of America) Order, 1967. Available at: https://gazettes.africa/archive/ng/1967/ng-government-gazette-supplement-dated-1967-04-13-no-23-part-b.pdf#page=8

46. Extradition (Liberia) Order, 1967. Available at: https://gazettes.africa/archive/ng/1967/ng-government-gazette-supplement-dated-1967-04-13-no-23-part-b.pdf

47. Section 20(2) of the Extradition Act, 1966. Available at: http://www.vertic.org/media/National%20Legislation/Nigeria/NG_Extradition_Act.pdf

48. George Udeozor v Federal Republic of Nigeria (2007) CA/L/376/05.

49. Article 2 of the London Scheme for Extradition within the Commonwealth, 2002 (as amended). Available at: https://www.oas.org/juridico/english/mesicic3_jam_london.pdf

50. Article 3 of the Economic Community of West African States (ECOWAS) Convention on Extradition, 1994. Available at: https://www.wacapnet.com/sites/www.wacapnet.com/files/general/convention_on_extradition.pdf

51. Attorney General of the Federation v Rasheed Abayomi Mustapha Charge No. FHC/L/218C/2011.

52. Order VIII of the Federal High Court (Extradition Proceedings) Rules, 2015. Available at: https://www.unodc.org/documents/nigeria/publications/Anti-Corruption-Project-Nigeria/Extradition_Act_Proceedings_Rules_2015_Final.pdf

53. Order IX of the Federal High Court (Extradition Proceedings) Rules, 2015.

54. Order X of the Federal High Court (Extradition Proceedings) Rules, 2015.

55. Section 10(1) of the Extradition Act, 1966. Available at: http://www.vertic.org/media/National%20Legislation/Nigeria/NG_Extradition_Act.pdf

56. Section 11 of the Extradition Act, 1966. Available at: http://www.vertic.org/media/National%20Legislation/Nigeria/NG_Extradition_Act.pdf

57. Section 8(5) of the Extradition Act, 1966. Available at: http://www.vertic.org/media/National%20Legislation/Nigeria/NG_Extradition_Act.pdf

58. Section 9 of the Extradition Act, 1966. Available at: http://www.vertic.org/media/National%20Legislation/Nigeria/NG_Extradition_Act.pdf, and see: Ikomi v State (1986) 5 SC.

59. ES Regulations refers to the Endangered Species Regulations of 2011; NPA refers to the National Parks Act and ML(P)A refers to the Money Laundering (Prohibition) Act 2011 as amended.

60. Section 4 of the Mutual Legal Assistance in Criminal Matters Act, 2019.

61. Nigeria No.1 (2014) Cm 8791. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/459457/TS_26_Nigeria_CM_9132_Web_Accessible.pdf

62. Daily Trust, 2020. Nigeria, Macao agree on transfer of sentenced persons. [online] Daily Trust. Available at: https://dailytrust.com/nigeria-macao-agree-on-transfer-of-sentenced-persons [Accessed 2 June 2021].

63. Treaty between the Government of the Kingdom of Thailand on the Transfer of Offenders and Co-operation in the Enforcement of Penal Sentences, 2002. Available at: http://www.thailawforum.com/laws/Nigeria%20treaty.pdf

"Wildlife crime must be prioritised in the short term to address the unenviable reputation that Nigeria has acquired in this context. Targeted and surgical interventions will be required to build Nigeria's capacity for a short, sharp and impactful response to these crimes. In the longer term, the resources required are substantial if Nigeria is to create a coherent legal framework to address these and other emerging crimes against the planet's biodiversity."

environmental investigation agency

AFRICA NATURE INVESTORS