

# Law and Wildlife

## BiLL (Birds through a Legal Lens)

### Legal Rules Applicable to the Trade of African Grey Parrots (*Psittacus erithacus*) in Nigeria



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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.

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## Legal Rules Applicable to the Trade of African Grey Parrots (*Psittacus erithacus*) in Nigeria

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.<sup>1</sup> 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 Nigeria, 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

In the case of Nigeria the most important legal document in the country, the Constitution, stipulates that the State has a permanent sovereignty over its environment. Nigeria understands environment as tangible and intangible resources, especially the soil, water, flora and fauna. This definition includes the AGP and all birds in general.

The State has the right to freely dispose of, to explore and exploit the environment, 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.<sup>2</sup> This principle along with the ones listed below have also been acknowledged by the Rio Declaration on Environment and Development.<sup>3</sup>

These two principles are reflected across Nigeria's environmental laws, which stipulate that the federal government exercises permanent sovereignty over wild plants and animals (this includes grey parrots) located in the national parks and the federal government is in charge of the protection of these wild plants and animals.

#### 1.2 Nigeria's International Obligations

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

Nigeria 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. The federal government has the responsibility of entering into and implementing international

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<sup>1</sup> 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.

<sup>2</sup> Art. 30, Charter of Economic Rights and Duties of States, UN General Assembly 3281 (XXIX), New York, 12 December 1974

<sup>3</sup> 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

agreements. National Environmental Standards and Regulations Enforcement Agency (NESREA) will enforce compliance with these agreements.

There are a couple of relevant international agreements where Nigeria is a signature party: CITES and CBD. Although an extensive analysis of how these agreements are individually implemented in Nigeria's legal system is beyond the scope of this summary, we can say that provisions implementing these obligations are scattered along many laws and regulations. The most important are:

- Endangered Species (Control of International Trade and Traffic) Act (hereafter *ESA*);
- National Park Service Act (hereafter *NPSA*);
- National Environmental (Protection of Endangered Species in International Trade) Regulations, 2011 (hereafter *Endangered Species Regulation* or *ESR*).

### 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.<sup>4</sup> 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;
6. the principle of common but differentiated responsibility; and
7. the public participation principle.

Some of these environmental principles help frame how conservation organizations can participate in the decision-making process. For instance, the organizations may use the public participation principle to request moving certain species to a higher level of protection, or address how illegal trapping of an AGP may be dealt with arguing for the precautionary principle to be used.

These internationally recognized environmental principles do not appear to be expressly enshrined in Nigeria's conservation laws.

## 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

Nigeria's national ESA lists all parrots, which includes the AGP, in its First Schedule. This gives wild AGPs the highest level of protection Nigeria offers its wildlife. The Minister of the Federal Ministry of Environment, may, by order, modify the list of animals in Schedule I and/or Schedule II of the ESA. However, the ESA provides exceptions for AGPs that have been bred in captivity for commercial purposes,

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<sup>4</sup> Sands P. (2003); Principles of International Environmental Law; Cambridge University Press

providing the second highest level of protection for such AGPs. **Captive AGPs** refer to parrots confined in a laboratory, zoo, or wildlife rescue center.

The details of these levels of protection are summarized in the Table 1.

Table 1: Protection Status of African Grey Parrots in Nigeria					
Source of Specimen	Actions			Protection Status	Listing
	Capture	Domestic Trade	International Trade		
Wild	No	Yes, only under certain conditions	Yes, only under certain conditions		First Schedule
Captive Bred	N/A	Yes, only under certain conditions	Yes, only under certain conditions		<i>treated as Second Schedule</i>

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

### Legal Capture

The ESA prohibits any trade of wild AGP, as a result, there are no “take” activities from the wild that are legal in Nigeria.

*We must note here that, Nigerian federal laws don't address where the breeding stock of AGP is obtained from, and if or how they can be taking from the wild. However, wild AGPs that have been confiscated may be sent to a wildlife rescue center, and AGPs in such centers are considered captive.*

### Legal Captive Breeding

To legally breed captive AGPs the following criteria must be met:

1. The person must be registered with the Federal Ministry of Environment
2. This person must keep records of the their stocks and transactions thereof – these records need to be submitted biannually to the Federal Ministry of Environment and NESREA.

To date, there are no AGP captive breeding facilities in Nigeria 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 Singapore<sup>5</sup>.

### Legal Domestic Trade

Captive bred AGPs may be traded within Nigeria as long as the following criteria are met:

1. The AGP must be bred in captivity.
2. The trader must be registered with the Federal Ministry of Environment
3. The trader must have a certificate of captivity issued by the minister of the Federal Ministry of Environment.

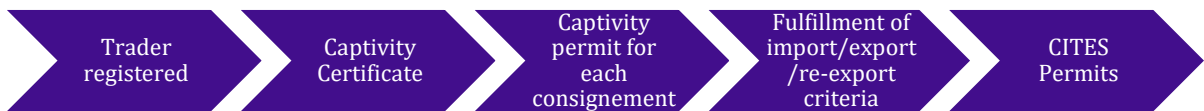


<sup>5</sup> <https://cites.org/eng/common/reg/cb/species.html>

### Legal International Trade

Wild AGPs may be imported into Nigeria as long as the specimen is accompanied with a valid Nigerian import permit AND a valid foreign re-export permit issued either from the country of re-export or the country of import. Wild AGPs may also be transshipped in Nigeria, as long as they remain in the custody of from Nigeria's customs.

As described in the legal domestic trade section, captive bred AGPs may be imported into and exported or re-exported from Nigeria as long as the traders are registered with the Ministry of Environment, keep the required records ((names and addresses of exporters and importers; number and types of permits and certificates granted; countries with which trade occurred and the number, quantity and types of specimens traded; and size and sex of specimen, when applicable), and a number of criteria are respected.



Tables 2 & 3 describe the criteria required for the import and export of captive bred AGPs.

<b>Conditions required</b>	<b>First Schedule</b>	<b>Certificate Validity</b>
Captivity Certificate	Yes	From date of issue: 6 months/Such period decided by Environment Minister
Separate Captivity Permit for each consignment of AGP	Yes	
Import Certificate OR Re-export Certificate	Yes	From date of issue: 6 months/Such period decided by Environment Minister
Separate Import/Re-export Permit for each consignment of AGP	Yes	
Import is not detrimental to survival of AGP	Yes	
AGP(s) will not be used for a primarily commercial purpose	Yes	
Adequate facilities in case of live specimens	Yes	
Export permit from the Management Authority of country of origin	No	

<b>Table 3: Export Criteria for Captive Bred African Grey Parrot in Nigeria</b>		
<b>Conditions required</b>	<b>First Schedule</b>	<b>Certificate Validity</b>
Captivity Certificate	Yes	From date of issue: 6 months/Such period decided by Environment Minister
Separate Captivity Permit for each consignment of AGP	Yes	
Export Permit from the Minister of Nigeria's Ministry of Environment	Yes	From date of issue: 6 months/Such period decided by Environment Minister
Separate Export Permit for each consignment of AGP	Yes	
Transported in such a way as to avoid the risk of injury, illness, damage to health, death of a live animal	Yes	
Export is not detrimental to the survival of the animal	Yes	
Import Permit has or will be granted from the importing country	Yes	
CITES import permit from the Management Authority of country of destination	No	
CITES SA expressed the opinion that this export is not detrimental to the survival of the species	Yes	
CITES SA has set an annual export quota for the species	No	

Finally, AGPs coming from travelling zoos, circus, exhibitions, in transit, or part of a household must fulfil other criteria, including having required CITES documentation to be imported, exported, or re-exported.

### 2.3 Illegal Capture and Trade of the African Grey Parrot

Nigeria, as mentioned in the previous section, permits trade only with captive AGPs. Consequently, any trade or capture of wild AGPs is considered illegal.

Specific offences with regard to capture and trade with their accompanying sanctions are summarized in Tables 4, 5, & 6.



**Table 4: Capture of African Grey Parrots – Offences & Sanctions in Nigeria**

<b>Offence</b>	<b>Imprisonment (months)</b>	<b>AND/OR</b>	<b>Fine (Naira)</b>	<b>Other</b>
Hunting or capture of all wild AGP (including chicks and eggs)	12 (for 2nd & subsequent offences)	OR	5,000,000 (1st offence only)	<ul style="list-style-type: none"> <li>• Forfeiture of animal</li> <li>• Expenses such as upkeep, transport, disposal, maintenance of AGP</li> </ul>
Possessing of trapping equipment without license in a National Park	12 to 60	AND/OR	10,000-50,000	<ul style="list-style-type: none"> <li>• Forfeiture of instrument</li> <li>• Compensation for value of AGP, when applicable</li> </ul>

**Table 5: Domestic Trade of African Grey Parrots - Offences & Sanctions in Nigeria**

<b>Offence</b>	<b>Imprisonment (months)</b>	<b>AND/OR</b>	<b>Fine (Naira)</b>	<b>Other</b>
Domestic trade (offer or expose for sale, display to public) of all wild AGP	up to 36	AND/OR	5,000,000	<ul style="list-style-type: none"> <li>• Forfeiture of animal</li> <li>• Expenses such as upkeep, transport, disposal, maintenance of AGP</li> </ul>
Domestic trade (offer or expose for sale, display to public) of all captive AGP without a valid permit	up to 36	AND/OR	5,000,000	<ul style="list-style-type: none"> <li>• Forfeiture of animal</li> <li>• Expenses such as upkeep, transport, disposal, maintenance of AGP</li> </ul>
Possession of wild AGP imported into Nigeria, or exported or re-exported from Nigeria	up to 36	AND/OR	5,000,000	<ul style="list-style-type: none"> <li>• Forfeiture of animal</li> <li>• Expenses such as upkeep, transport, disposal, maintenance of AGP</li> </ul>
Possession of captive AGP without a valid license	up to 36	AND/OR	5,000,000	<ul style="list-style-type: none"> <li>• Forfeiture of animal</li> <li>• Expenses such as upkeep, transport, disposal, maintenance of AGP</li> </ul>
Possession of an AGP, dead or alive without license in a national park	3 to 60			<ul style="list-style-type: none"> <li>• Forfeiture of instrument</li> <li>• Compensation for value of AGP, when applicable</li> </ul>

**Table 6: International Trade of African Grey Parrots - Offences & Sanctions in Nigeria**

<b>Offence</b>	<b>Imprisonment (months)</b>	<b>AND/OR</b>	<b>Fine (Naira)</b>	<b>Other</b>
Import, export, and re-export of all wild AGP	up to 36	AND/OR	5,000,000	<ul style="list-style-type: none"> <li>• Forfeiture of animal</li> <li>• Expenses such as upkeep, transport, disposal, maintenance of AGP</li> </ul>
Import, export, and re-export of captive AGP without valid permit or certificate	up to 36	AND/OR	5,000,000	<ul style="list-style-type: none"> <li>• Forfeiture of animal</li> <li>• Expenses such as upkeep, transport, disposal, maintenance of AGP</li> </ul>

## 2.4 Advertising African Grey Parrot

The Nigerian Code of Advertising Practice, Sales Promotion and Other Rights/Restrictions on Practice, 2012 (*hereafter*, Advertising Code) establishes in its first article that all advertisements must conform to existing laws to be legal. Further, this advertising code discusses advertising on the internet and other electronic medium, establishing that all advertising and marketing communications directed to the Nigerian market must follow laws that regulate advertising in Nigeria. The above sections (2.1 – 2.3) in this report list the legal and illegal aspects of AGP trade within, into, and out of Nigeria. Applying these legal or illegal aspects of AGP trade to advertisements for the AGP will help determine if such advertisements are legal or not.

## 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 Nigeria: the Federal government, State government, and Local government. Environmental and conservation competences are distributed between these three levels, with the bulk of the responsibility at the federal level.

#### Federal Level

The National Assembly (comprising of the Senate & the House of Representatives) may pass legislation related to environmental protection and conservation: the national assembly adopts Laws (or Acts), the ministers or governors adopt Regulations, and the federal military government adopts Decrees.

Other exclusive competences of the State in relation to the protection of biodiversity are: to regulate national park designation with consent of the government of the state, foreign trade, customs and excise duties, export duties, exchange control, and implementation of environmental and biodiversity treaties.

#### State Level

Nigeria's constitution does not explicitly lay out the powers of the each state's House of Assembly. However, based on the Exclusive Legislative List in the Constitution, we see that the government of the state has to give the federal government consent to designate national park areas.

Further, the National Biodiversity Strategy and Action Plan 2016-2021, written by the Federal Ministry of Environment says that the state ministries of Environment play a role in protecting the environment at the state level, but fails to elaborate how these ministries do so.

#### Local Level

At this local level, the local government's Department of Agriculture and Natural Resources establishes local forest reserves and gets rural communities to support environmental and conservation programmes.<sup>6</sup>

<sup>6</sup> National Biodiversity Strategy and Action Plan 2016-2020, Federal Republic of Nigeria

### 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 captive breeding and trade of AGP.

Table 7: International Trade Management Authorities in Nigeria			
Authority	Designated Authority	Description of Competences	Contact Details
CITES Management Authority (CITES MA)	Federal Ministry of Environment - Federal Department of Forestry	<ul style="list-style-type: none"> <li>• Grants captivity permits/certificates.</li> <li>• Grants import, export, re-export permits/certificates.</li> <li>• Cancel export or re-export certificate, and import permits for AGP when applicable</li> <li>• Verifies conditions and grants captive breeding certificates and permits</li> <li>• Determines (after consulting with country of origin) if AGP is returned to country of origin at the expense of that country or to a facility in Nigeria, such as a wildlife rescue center</li> <li>• Confirms that import or export conditions determined by CITES for AGP are being met</li> </ul>	<p><b>Email:</b></p> <ul style="list-style-type: none"> <li>• Timothy Daniel John – Head of Wildlife and CITES Management Division (timdanjohn@yahoo.com),</li> <li>• Rasak Kolawole Adekola - Acting Director of Forestry (koladekola@yahoo.com)</li> </ul> <p><b>Phone:</b></p> <ul style="list-style-type: none"> <li>• +234 805 273 4050</li> <li>• +234 803 361 6089 (mobile-Mr Tiamiyu Sikiru Oladele/Ag Director, Forestry)</li> </ul> <p><b>Mailing Address:</b> Mabushi District, P.M.B. 468, Garki, Abuja 9000008</p>
CITES Scientific Authority (CITES SA)	Federal Ministry of Environment - Federal Department of Forestry, Wildlife Management Division	<ul style="list-style-type: none"> <li>• Provide scientific advice about how trade affects CITES species</li> </ul>	<p><b>Mailing Address:</b> Utako District, P.M.B. 468, Garki, Abuja</p>

### 3.3 Enforcement Authorities

Authorities for the purposes of this report are those public authorities in charge of the observance and compliance of the rules related 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 but only those with competences to investigate illicit activities related to capture, captive breeding and trade in general.

Table 8: Enforcement Authorities in Nigeria		
Authority	Designated Authority	Description of Competences
National Environmental Standards and Regulations Enforcement Agency (NESREA)	Authorized Person/Officer - <i>authorized in writing by the Director General of NESREA</i>	<ul style="list-style-type: none"> <li>• With reasonable suspicion: <ul style="list-style-type: none"> <li>◦ arrest and seize item related to AGP capture or trade</li> <li>◦ enter premises or vehicles</li> <li>◦ examine specimens and records</li> </ul> </li> <li>• Take photos or samples of specimen</li> </ul>

## 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.<sup>7</sup>

### 4.1 Levels of Law

In Nigeria 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 Nigeria 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 places the bulk of environmental and nature conservation responsibility with the federal government.

#### Laws or Acts

Important rules in one country require that the citizen representatives (i.e. the National Assembly) have a say. This level is what we commonly call: laws or acts, and the power to approve laws is called 'Legislative Power'. In Nigeria, this legislative power is exercised by a National Assembly consisting of two Chambers: the Senate and the House of Representatives. 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. Nigeria's environmental and conservation laws are listed in the next section.

#### Implementing Regulations

These rules are developed at a lower level and they do not require National Assembly approval, though, the legal procedure has some safeguarding to avoid abuses. These normally develop the rules established by the law. In Nigeria, these Regulations are usually issued by the Federal Minister of Environment. When there are contradictions between implementing regulations and laws, the laws always take precedence.

<sup>7</sup> 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

Nigeria has over 250 ethnic groups, each with its own ethnic customary laws.<sup>8</sup> These laws are unwritten and uncertain, leaving them flexible and adaptable to social and economic changes. In Nigeria, there are two categories of customary law: Ethnic (Non-Muslim) Law and Sharia (Muslim/Islamic) Law. Sharia law is written and based on the Islamic religion. While ethnic laws are predominantly used for personal and family relationships, sharia law is more extensive, and its civil and criminal aspects might play a role in wildlife protection.<sup>9</sup> Further research into sharia laws applicability to the AGP is beyond the scope of this project.

Considering the importance of customary law in Nigeria, 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

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 regulations.

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<sup>8</sup> Oba, A. A., *Religious and Customary Laws in Nigeria*, 25 EMORY INT'L L. REV. 881 (2011)

<sup>9</sup> Dina, Y. (2020, August). UPDATE: Guide to Nigerian Legal In Nigeria. Hauser Global Law School Program <https://www.nyulawglobal.org/globalex/Nigeria.html>

## 4.2 Hierarchy of Laws in Nigeria

To describe legal vs illegal trade of the AGP in Nigeria we have consulted a total of 6 legal texts, including the constitution, 4 laws, and 1 implementing regulation. The figure below represents the relationship among them.

