

Law and Wildlife

BiLL (Birds through a Legal Lens)

Legal Rules Applicable to the Trade of African Grey Parrots (*Psittacus erithacus*) in the Democratic Republic of the Congo



©Magda Ehlers from Pexels

Maribel Rodriguez and Naila Bhatri

May 2021

LaW

Law and Wildlife

Law and Wildlife aims to fill legal gaps in the conservation world by providing assistance to other nonprofits and governments with their legal needs as it applies to wildlife trade and conservation.

Copyright © 2021 Naila Bhatari and Maria Isabel Rodriguez Valero. All rights reserved. No part of this report may be reproduced without the prior written permission of the copyright owners.



Table of Contents

Chapter 1. Basic Legal Information	1
1.1 Sovereign Rights of the State vs Environmental Protection	1
1.2 The DRC's International Obligations.....	2
1.3 International Principles of Environmental Law	2
Chapter 2. Legal vs Illegal Trade of the African Grey Parrot	3
2.1 Status of the African Grey Parrot	3
2.2 Criteria for Legal Capture and Trade of the African Grey Parrot	4
2.3 Illegal Capture and Trade of the African Grey Parrot	10
Chapter 3. Authorities	14
3.1 Legislative Authorities	14
3.2 Management Authorities	15
3.3 Enforcement Authorities.....	16
Chapter 4. Hierarchy of Laws	17
4.1 Levels of Law	17
4.2 Hierarchy of Laws in the DRC	19

Legal Rules Applicable to the Trade of African Grey Parrots (*Psittacus erithacus*) in the Democratic Republic of the Congo

Decline in grey parrot populations is driven by an expansion of trapping operations, its international demand, little incentives for sustainable exploitation from local communities and poor awareness, and ineffective application of rules.¹ This report aims to fill in the legal knowledge gap by providing a review of the rules applicable to the trade of the African grey parrot (*Psittacus erithacus*, hereafter AGP). The legislation consulted to elaborate this report comes exclusively from available online sources. These do not reflect the entirety of laws applicable, and any conclusion about the contents of this report must be tested against the missing pieces of legislation.

Chapter 1. Basic Legal Information

Before determining the legal status of the AGP in the Democratic Republic of the Congo (DRC), it is important to understand some basic legal principles that apply to all wildlife and the environment in general. This may help find legal solutions in cases when the law does not specifically address certain questions.

1.1 Sovereign Rights of the State vs Environmental Protection

One basic question that we hardly ask ourselves is how laws regulate the ownership of wildlife. In the case of the DRC, as in many other African countries, their political independence was coupled with economic independence, which implied the ability to be able to exploit their natural resources to enhance economic development.² This is why the most important legal document in the country, the Constitution, stipulates that the State has permanent sovereignty over its natural resources. The DRC understands flora, fauna, and protected areas as natural resources that are part of the public domain, including AGP and all birds in general.

The State has the right to freely dispose of, to explore and exploit the natural resources, as well as to invite foreign investors to do so. The principle has been long acknowledged at international level, but it has its limits: States also have the duty to protect and preserve the environment for present and future generations, and ensure that activities within their jurisdiction do not damage the environment.³ This principle along with the ones listed below have also been acknowledged by the Rio Declaration on Environment and Development.⁴

These two principles are reflected across the DRC's environmental laws, which stipulate that the State exercises permanent sovereignty over natural, biological and genetic ecosystems, natural sites and monuments located on the national territory, and it is in charge of the protection of the environment.

¹ Hart J, Barnard A, Abani R, Salumu L, Martin RO (2015); *Harvesting and trade of Grey Parrots in DR Congo: Is sustainable exploitation possible?* Presentation to symposium 'Towards a sustainable and legal wildlife trade'. Durrell Institute for Conservation and Ecology, School of Anthropology & Conservation, University of Kent, Canterbury, UK. June 18th - 19th 2015.

² Ng'ambi S.P. (2015); *Permanent Sovereignty Over Natural Resources and the Sanctity of Contracts, From the Angle of Lucrum Cessans*; Loyola University Chicago International Law Review Volume 12 | Issue 2 Article 3

³ Art. 30, Charter of Economic Rights and Duties of States, UN General Assembly 3281 (XXIX), New York, 12 December 1974

⁴ Principle 2, Rio Declaration on the Environment and Development, UN General Assembly, Report Of The United Nations Conference On Environment And Development, Rio de Janeiro, 3-14 June 1992

1.2 The DRC's International Obligations

Another interesting piece of information when discussing the rules applicable to AGPs is how international obligations are present in the DRC legal system.

The DRC implements environmental protection cooperation policies and programs with other countries within the framework of conventions, treaties, and international agreements to which the Republic is a party. In the DRC, treaties and international agreements duly concluded must, upon publication in the Official Journal (*Journal Officiel de la DRC*), prevail over Congolese legislation. These agreements are considered as a second source of law after the Constitution.

There are a number of relevant International Agreements where the DRC is a signature party: the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the Convention on Biological Diversity (CBD), and COMIFAC (Commission des Forêts d'Afrique Centrale). Although an extensive analysis of how these agreements are individually implemented in the DRC legal system is beyond the scope of this summary, we can say that provisions implementing international obligations are scattered along many laws, decrees, and orders. The most important are:

- The Forestry Law;
- The Decree Regulating International Trade In Endangered Species Of Wildlife And Flora;
- The Natural Conservation Law

1.3 International Principles of Environmental Law

Countries may decide to adopt and implement general principles and rules of international environmental law. These represent general legal standards that states decide to refine and develop in their own legal system.⁵ Together with the principle of sovereignty over natural resources and the responsibility not to cause environmental damage, there are other general principles that might or might not be present in a given country:

1. the principle of preventive action;
2. the principle of co-operation;
3. the principle of sustainable development;
4. the precautionary principle;
5. the polluter-pays principle; and
6. the principle of common but differentiated responsibility
7. the public participation principle

Some of these principles help frame how conservation organizations can participate in the decision-making process. There are a number of internationally recognized environmental principles enshrined in the DRC legal system⁶:

1. Precautionary principle: public authorities shall take any necessary precautionary measures to ensure effective protection of the environment. The lack of certainty in relation to scientific and technical knowledge should not be used as a pretext to delay the adoption of effective and proportionate measures aimed at preventing a risk of serious and irreversible damage to the environment.
2. Prevention principle: authorities shall ensure the use of preventive or corrective measures when there is environmental harm.

⁵ Sands P. (2003); Principles of International Environmental Law; Cambridge University Press

⁶ These Principles stem mainly from publications such as 'Our Common Future' (1987), published by the World Commission on Environment and Development, and the Earth Summit's Rio Declaration (1992).

3. Public participation implies that everyone has the right to participate in the decision-making process in matters of environment and natural resource management. In this respect, the Environment Ministry annually publishes the list associations and approved non-governmental organizations exercising their statutory activities in the environment sector, in general, and forestry, in particular.

Conservation organizations may use these principles to approach authorities to request the inclusion of species into categories with a higher level of protection or deal with illegal trapping of AGPs. For example, authorities may have decided by a Decree to allow for the capturing of parrots in a certain areas. Conservation organizations may invoke a) the principle of public participation to express their opinion and share relevant knowledge, b) the principle of precaution to request suspension of trapping until sufficient scientific data is available, c) the principle of prevention to request preventive measures (i.e. increase rangers patrolling in the area, educational campaigns for local population).

Chapter 2. Legal vs Illegal Trade of the African Grey Parrot

The State has, both, the right to exploit natural resources, and the duty to protect the environment, including all birds. In this section we will analyse how this obligation is represented in relation to the AGP in the basic environmental and conservation laws in the country.

2.1 Status of the African Grey Parrots

The protection status of wildlife species in the DRC is governed by several pieces of legislation that regulate the capturing, domestic trade, and international trade of the species.

Capture and Domestic Trade (within the DRC)

The DRC protects all wild fauna species at any stage of their development, with a particular emphasis on endangered or threatened birds in the country. This is done by acknowledging two levels of protection for animal species:

1. **Totally Protected**, which means that no exploitation is possible other than with a scientific permit,
2. **Partially Protected**, which allows for exploitation under certain conditions.

The original list of protected species is to be found in the 1982 Hunting Law. AGPs were traditionally listed as totally protected species when it was first approved. To update the list the law allows for the Minister of Environment to change species status and add new species without further justification. Since 1982, AGPs have changed status in 2004 (where it was listed as both totally and partially protected) and in 2006. Ever since, the AGP is only partially protected under the DRC laws.

International Trade

At the same time, in a separate piece of legislation, the DRC regulates the rules and conditions of detention, trade, and transport in the DRC of species covered by the CITES Convention. This decree establishes different levels of protection for species listed in five annexes. These annexes are not publicly available, and at this stage it is impossible to know whether the classification and lists at domestic level match those at the international level. Wildlife T.R.A.C.K. has made a formal request to the CITES MA to obtain this information. In the meantime, for this report we have considered the obligations attached to species in Annexes 1 and 2 because of their similarities with the description of totally protected and partially protected species. Annex 1 covers all species threatened with extinction and which are or could be affected by trade⁷ and Annex 2 includes all species which, although not necessarily currently threatened with extinction, could become so if the trade in their specimens is not regulated or even certain species which

⁷ This protection has historically been given in the 1982 Hunting Law

trade must be regulated. Specimens of an animal species listed in Annex 1 born and bred in captivity or ranches for commercial purposes are considered specimens of species included in Annex 2.

In an attempt to present the situation visually, Table 1 displays the protection status of AGPs in the DRC.

Table 1: Protection Status of African Grey Parrots in the DRC					
Source of Specimen	Actions			Protection Status	Listing
	Capture	Domestic Trade	International Trade		
Wild	Yes, only under certain conditions	Yes, only under certain conditions	Yes, only under certain conditions	Partially protected/Threatened or Not threatened	Annex 2
Captive Bred	Yes, only under certain conditions	Yes, only under certain conditions	Yes, only under certain conditions	Partially protected/Threatened or Not threatened	Annex 2

AGPs, DRC, and CITES

*In 2017, AGPs were included in Appendix 1 of CITES. The international community considered this species as threatened with extinction and prohibited international trade except when the purpose of the import is not commercial. The DRC introduced a 'reservation' to the inclusion of the AGP in Appendix 1, which means that it will not be bound by the provisions of the Convention relating to that particular species. In 2018 CITES Standing Committee decided to suspend commercial and non-commercial trade in specimens of *Psittacus erithacus* of wild origin from the DRC. Since then, the DRC announced a moratorium to suspend trade of *Psittacus erithacus* and its intention not to implement its reservation on the listing of the species.*

2.2 Criteria for Legal Capture and Trade of the African Grey Parrot

From the section above, we conclude that wild AGPs may be captured and exploited as long as the competent authorities have issued a permit.

Fauna and game reserves establish their own conditions based on the general rules of protected areas in the country. In relation to birds, the DRC has established 19 Important Bird Areas. Of these, 5 are without protection, 10 have partial protection, and 4 are completely protected. Figure 1 displays these areas of importance to birds in the DRC⁸. Due to time and accessibility constraints, this report will only describe the general rules. A more in depth study would require the study of conditions established by these and other specific reserves and hunting areas.

⁸ National Biodiversity Strategy and Action Plan 2016-2020, Democratic Republic of Congo

N°	Noms des sites	Superficie (en Km ²)	% sous protection	Statut de la protection
1.	Reserve forestière de Luki	644.43	48.23	Partiel
2.	Reserve de Bombo-Lumene	3374.12	64.71	Partiel
3.	Ngiri	20288.55	6.38	Partiel
4.	Parc national de la Salonga	34732.94	99.21	Complet
5.	Lomako - Yekokola	2452.31	85.12	Partiel
6.	Parc national de la Garamba	5009.87	99.78	Complet
7.	Plateau de Lendu	4132.31	0.08	Sans
8.	Reserve du Mont Hoyo	588.30	0.00	Sans
9.	Reserve de faune à Okapi	13970.79	96.98	Partiel
10.	Parc national de Virunga	6026.12	83.08	Partiel
11.	Parc national de Maiko	10556.56	88.60	Partiel
12.	Forêts de l'Ouest du Lac Edouard	1766.26	10.82	Partiel
13.	Parc national Kahuzi-Biega	5655.59	83.32	Partiel
14.	Montagnes d'Itombwe	8262.87	0.14	Sans
15.	LaLuama - Katanga - Mont Kabobo	2561.08	0.00	Sans
16.	Marungu highlands	9774.71	0.00	Sans
17.	Parc national de l'Upemba	13526.86	100.00	Complet
18.	Parc National de Kundelungu	8092.27	100.00	Complet
19.	Vallée de la Lufira	584.06	13.09	Partiel

Figure 1: Areas of importance for birds present in DR Congo⁹

Legal Capture

AGPs are considered by law as 'game animal' and their feathers and other parts as 'trophies'. In general, it is allowed to capture adult male grey parrots. The taking or destruction of eggs and nests is prohibited, except if allowed by a scientific permit. It is also forbidden to take juvenile specimens, and in principle, females.

Capturing is only allowed during predetermined hunting seasons, which normally lasts for a period of maximum 6 months for commercial hunting¹⁰, and normally only during daylight.

AGP hunting seasons are established since 2001 as follows:

1. from September to April in the provinces of Orientale, Bandundu, Équateur, Western, and Easter Kasai;
2. from February to July in Maniema province; and
3. from January to July in Bas-Congo.

⁹ National Biodiversity Strategy and Action Plan 2016-2020, Democratic Republic of Congo

¹⁰ Authorities may decide to close the season for certain species to allow for their recovery

Given that since 2001 the protected status of the species and the administrative division of the State has changed, laws in this respect are largely outdated.

Several pre-conditions (Figure 2) need to be met to capture grey parrots legally: obtain an arms licence (if applicable); obtain a hunting permit; pay the applicable duties; register the capture with the authorities to obtain a certificate of origin; and request a certificate of legitimate possession.



Figure 2: Sequence of administrative steps required to capture African grey parrots legally in the DRC

This section will describe in detail the pre-conditions:

1. **Arms Licences:** certain types of hunting arms require licences. In general, it is forbidden to hunt using automatic weapon, bright lights, metallic collar and laces, poison and toxic products, fire, illegally handmade arms, war weapons, and from a moving vehicle. People with a commercial hunting permit may not use firearms at all.
2. **Hunting Permits:** They are personal and non-transferable, only valid for one hunting season and contain the specific conditions whereby hunting may take place, like, species, number of specimens, hunting area, or permit duration. Hunting permits are not to be given to applicants who have been convicted of a hunting criminal offence with at least one month in the DRC or elsewhere. If hunting rules are breached, authorities may suspend the permit.

Depending on the objective of hunting, the type of permit and cost differ. AGPs may only be hunted with a big game permit, a big tourism permit, or special permits (scientific or commercial permit) and under the conditions determined in the permits by the competent authorities.

Table 2: Types of Hunting Permits Required to Legally capture African Grey Parrots in the DRC			
Permit	Reason	Authority	Permit cost (Congolese Franc)
Big Game	To hunt non-protected and partially protected animals in the province outside protected and game reserves	Provincial Authority	21,560
Big Tourism	To hunt non-protected and partially protected wildlife within a game reserve	Director of the game reserve	64,690 + 36,660 to access the game reserve
Commercial Hunting	To hunt non or partially protected animals registered in the permit. (Validity: 6 months)	Secretary General, Ministry of Environment and Sustainable Development	43,310
Scientific	To capture species under the conditions mentioned in the permit	Ministry of Environment and Sustainable Development	86,250

3. Applicable Duties: Once the permit is obtained, AGPs may only be captured if the duties have been paid. Again, the amount will depend on the specific conditions of the permit. Capturing live specimens costs 650 CF, parts of it (feathers, bills, paws) 220CF/kg, and the killing of the specimen amounts to 8,630CF. Lack of payment will receive a penalty of 5 times the equivalent tax for that species.
4. Registration with authorities, certificate of origin, and certificate of legitimate possession: After the specimens have been captured, it must be registered with the authorities. The Registration Certificate is considered as the 'Certificate of Origin', the document that proves that the specimens have been legally captured. Having the Certificate of Origin is a pre-condition to obtain the 'Certificate of Legitimate Possession', that will allow its holder to possess and trade with the specimen. Duties apply to these certificates. For live animals, this certificate is valid for one year, after which authorities make an inspection and issue a new certificate. Authorities issuing such certificates for AGPs will differ depending on where the specimen is:
 - If specimen or its parts are held in Kinshasa → Director of the Nature Conservation Department (Ministry of Environment)
 - If specimen or its parts are held in a province → Head of the provincial hunting administration
 - If specimen or its parts are in a reserve area → Managing Director of the Congolese Institute for Nature Conservation (ICCN) or Manager in the reserved areas.

Legal Captive breeding

The DRC permits the breeding in captivity for commercial purposes of any CITES listed species, including AGPs. To do this, a permit needs to be issued by the CITES Management Authority (CITES MA) after verifying that the applicant has the technical capacities and material resources, that the breeding stock is constituted of wild animals coming exclusively from the DRC, and that CITES Scientific Authority (CITES SA) has certified that the removal of the breeding stock is not detrimental to the survival of the species in the wild and in its range of natural distribution. Specimens of an animal species listed in Annex 1 born and bred in captivity or ranched for commercial purposes will be considered specimens of species included in Annex 2.

The permit granted will include the conditions required for the breeding premises and operations as well as the monitoring terms by the CITES or any other competent authority. In addition, a captive breeding certificate will be issued by CITES MA and registration with the CITES Secretariat is required. To date, there are no AGP captive breeding facilities in the DRC registered with the CITES Secretariat. There are however almost 200 facilities registered in South Africa, two in the Philippines, one in Zambia and one in Singapore¹¹.

All specimens born in breeding establishments must be identified with a mark, registered, and regularly checked according to the terms in the permit.

Legal Domestic Trade

Someone in possession of AGPs and the corresponding certificate of legitimate possession is entitled to trade the specimens provided that a number of conditions are met:

1. For those willing to commercially exploit these birds, it is necessary to obtain an accreditation license granted by the Ministry of Environment.
2. Live birds must be in quarantine for a period established by the authorities.

¹¹ <https://cites.org/eng/common/reg/cb/species.html>

3. In addition, every individual commercial transaction requires authorities to be notified and the corresponding duty paid. A new certificate of legitimate possession will be issued in the name of the buyer.



Figure 3: Sequence of administrative steps required to trade African Grey Parrots legally in the DRC

Legal International Trade (Import, Export, and Re-export)

Wild and captive bred AGPs may be internationally traded provided that a number of conditions are met. As a pre-requisite, birds need to be kept in good health and condition until the export is done, and their holders must be in possession of the certificates of origin and legitimate possession.

Additionally, prior to trade with live birds, the trader must hold a trading licence issued by the CITES MA. This licence will be granted provided that all legal formalities are met, the trader has appropriate premises, and a veterinarian to provide care for animals in captivity.



Figure 4: Sequence of administrative steps required to import, export and re-export African Grey Parrots legally in the DRC

After these conditions are met, traders may request an import, export, or re-export permit from the CITES MA for every shipment of specimens. As of 1st June 2020, permits or certificates issued by the DRC have a QR CODE on the far right of the security stamp. Permits issued after this date should contain the QR Code, and other CITES Parties should not accept permits issued after 1st June 2020 that do not contain a QR code.¹² The import, export, or re-export permits are valid for 6-months from the date of issue. They are for a specific individual and non-transferable, and they cannot be retroactively put in effect, except in exceptional cases provided for by the CITES MA. A valid permit or certificate can only be changed one time, when the modification does not relate to the identification of specimens, their number, or quantity. Export permits are for 43,130CF, imports and re-exports for 86,250CF.

Permits have a validity date, and they may not be used beyond the validity period. If they have been unused they must be returned to the CITES MA. It is strictly forbidden to renew permits according to DRC law. Similarly, no export permit can allow the export of a total number of species that exceeds the established annual export quotas. Permits may be suspended by the CITES MA, especially if they were granted on the basis of false statements.

Since the current protection status of AGPs in the CITES legislation is unavailable to us, the Tables 3 & 4 represent the conditions for the legal import and export of specimens listed in both Annex 1 (threatened with extinction) and Annex 2 (not threatened with extinction and captive bred):

¹² [CITES Notification to the Parties No. 2020/047](https://www.citesrdc.org). To quickly verify the authenticity and validity of permits and certificates issued by the CITES Management Authority (MA) of the DRC from 1 June 2020 onwards, DRC has provided a tool in CITES MA website: <https://www.citesrdc.org>

Table 3: Import Criteria for African Grey Parrots in the DRC

Criteria	Type of specimen	
	Wild (if considered 'Threatened')	Wild (if considered 'Non-threatened') and Captive bred
Trader registered with authorities	yes	yes
Trader in possession of 'Certificate of Origin' and 'Legitimate Possession Certificate'	yes	yes
CITES export permit from MA of the country of origin or re-export certificate from country or re-export	no	yes
Import permit from the CITES MA for each consignment	yes	yes
Import is not detrimental to survival of AGP	yes	no
Specimens will not be used for a primarily commercial purpose	yes	no
Adequate facilities in case of live specimens	yes	no

Table 4: Export Criteria for African Grey Parrots in the DRC

Criteria	Type of specimen	
	Wild (if considered 'Threatened')	Wild (if considered 'Non-threatened') and Captive bred
Trader registered with authorities	yes	yes
Trader in possession of 'Certificate or origin' and of 'Legitimate Possession Certificate'	yes	yes
Specimen not obtained in breach of Congolese laws in matters of fauna and flora	yes	yes
Export Permit from CITES MA	yes	yes
CITES import permit from the MA of country of destination	yes	no
CITES SA expressed the opinion that this export is not detrimental to the survival of the species	yes	no
CITES SA has set an annual export quota for the species	no	yes
Transported in such a way as to avoid the risk of injury, illness, damage to health, death of a live animal	yes	yes

When the specimen does not come from Congolese flora or fauna, a re-export permit may be issued upon presentation of an import permit from the destination country.

There are exceptions to these permits based on public interest or scientific research reasons. The exemption can only be granted on the condition that there is no other satisfactory solution and that it does not affect the maintenance of a favourable conservation state of specimens of the species of fauna or flora

concerned in their area of natural distribution. It is subject to a prior environmental and social impact study accompanied by its management plan duly approved.

2.3 Illegal Capture and Trade of the African Grey Parrot

In previous sections we have described that the exploitation of protected species in the DRC is possible only under certain conditions. We may conclude that, unless capturing, breeding, and trading are done within the established conditions, they are forbidden.

Illegal Capture

In general, the taking, hunting, fishing, capturing, harassing, or deliberately killing specimens of protected species is forbidden. In relation to capturing AGPs:

1. Eggs: it is forbidden to destroy, damage, remove, collect the eggs of these species or modify their position.
2. Chicks: It is forbidden to disturb them, especially during the time of reproduction, dependence, hibernation or migration.
3. Habitats: it is forbidden to deteriorate or destroy breeding sites, resting places or any habitat natural environment where these species live at one of the stages of their biological cycle.

If parrots are within a total faunal reserve (*Reserve de Faune*), carrying any hunting weapon, transport them dead or alive, disturb them, or hunt them is prohibited.

Anyone who accidentally captures a specimen of one of the protected species is required to declare it and return it to the public authorities.

Specific offences with regard to capture with their accompanying sanctions are summarized in Table 5.

Table 5: Capture of African Grey Parrot - Offences and Sanctions in the DRC

Offence	Prison (months)	and/or	Fine (Congolese Francs)	Others
Breach of conditions in relation to the obtention of capturing permits and certificates	0 to 60	and/or	5 to 50,000 (zaïres)	<ul style="list-style-type: none"> Permit suspension and prohibition to grant similar permits for 5 years. If permit is missing, a fine of 3x the hunting permit duty
Killing, injuring capturing or detaining a partially protected species	6 to 24	and/or	1,000,000 to 5,000,000	<ul style="list-style-type: none"> Specimens confiscated and entrusted to the public body responsible for conservation
Introducing firearms and other hunting instruments in strict nature reserves, national parks and biosphere reserves	12 to 36	and/or	100,000 to 1,500,000	<ul style="list-style-type: none"> Specimens confiscated and entrusted to the public body responsible for conservation Restoration of ecosystems, natural habitats and/or protected areas at the expense of the offender. In the event of non-performance within the time limits a judge may order for the restoration at the expense of the offender until their completion or payment of the equivalent.
Holding or transporting live species of wild flora and fauna, their skins or other remains in strict nature reserves, national parks and biosphere reserves	12 to 36	and/or	100,000 to 1,500,000	<ul style="list-style-type: none"> Specimens confiscated and entrusted to the public body responsible for conservation Restoration of ecosystems, natural habitats and/or protected areas at the expense of the offender. In the event of non-performance within the time limits a judge may order for the restoration at the expense of the offender until their completion or payment of the equivalent.
Taking or destroying eggs and or nests in strict nature reserves, national parks and biosphere reserves	12 to 36	and/or	100,000 to 1,500,000	<ul style="list-style-type: none"> Specimens confiscated and entrusted to the public body responsible for conservation Restoration of ecosystems, natural habitats and/or protected areas at the expense of the offender. In the event of non-performance within the time limits a judge may order for the restoration at the expense of the offender until their completion or payment of the equivalent.
Destroying, by any means, biotopes, species of fauna, and any other natural resource in strict nature reserves, national parks and biosphere reserves	12 to 36	and/or	100,000 to 1,500,000	<ul style="list-style-type: none"> Specimens confiscated and entrusted to the public body responsible for conservation Restoration of ecosystems, natural habitats and/or protected areas at the expense of the offender. In the event of non-performance within the time limits a judge may order for the restoration at the expense of the offender until their completion or payment of the equivalent.
Pursuing, hunting, capturing and destroying, and intentionally killing by any means any wildlife species in strict nature reserves, national parks and biosphere reserves	12 to 36	and/or	5,000,000 to 25,000,000	<ul style="list-style-type: none"> Specimens confiscated and entrusted to the public body responsible for conservation
Issuing permits illegally for prohibited activities in protected areas (Offender: public official)	3 to 6	and/or	5,000,000 to 25,000,000	<ul style="list-style-type: none"> Specimens confiscated and entrusted to the public body responsible for conservation

Illegal Domestic Trade

In relation to domestic trade, the following is prohibited:

1. Holding, transporting, exchanging, selling or buying, offering or transferring free of charge specimens or any part thereof taken from the wild
2. Holding, transferring, selling, buying, or transporting any product whose packaging or advertising containing specimens of one of the protected species
3. Displaying these specimens in public places
4. Manufacturing illicit trophies and exporting

Specific offences with regard to domestic trade with their accompanying sanctions are summarized in Table 6.

Table 6: Domestic Trade of African Grey Parrot - Offences and Sanctions in the DRC	
Offence	Fine (Congolesse Francs)
Holding, buying, offering to buy, acquiring for commercial purposes, use for profit, display to the public for commercial purposes, selling, offering for sale and transportation for the sale of any specimen belonging to a species listed in the CITES Implementing Decree	<ul style="list-style-type: none"> • Individual: 1,000 to 20,000 • Legal person: x3 • Recidivism: x2

Illegal International Trade

Specimens affected by these types of breaches will be seized and confiscated and they will be:

1. kept in captivity and handed over to national or foreign rescue centers or sold to individuals; or
2. returned to nature; or
3. be euthanized.

If seizure and confiscation follow an illegal import, specimens will preferably be repatriated to the country of origin, in collaboration with the CITES MA of that country, unless the latter is not a member of the Convention.

Specific offences with regard to international trade with their accompanying sanctions are summarized in Table 7.

Table 7: International Trade of African Grey Parrot - Offences and Sanctions in the DRC

Offence	Prison (months)	and/or	Fine (Congolese Francs)	Other
Carrying out the activities of international trade in specimens of wild flora and fauna partially protected and their products in violation of the provisions of this law and the decree regulating international trade in wildlife	12 to 24	and/or	10,000,000 to 25,000,000	•Specimens confiscated and entrusted to the public body responsible for conservation
Importing, introducing from the sea, exporting or re-exporting, without appropriate CITES permits or certificates, of any specimen of one of the species listed in the CITES Implementing Decree			<ul style="list-style-type: none"> • Individual: 1,000 to 20,000 • Legal person: x3 • Recidivism: x2 	<ul style="list-style-type: none"> • Permit suspended by CITES MA • Species: Seized and confiscated • Recidivism: Refusal to get a permit
Using species listed in Annex 1 for purposes other than those indicated on the import permit			<ul style="list-style-type: none"> • Individual: 1,000 to 20,000 • Legal person: x3 • Recidivism: x2 	<ul style="list-style-type: none"> • Permit suspended by CITES MA • Species: Seized and confiscated • Recidivism: Refusal to get a permit
Using a permit or certificate for a specimen other than that for which it was issued			<ul style="list-style-type: none"> • Individual: 1,000 to 20,000 • Legal person: x3 • Recidivism: x2 	<ul style="list-style-type: none"> • Permit suspended by CITES MA • Species: Seized and confiscated • Recidivism: Refusal to get a permit
Failure to comply with the conditions stipulated on a permit or certificate			<ul style="list-style-type: none"> • Individual: 1,000 to 20,000 • Legal person: x3 • Recidivism: x2 	<ul style="list-style-type: none"> • Permit suspended by CITES MA • Species: Seized and confiscated • Recidivism: Refusal to get a permit
Using a false, falsified or invalid permit or certificate, or modified without authorization			<ul style="list-style-type: none"> • Individual: 1,000 to 20,000 • Legal person: x3 • Recidivism: x2 	<ul style="list-style-type: none"> • Permit suspended by CITES MA • Species: Seized and confiscated • Recidivism: Refusal to get a permit
Transporting of a live specimen belonging to a species listed in the CITES Implementing Decree with insufficient preparation to minimize the risk of injury, illness or rough treatment			<ul style="list-style-type: none"> • Individual: 1,000 to 20,000 • Legal person: x3 • Recidivism: x2 	<ul style="list-style-type: none"> • Permit suspended by CITES MA • Species: Seized and confiscated • Recidivism: Refusal to get a permit

Chapter 3. Authorities

Three types of authorities should be taken into consideration in wildlife trade matters: those who write the laws (legislative authorities), those who manage wildlife by determining quotas and providing permits (management authorities), and those who enforce the laws (enforcement authorities).

3.1 Legislative Authorities

Environmental rights and obligations are developed by public authorities. Knowing the entities responsible for legislative development may be useful for conservation organizations to exercise their rights to be heard before decisions are taken.

There are different decision levels that may be found in the DRC: the State or central power, the Provinces, territorial authorities and customary authorities. Environmental and conservation competences are divided between the two first levels.

State – Department of Nature Conservation, Ministry of Environment and Sustainable Development

At the level of the State the following authorities may pass legislation related to environmental protection and conservation: 1) the Parliament which adopts law (*Lois*) and 2) the Government which adopts Regulations in the form of Decrees (*Decrets*) and Orders (*Ordre*).

In general, the Government defines the policy of the country. This includes the environmental and biodiversity national policy in the form of a national action plan. The Ministry of Environment is in charge of implementing this plan and coordinating national efforts. In relation to biodiversity, the DRC's new Biodiversity Strategy and Action Plan (SPANB) is due in 2021. Among other objectives, the protection of endangered species of flora and fauna and the reduction of the pressure on natural habitats were two main pillars of the 2016-2020 Action Plan¹³. It establishes specific objectives and actions, among them the strengthening of the CITES implementation. Contrary to all the legal texts that we have seen in this report, this policy sets out the countries' priorities but the government may not be held accountable in case of breach of these measures.

Other exclusive competences of the State in relation to the protection of biodiversity are: to regulate foreign trade, customs and the regime of import and export, the elaboration of forestry programs of national interest and the coordination of programs of provincial interest, the forestry regimes concerning hunting, the conservation of nature (flora and fauna), the capture and breeding of animals, and legislation concerning the conservation of natural resources.

A Provincial Assembly cannot legislate on the matters of the exclusive competence of the Central Power. Reciprocally, the National Assembly and the Senate cannot legislate on the matters of the exclusive competence of a Province. But there are exceptions to this.

Provinces

The DRC is divided administratively into 25 provinces and the city of Kinshasa, which also has the status of a Province. Provinces develop their own environmental protection and management plan in accordance with the Environmental Action Plan.

Exclusive competences of the Province in environmental protection/biodiversity matters are: the organization of the small commerce at the frontier (*petit commerce frontalier*); the establishment of fines and prison penalties to assure the respect for edicts in accordance with the national legislation; the

¹³ National Biodiversity Strategy and Action Plan 2016-2020, Democratic Republic of Congo

application of the national legislation concerning forest, hunting, and fishing as well as the environment; the conservation of nature and the capture of wild animals, and the execution of customary law.

State and provinces share a number of competences (concurrent competences) related to environment/biodiversity protection: tourism, land and mining rights, territorial management, the regime of waters and forests, the prevention of human and animal epidemics dangerous to the collectivity, protection of the environment, of natural sites, of landscapes, and of the conservation of sites. In these matters any provincial edict that is incompatible with national laws and regulations is null and void. The national legislation takes precedence over the provincial edict.

3.2 Management Authorities

Management Authorities for the purposes of this report are those public authorities in charge of the administrative procedures required for the legal capture, captive breeding, and trade of AGPs.

Capture

As mentioned above, the authorities granting capture permits depend of the type of permit needed.

Permit	Authority
Big Game	Provincial Authority
Big Tourism	Director of the game reserve
Commercial Hunting	Secretary General, Ministry of Environment and Sustainable Development
Scientific	Ministry of Environment and Sustainable Development

Additionally, the DRC requires legal captures to be registered with the authorities, which will be different depending on where the specimen are. They will issue two consecutive certificates: the 'Certificate of Origin', that proves that the animal was captured legally and the 'Certificate of Legitimate Possession', that will allow its holder to possess and trade the specimen. The competent authorities are the following:

- If specimen or its parts are held in Kinshasa → Director of the Nature Conservation Department (Ministry of Environment)
- If specimen or its parts are held in a province → Head of the provincial hunting administration
- If specimen or its parts are in a reserve area → Managing Director of the Congolese Institute for Nature Conservation (ICCN) or Manager in the reserved areas.

Captive breeding

The DRC authorities for captive breeding certificates and permits at national level are the CITES authorities described below.

Domestic Trade

The legal trade of AGPs requires an accreditation license granted by the Ministry of Environment. In addition, every individual commercial transaction requires authorities to be notified and the corresponding duty paid. A new certificate of legitimate possession will be issued in the name of the buyer. Just by looking at the legislation it is uncertain whether this procedure corresponds to the CITES permits procedure or if it is a different one.

International trade

The national CITES authorities are responsible for the granting of import/export and re-export permits.

Table 9: Management Authorities for Illegal Wildlife Trade in the DRC

Authority	Designated Authority	Description of Competences	Contact Details
CITES Management Authority (CITES MA)	Congolese Institute for the Conservation of Nature (<i>Institut Congolais pour la Conservation de la Nature</i>) (ICCN) • directed by Prof. Dr. Augustin NGUMBI AMURI	<ul style="list-style-type: none"> • Drafts reports about trade operations and domestic measures regarding the CITES Convention • Determines premises conditions for live animals • Verifies conditions and grants captive breeding certificates and permits • Grants, verifies, modifies and revokes CITES permits • Investigates breaches of CITES legislation • Controls captive breeding facilities • Determines rescue centres for confiscated animals 	<p>Email:</p> <ul style="list-style-type: none"> • coordination@citesrdc.org • secretariat@citesrdc.org. <p>Phone:</p> <ul style="list-style-type: none"> • +243 812633770 <p>Website:</p> <p>https://www.citesrdc.org</p>
CITES Scientific Authorities (CITES SA)	For birds: <ul style="list-style-type: none"> • Department of Ecology and Management of Animal Resources (Département d'Ecologie et Gestion des Ressources Animales) • Science Faculty at Kisangani University (UNIKIS) 	<ul style="list-style-type: none"> • Provide scientific advice about how trade affects CITES species • Controls captive breeding facilities 	<p>Email:</p> <ul style="list-style-type: none"> • bapeamonifrank@gmail.com (Prof. Frank Bapeamoni Andemwana) • ddupoki2@yahoo.fr (Prof. Dieudonné Upoki Agemong'a) <p>Phone:</p> <ul style="list-style-type: none"> • +243 994044169 • +243 853565790 • +243 818063889 • +243 998508575

3.3 Enforcement Authorities

Enforcement Authorities for the purposes of this report are those public authorities in charge of the observance and compliance of the rules related to nature conservation and wildlife trade. Given that the rules of protected areas are out of the scope of this report, this section will not discuss enforcement authorities in protected areas by the CorpPPN at the ICCN, but only those with competences to investigate illicit activities related to capture, captive breeding, and trade, in general.

Table 10: Enforcement Authorities for Illegal Wildlife Trade in the DRC

Institution	Authority	Description of Competences
Judicial Police	Designated officers from the CITES MA	Investigate and prosecute breaches of hunting and CITES legislation
	Hunting Officials	Investigate and prosecute breaches of CITES legislation, hunting law and ivory and arms related obligations
	Regular Judicial Police	Investigate and prosecute breaches of hunting and CITES legislation
Customs	Direction Générale des Douanes et Accises (DGDA)	Control permits at borders, investigate and prosecute breaches of hunting and CITES legislation
Trade Control	Office Congolais de Contrôle (OCC)	Controls of quantity, quality, price and conformity of specimens intended for export/Surveillance for commodities in transit

In addition, the CITES MA, Customs (*Office des Douanes et Accises OFIDA*), and the Congolese Trade Controlling Authorities (*L'Office Congolais de Contrôle OCC*) signed a Memorandum of Cooperation (MoC) in 2002 whereby they agree collaborate permanently, meet quarterly to exchange information, and build the capacity of their officers to tackle international Illegal Wildlife Trade.

Chapter 4. Hierarchy of Laws

In a legal system, laws relate to each other in a hierarchical order. In legal theory this is explained using the image of an inverted pyramid, where the top of the pyramid is the fundamental law of the country, the Constitution, generally. Subsequent layers develop rights and obligations but each one of them must comply with the standards established in higher norms.¹⁴

4.1 Levels of Law

In the DRC there are different levels where environmental protection and conservation rules may be found. Each of these levels is related hierarchically: some rules will be 'higher' than others, and in case of contradictions, the higher rules will take precedence. It is important to understand their relationship to address contradictions.

Taking them in a hierarchical order, from most important to least important, the rules in the DRC are:

Constitution

It is the most important piece of legislation in the country, the fundamental norm. It establishes general principles of environmental protection and natural resources exploitation. It determines that the State, provinces and customary authorities have competences on environmental and natural conservation matters.

Law (Loi)

Important rules in one country require that the citizen representatives (i.e. the Parliament) have a say. This level is what we commonly call 'laws', and the power to approve laws is called 'Legislative Power'. In the DRC, the legislative power is exercised by a Parliament consisting of two Chambers: the National Assembly and the Senate. In matters of environment, the law determines the fundamental principles concerning the regime of land, mining, forestry and real property; scientific and technological research; animal husbandry, fishing; the protection of the environment and tourism; the protection of vulnerable groups. The DRC's environmental and conservation laws are listed in the next section.

Ministerial Orders (Arrêté Ministeriel)

These rules are developed at a lower level (normally Ministry of Environment) and they do not require parliamentary approval, though, the legal procedure has some safeguarding to avoid abuses. These normally develop the rules established by the law. In the DRC these are the Ministerial Orders are usually issued by the Minister of Environment. When there are contradictions between implementing decrees and laws, the laws always take precedence.

Provincial Orders

In the matters concerning exclusive and concurrent competence, provinces may also dictate provincial orders in so far as they are compatible with the national laws and regulations. The national legislation takes precedence over the provincial edict.

¹⁴ Marmor, A. (2016); *The Pure Theory of Law*, The Stanford Encyclopedia of Philosophy (Spring 2016 Edition), Edward N. Zalta (ed.) <https://plato.stanford.edu/archives/spr2016/entries/lawphil-theory/>

Customary Rules (*Droit Coutumier*)

Customary law or tribal law is another pillar of the legal system of the DRC, where 56% of the population lives in rural areas. These rules are enacted by customary authorities like patriarchs, family councils, clan councils, and traditional or tribal chiefs. Local customary laws regulate, among other things, land tenure systems in the various traditional communities of the country. They only apply to the traditional communities from which they originate.¹⁵ Considering the importance of customary law in the DRC, a further study of the applicable customary rules in areas where wild birds/parrots are present could be useful to discover alternative pathways to deal with IWT.

Case Law (*Jurisprudence*)

It is the interpretation of law made by judges.

Due to time and accessibility reasons, this report only analysed the first two levels: laws and implementing decrees.

¹⁵ Zongwe, D.P; Butedi, F and Clément P.M. (2020); *Overview of the Legal System of the Democratic Republic of the Congo (DRC)*; Global Lex, Hauser Global Law School Program, New York University School of Law

4.2 Hierarchy of Laws in the DRC

To describe legal vs illegal trade of AGPs in the DRC we have consulted a total of 10 legal texts, including the Constitution, four laws, and five implementing decrees. The figure below represents the relationship among them.

