

Legal remedies for harm to biodiversity

AN ANALYSIS OF LIBERIA'S
ENVIRONMENTAL LIABILITY
LEGISLATION



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KEY TERMS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

INTRODUCTION

Conservation Litigation as a response to remedy harm to biodiversity

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

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



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

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

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

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

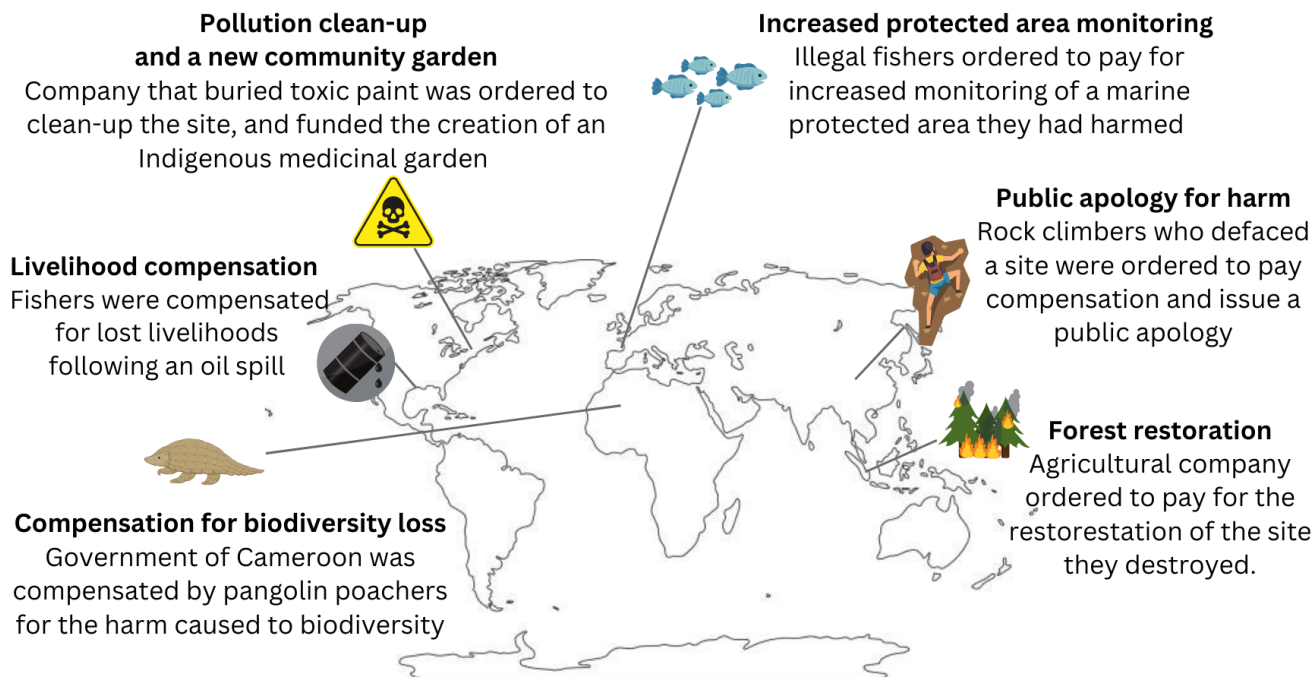


Figure 2. Examples of diverse remedies provided to biodiversity in liability cases

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

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

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

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

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



The road to Voinjima in Lofa County
Credit: Adam Welti

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

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

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

There are many, often interacting causes of biodiversity loss. Illegal Wildlife Trade (IWT) is a leading driver⁷ that yields a cascade of harms that could become the subject of environmental liability litigation to support conservation goals.

For example, IWT in Liberia targets critically endangered species including West African chimpanzees (*Pan troglodytes verus*) for the pet trade, and pangolins (*Manis spp.*) for their scales used in traditional medicine.

Across these examples, IWT harms not only individual animals, but also the survival of populations and entire species. IWT also impacts ecosystem functions and services, and can disrupt livelihoods of communities.^{3,8} IWT can also impact human wellbeing in other ways, such as harming cultural values and people's sense of place.⁹ Moreover, IWT can increase costs for government agencies and NGOs that often bear the effects of IWT, including rehabilitation centres responsible for wildlife confiscated from IWT¹⁰ and the costs of having to increase enforcement measures in certain areas. These harms, particularly where driven by commercial and organised trade, could become the subject of future liability litigation, to hold responsible parties liable for providing remedies to them.

White-backed Vulture (*Gyps africanus*)
Credit: Bernard Dupont



Categories of Harm	Types of Harm	Example of Harm
Harm to Nature	Individual plants and animals	A primate is rescued from illegal trade, and the individual needs long-term care in a wildlife centre.
	Species	The illegal trade of even one individual of a critically endangered species has a significant impact on the whole population of that species.
	Ecosystem goods & services	Commercial scale poaching of pangolins is likely to impact the ecosystem services they provide, including unique services such as the control of certain insects. Even where this has not been specifically researched or quantified, it is a recognised ecological pattern observed across other contexts.
Harm to Humans	Private livelihoods	Deforestation affects the livelihoods of Indigenous and other local communities that are directly reliant on wild resources.
	Private property, personal health	Deforestation negatively affects local communities' plantations in traditionally managed areas.
	Broader human wellbeing (e.g., culture, existence values, intrinsic values)	The killing of sacred animals and the deforestation of sacred places harm Indigenous communities that have cultural and religious ties to them. The disappearance of charismatic species like chimpanzees can also harm other communities that are geographically far away, such as, people in urban areas and in other countries who also value those sites and species.
Harm to the State	Income loss (e.g., taxes)	Illegal fishing means that taxes owed to regional, or state governments were never paid.
	Increased cost of provision	Illegal wildlife trade and habitat destruction means that the government must invest more into enforcement, monitoring and conservation measures.
	Reputational harm and reduced public trust	Repeated incidents of illegal trade inside a protected area have an impact on the public perception of the park management and authorities, harming public trust in their capability to fulfil their obligations.

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

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

Liberia

All biodiversity in Liberia is held in trust by the State, part of a "Public Trust Doctrine" in which the State has a duty to protect natural resources for the benefit of people and humanity (Article 7, Constitution of the Republic of Liberia, 1986). This includes particular protections for species listed as "particularly protected" and "fully protected", as determined by the Forest Development Authority listing process; species protected under the Convention on International Trade of Endangered Species of Fauna and Flora (CITES), and species listed as threatened on IUCN Red List (Section 1.3, Section 6.3, National Wildlife Law). The State's rights include the right to draft laws that define the management of the environment and biodiversity by imposing limits and prohibitions to protect them from harm, and the right to remedy them when they are harmed. Some exceptions exist for wildlife in private and customary lands, notably related to timber and non-timber forest products (Box 2).

Box 2: Harm to biodiversity on private lands

Although the "Public Trust Doctrine" entrusts the State to protect biodiversity, there are exceptions for some natural resources located in Communal Forests, private and deeded land, and for privately owned domesticated wildlife (Section 2.1, Forestry Reform Law; Section 2.2, National Wildlife Law; Section 2.2, Fisheries Law). Holders of private and communal land have the right to use resources on their land, subject to permissions. However, legislation states that protected species (both fauna and flora) remain in the public trust, even if on private land, and their use is subject to the government permitting (Section 2.2, Community Rights Law; Section 2.2.1, Section 2.2.3, National Wildlife Law). In practice, all species of fauna are treated as in public trust regardless of their protection status. In comparison, only protected species of flora are considered to be in public trust, and unprotected species of timber and non-timber forest product on private land can be used (Section 2.2 b, Community Rights Law; Section 5.6, Section 6.22, National Forest Reform Law).

These private property exemptions mean that offenders that harm any species of fauna on private and communal land may be held liable for remedies, regardless of their protection status. Offenders of harm to flora, may only be liable if it is protected species. One might argue that if the State trust (fauna) is explicitly harmed by action on private land (clearing flora), then an offender could potentially be liable.

Liberia's laws do not explicitly define what constitutes harm to the environment or harm to biodiversity. However, the concept of harm is clearly acknowledged in Liberia's environmental laws:

- **2002 Environmental Protection Agency Act (EPA Act).** This law recognises all citizens' duties to protect the environment, and their rights to bring actions to prevent, discontinue and restore environmental harm (Section 32). Most importantly, it provides the authorities with the right to impose Environmental Restoration Orders (ERO) that request those who cause, or are likely to cause, environmental harm to prevent and/or remedy the impacts (Section 40).
- **2002 Environmental Protection and Management Law (Environment Protection Law).** This law sets prohibitions on a range of activities that may cause harm to the natural and physical environment. For example, in relation to biodiversity, it requests that authorities develop guidelines to protect rivers, lakes and wetlands (Section 75.1), forests (Section 77), wild animals and birds (Section 80.1), coastal zones and marine environments (Section 82), and for the conservation of biological diversity in general (Section 83). It further develops the rules for the use of EROs (Sections 90 and following).
- **2006 National Forestry Reform Law (Forestry Reform Law), 2012 Act Adopting the National Wildlife and Conservation Protected Area Management Law (National Wildlife Law), and Act to Amend the National Fisheries and Aquaculture Authority Law by Adding thereto the Fisheries and Aquaculture Management and Development of 2019 (Fisheries Law).** These three thematic laws regulate biological diversity in different contexts and establish various prohibitions against harming those resources. They do not, however, define what that harm is.
- **Bill of Fundamental Rights of the Constitution.** The Bill guarantees every person in Liberia the right to life, although it does not explicitly mention or link this to the right to a healthy environment. However, the Preamble of the EPA Act specifically interprets this right to life as including the right to a clean and healthy environment that supports that life.

In cases where the environment, including biodiversity, is harmed, Liberia acknowledges the right to protection from that harm, and to remedies when harm occurs. Although there is no single, specific environmental liability law, provisions across different pieces of legislation show that remedies may be obtained through administrative procedures and judicial processes involving litigation of civil cases, notably:

- Public authorities are requested to implement the Environmental Protection Law, seeking the restoration, protection, and the conservation of biological diversity (Section 4.2.c, Environmental Protection Law). From these State duties emanates the right of government authorities to request that those who cause, or are likely to cause, environmental harm prevent and/or remedy the impacts. In Liberia this is operationalised through an administrative procedure that allows them to issue ERO's that compel offenders to provide remedies (Section 40, EPA Act; Section 90, Environmental Protection Law).
- Individuals who suffered private harm (e.g., to their livelihoods) and/or who feel their right to a clean and healthy environment has been breached may petition the authorities to act, and may bring civil and administrative actions to court to defend their rights (Section 5, Environmental Protection Law).

This principle is further acknowledged in the Forestry Reform Law (Section 20.10), the National Wildlife Law (Section 12.1) and the Fisheries Law (Section 13.12) – all of which establish the right of citizens to bring civil suits against private parties that have caused them harm due to breaches of any provision in those laws.

- Any person, irrespective of whether they have been personally harmed, may bring an action to request the restoration of a degraded environment, but also to request the discontinuation of the harm and actions by authorities (Section 32.6, EPA Act). This involves courtroom litigation and follows civil law rules.

Fishing vessel stopped by the Liberian Coast Guard for illegal fishing
Credit: M.Romao/Sea Shepherd.



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

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

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

- **Causation:** Cases require a clear link between the offender’s actions and the purported harm to the plaintiff. In most jurisdictions, the plaintiff must prove that there was a direct link between the two, though the causal relationships in environmental cases can be complex and uncertain. For example, there may be uncertainty about the various relationships between biodiversity loss and ecosystem function. Many of these types of relationships, even those clearly understood by scientists, have not been widely recognized by courts.
- **Party’s fault:** Legal liability is also often determined by the offending party’s fault, which may be intentional or negligent. In some countries and contexts, liability is triggered irrespective of whether harm was caused intentionally or through negligence (“strict liability”). This is most often the case when harm is caused by actions that are legally identified as “inherently dangerous”, such as handling oil and toxic chemicals. In most other contexts, the law requires that the harm have been committed intentionally or due to negligence (“fault-based liability”). Negligence requires non-deliberate but careless actions that result in the breach of a duty. For negligence to be established, an objective evaluation should be made to ascertain whether a reasonable person would have acted in the same way in the same circumstances, or if reasonable care was taken under the circumstances.
- **Specific environmental triggers:** In addition to these general requirements, many countries have additional, specific triggers that apply in environment cases and determine when offenders can be held liable for providing remedies. In some countries, the trigger is that harm was caused by a specific type of activity listed in legislation, and harm caused by actions that are not listed does not result in liability. Other countries use thresholds to define what triggers liability, such as concentrations of pollutants or percentage of a habitat that is harmed. In other countries, liability is

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

Liberia

Liability litigation for environmental harm is legally possible in Liberia. There are two main legal procedures through which to do this, one via Liberia's administrative procedures, and the other via judicial claims (courtroom litigation) brought by the government or citizens. The triggers of liability that define when offenders can be held legally responsible differ depending on the approach used.

Triggers of liability in administrative procedures

The Environmental Protection Agency is entitled to issue an ERO "in respect of any matter relating to the management of the environment and natural resources" (Section 40, EPA Act; Section 90, Environmental Protection Law; Box 3). Under this administrative procedure, a defendant may be found legally liable (and be issued an ERO) if:

- They caused harm that breached an administrative agreement or regulated activity over which the Agency has authority, such as the management of logging concessions and hunting permits. This also includes breaches of Environmental Impact Assessments (Section 90, Environmental Protection Law);
- They caused harm during the commission of a criminal offence, although in these cases, a criminal action is likely to be initiated in court; the EPA would likely wait for a judicial outcome in the criminal case before addressing the remediation of the harm provided that the judgement addresses or mandates the remediation action. If the Court judgement does not address remediation, practitioners and scholars suggest that the EPA would likely refrain from issuing an ERO growing out of the criminal action.

Potential harm may be identified by either the EPA itself, or by citizens who may petition the EPA to take action to protect their right to a healthy environment (Section 5, Environmental Protection Law; Section 32, EPA Act). In both cases, EPA inspectors carry out inspections, examinations and enquiries as necessary (Section 95, Environmental Protection Law) to establish whether there was a breach occurred, whether it caused harm, and the magnitude of the harm – to determine whether liability is triggered (Sections 90.3 and 91.3, Environmental Protection Law).

Box 3: Environmental Restoration Orders in cases of harm to biodiversity

Although EROs shall be issued “in respect of any matter relating to the management of the environment and natural resources” (Section 90, Environmental Protection Law; Section 40, EPA Act), the legislation governing forestry, wildlife and fisheries does not state whether EROs can be issued in cases of harm caused to biodiversity governed under those laws. However, this gap does not exclude the possibility of issuing EROs and providing remedies because:

- The EPA issuance of EROs applies broadly to the “management of the environment and natural resources”, which necessarily includes the enforcement of prohibitions (e.g., protected species lists), and the issuance of administrative acts such as permits and concessions granted by the Forestry Development Authority and Ministry of Agriculture. These activities are conducted within the administrative framework that establishes limits and conditions (e.g., quotas, pollution limits) -- and thus also the sanctions and responsibilities that emanate from violating these acts.
- Both the Fisheries Law and the Forestry Reform Law acknowledge the principle of restoration implicitly, even if they do not mention EROs explicitly:
 - In agreements that determine the rights and obligations for forest use, the competent authority must incorporate specific rehabilitation and restoration requirements (Section 77.6, Environmental Protection Law), and
 - For offences that harm fisheries or forestry resources, offenders face an additional fine equal to twice the value of the reduction in market caused by the violation, twice the total cost of restoration of the resources, or twice the total cost of restoration of the environment, whichever is greatest (Section 15.1.3, Fisheries Law; Section 20.7, Forestry Reform Law).

As such, harm to biodiversity may be remedied by means of issuing an ERO. Alternatively, an interpretation that concluded that harm to biodiversity does not trigger liability, would defeat the underlying environmental principle established by biodiversity laws in Liberia. More explicit inclusion of EROs in the text of the Forestry Reform Law, the National Wildlife Law and the Fisheries Law would improve legal certainty for operators and authorities.

Triggers of liability in judicial procedures

In cases of harm caused by illegal or unregulated activities that constitute criminal offences, such as illegal logging, illegal wildlife trade or habitat destruction, liability to secure remedies can be established via enforcement and judicial processes. In these cases, the Ministry of Justice will initiate criminal actions against the offenders. The Forestry Development Authority (FDA), the authority mandated to ensure the sustainable management and conservation of Liberia’s forest and related natural resources (Section 3.1, Forestry Reform Law), then has two options: The FDA may join the Ministry of Justice’s action as a civil party, forming a joint criminal-civil process. Alternatively, it may initiate its own civil action separate from the criminal procedure.

Citizens also have the right to bring civil suits against private parties that have caused them harm due to breaches of any provision in biodiversity laws (Section 20.10, Forestry Reform Law; Section 12.1, National Wildlife Law; Section 13.12, Fisheries Law). Equally, any person may bring an action to request the restoration of a degraded environment (Section 32.6, EPA Act). In these cases, courts are also entitled to issue EROs against a party whose activities have caused harm, or are causing harm, or are likely to cause harm to the environment (Section 94, Environmental Protection Law). Equally,

courts can request that the EPA issue an ERO in response to a verdict that grants remedies to a plaintiff.

Despite this breadth of contexts in which liability claims can be made in court, Liberia's laws establish several triggers that determine whether the offender can be held liable for the harm they caused. These triggers depend on the judicial approach adopted, whether they involve only a civil suit, or involve a civil claim attached to criminal prosecution:

- **Causation:** As in most civil liability suits globally, the plaintiff must establish a clear relationship between the defendant's action and the harm caused. To date, there are no environmental cases in Liberia that have tested this in, but causation is a requirement for the plaintiff to prove in general civil suits. It is, therefore, likely that a Liberian court would want to look into the relationship between the action and the harm.
- **Party's Fault:** Liberia's environmental legislation states that parties who cause harm are responsible for their actions (e.g., Section 40, EPA Act). However, it does not state whether a defendant's liability requires that they demonstrated "fault", i.e. that the harm was intentional or the result of negligence. This could be interpreted as a "strict liability" context in which defendants are liable irrespective of their intention or negligence. However, as there is no case law on the matter, it remains unclear whether a court would follow this approach, or refer to Liberia's general liability rules, which require fault.

If liability is requested during a joint criminal-civil procedure, liability will be triggered if the defendant is shown to have been culpable under criminal law (Section 2.3, Penal Code). An offender can only be found guilty if they acted purposely, knowingly, recklessly, or negligently, unless the offence committed was an "infraction" (i.e. the punishment foreseen is other than an imprisonment sentence, Section 50.1, Penal Code). While the general culpability requirement applies to all criminal offences described in the Wildlife Law, they vary for offences committed in breach of the Forestry Reform Law, which requires either knowledge or gross negligence in order to establish criminal culpability (Section 20.7, Forestry Reform Law).

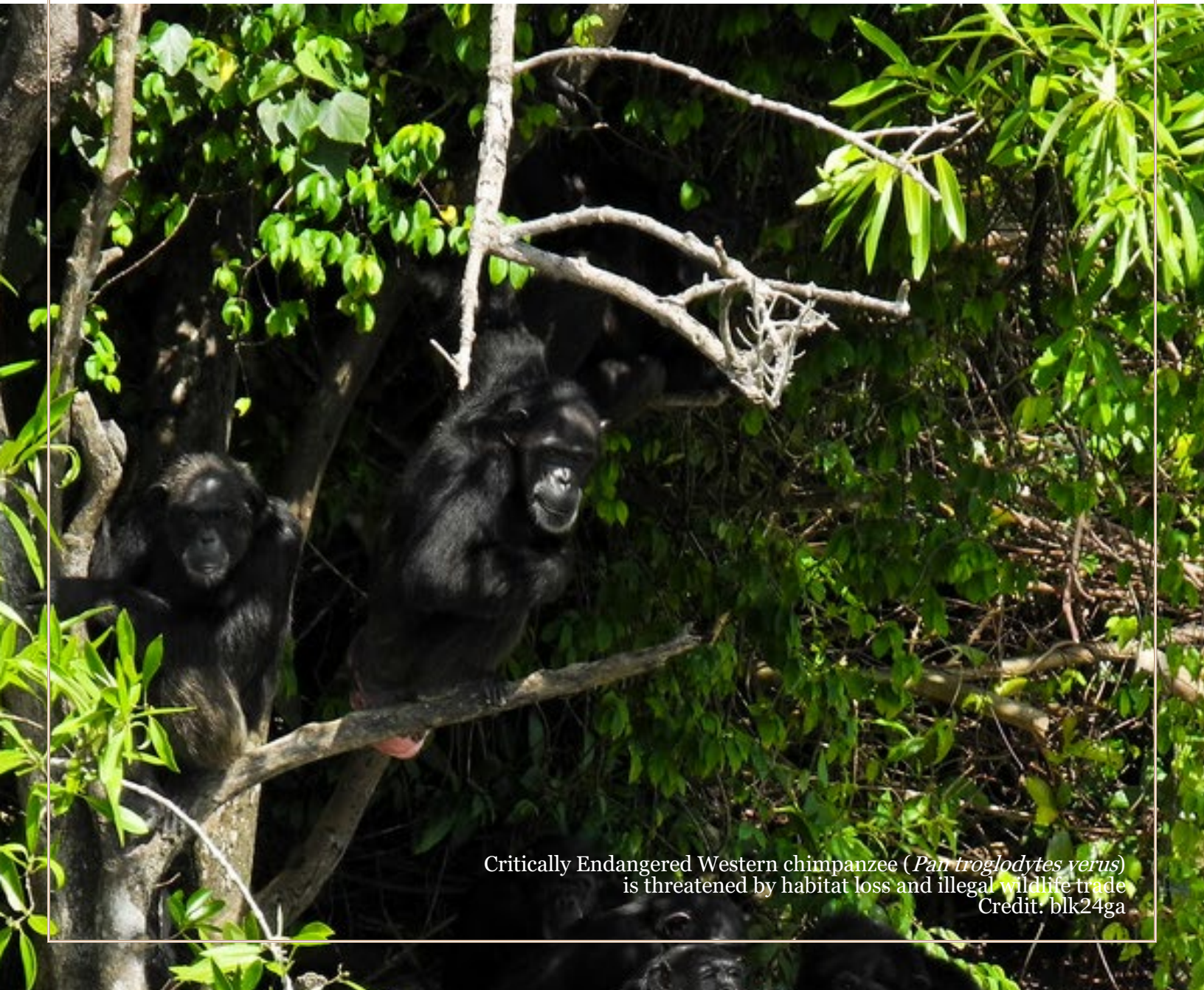
- **Specific environmental liability triggers:** Although many other countries establish environmental thresholds or standards that must be exceeded in order to establish an offender's environmental liability, none are established in Liberia. This implies that plaintiffs may theoretically claim remedies for any type of harm to biodiversity, so long as the general liability criteria are met (listed above). Liability could thus be triggered regardless of whether the harmed species or habitats are listed as protected or not. However, in other countries where liability provisions are similarly broad, case law shows that plaintiffs tend to prioritise litigation in cases of criminal offences and in cases of "significant" harm, such as large-scale events (e.g., pollution, forest fires) and harm to highly threatened species or habitats.

Exceptions

Beyond the general exceptions applicable in the Civil and Criminal Codes (e.g., offences committed by minors), offenders are not considered liable for harm caused in specific circumstances (Section 8.1, Forest Reform Law):

- **Force majeure:** In cases of emergency to save a human life, prevent significant bodily harm, or prevent a major injury to property.
- **Permit defence:** When the action has been approved under the environmental impact assessment laws of the Republic.

No other biodiversity laws stipulate similar exceptions, but it may be inferred that in cases of harm to fisheries or wildlife resources, these exceptions will also apply.



Critically Endangered Western chimpanzee (*Pan troglodytes verus*)
is threatened by habitat loss and illegal wildlife trade
Credit: blk24ga

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

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

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

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

- **States as plaintiffs:** States' sovereignty over natural resources and their duty to protect the environment for present and future generations are established international principles acknowledged across UN Resolutions and now embedded in the Convention on Biological Diversity. These provide a basis for their legal standing to claim remedies when the resources and environment over which they have rights are harmed. Their rights to litigate in response to environment harm are also often reflected in national legislation.
- **Individual as plaintiffs:** The principles of access to environmental justice and right to judicial remedies, including redress and remedy to harm, are reflected in the 1992 Rio Declaration, 2016 Sustainable Development Goals, and Framework Principles of Human Right and the Environment. Consistent with this principle, Article 21.2 of the African Union Charter stipulates that "In case of spoliation, the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation". This right to remedies is also included in most national legislation, usually focused on individual and organisations' private rights, such as when livelihoods, private property, personal health, wellbeing and reputation are harmed.
- **Plaintiffs in Public Interest Litigation (PIL):** Third parties can sometimes act as plaintiffs working on behalf of a broader public interest, such as on behalf of an affected group that cannot access a legal system or afford to litigate, the public, or the environment itself. In some countries, only designated government agencies can act as plaintiffs in PIL cases. In others, citizens, communities and civil society groups have standing for PIL, although they may have to demonstrate a specific interest in the case or expertise on the topic.

Liberia

Legislation places the main responsibility of protecting the environment on the State, and this obligation directs government authorities to both issue ERO's, and to act as plaintiffs in cases of biodiversity harm. However, Liberian law allows many different stakeholders to also bring liability cases: Citizens have the right to live in a healthy environment, a duty to protect the environment, and thus a right to claim remedies if they are direct victims of the harm. In some cases, laws also allow citizens, groups of citizens and civil society organisations to litigate cases in the broader public interest.

State's right to remedies: All biodiversity in Liberia is held in trust by the State, which has a duty to protect those resources. It may decide to take the responsibility of restoring affected ecosystems or species by itself, using State resources and staff. Although the State is entitled to take such unilateral action using its own budgets, it also has the right to request that offenders remedy the harm. This right may be exercised in two ways:

- Issuing an ERO, following the administrative processes of the EPA, described in the previous section.
- Bringing a civil case to court or adjoining a civil claim to an existing criminal prosecution. In these cases, the EPA or the FDA will bring the criminal charges through the Ministry of Justice (Section 5.6, EPA Act; Section 11.1.c., National Wildlife Law), and the FDA will act as the civil plaintiff. Although to date there has been no liability claim coming from authorities in Liberia, it may be assumed that the FDA would be in charge of developing the claim itself.

Individual's rights to remedies: All people have a right to a clean and healthy environment (Section 5, Environmental Protection Law; Section 32, EPA Act). This right allows individuals impacted by harm to either request that EPA to act, or to bring a civil case themselves (citizen suits) against private parties that have caused them harm due to breaches of any provision in biodiversity laws (Section 20.10, Forestry Reform Law; Section 12.1, National Wildlife Law; Section 13.12, Fisheries Law). These rules allow victims of biodiversity harm to claim remedies if the harm interferes with either their private rights, such as physical or monetary harm, or their right to a healthy environment. This covers both the right to obtain injunctions to stop harmful projects (Section 5, EPA Act), and to request remedies for harm they have suffered.

Plaintiffs working in Public Interest Litigation (PIL): The legal possibilities for PIL in Liberia are very wide. Everyone has the right to a clean and healthy environment in Liberia, and also the duty to take all appropriate measures to protect and enhance it. This includes PIL to:

- Request injunctions to stop or discontinue any act which harms the environment;
- Request authorities to act to prevent or discontinue environmental harm;
- Compel those responsible for environmental harm to restore the degraded environment; and
- Apply for a court order for other measures to ensure that the environment does not suffer any harm.

Before any PIL action, the plaintiffs must notify public authorities (EPA for administrative breaches, Ministry of Justice for criminal offences) and defendants of their complaint and allow them 60 days to reply. If authorities and/or defendants have already taken steps to address the harm, PIL suits are not possible. Otherwise, plaintiffs may proceed with the suit. As a result, the court may grant relief commensurate with what would have been appropriate if the Government were the plaintiff (Section 20.10.d, National Forest Reform Law).

PIL can be brought by individuals, legally-established civil society organisations, as well as groups of citizens (class action; Section 32, EPA Act; Section 5, Environmental Protection Law). These “class action” suits are intended to increase access to justice, including in cases where there are a very large number of plaintiffs, where the prospective plaintiffs are outside the jurisdiction and need others to act for them, or where the claims of one plaintiff are fairly representative of the interests of a larger group (Section 5.91, Civil Procedure Law).

Although PIL rights in environmental matters have not yet been interpreted by Liberian courts, the use of these rights in other contexts has been strictly interpreted by the Supreme Court (Case Example 1).

Case Example 1: PIL rights as interpreted by Liberian judges

(Citizens Solidarity Council v Republic of Liberia [2016] LRSC 20 (27 June 2016))

Although legislation provides extensive scope for PIL, these rights have not yet been exercised in court in relation to environmental matters. They have, however, been tested in cases related to employment law, where the Supreme Court used a strict interpretation of who can bring a PIL (legal standing). In this case, the Citizens Solidarity Council challenged the constitutionality of a legislative act called the Code of Conduct for All Public Officials and Employees of the Government of the Republic of Liberia. The Supreme Court of Liberia declined to delve into the issue of the unconstitutionality of the Code since the plaintiff was not considered to have the legal capacity and standing to bring the petition. According to the Court: “... a party seeking to demonstrate standing must assert his or her rights and cannot raise the claims of a third party or third parties who are not before the court; nor can such a party make claims of generalised injury ...the claimed injury must be individualised and unique or personal to the plaintiff.” This case suggests that judges may limit civil society organisations and public interest groups bringing environmental harm cases before the Courts, unless they can prove specific personal injury.

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

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

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

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

Liberia

Liberia's laws acknowledge the responsibility of both natural and legal persons, and legislation frequently refers to "person" as including "*any individual, partnership, joint venture, association, or cooperation, trust, estate, government or state, branch, division, instrumentality, authority or agency or any organised group of persons whether incorporated or not*" (e.g., Environmental Protection Law). Thus, both individuals and corporations that harm biodiversity can be held legally liable. For example, holders of Forest Resources Licences are liable for acts committed in contravention of the law, regardless of whether they commit the offences themselves, or they are committed by their operators, employees, agents, contractors, or subcontractors (Section 20.3, Forestry Reform Law). When multiple persons jointly hold a Forest Resources License, their liability will be joint and several. The same liability principles are established in other sectors, such as fisheries (Section 13.8, Fisheries Law).

Liberia further allows for the members of corporate management to be declared personally liable, especially where a prison sentence is a punitive option (e.g., Section 108, Environmental Protection Law). However, organised criminal groups are usually not considered formal legal persons for punitive or compensatory purposes, and so the liability will be applied to each individual member of the network. Environmental liability of corporate management or organised criminal groups has not yet been tested in court, but it is likely that judges would tend to follow the general rules and practices.

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

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

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

Liberia

For administrative breaches, the EPA can issue EROs without the need for Courts to intervene. However, civil cases and joint criminal-civil cases involve the courts.

Liberia's courts are organised hierarchically, starting from Magisterial Courts (bottom), Circuits Courts (middle), to the Supreme Courts. Cases involving liability claims, whether for economic loss or environmental harm, are heard by the Circuit Courts. (Magisterial Courts hear cases involving lesser offences where the sanctions tend to involve only fines.) Current legislation calls for the development of civil procedures to guide liability suits for biodiversity harm (Section 110.2, Environmental Protection Law; Section 32.3, EPA Act), but this has not yet been done.

Liberia has also set the legal basis for the creation of specialised environmental courts, though these have not yet been operationalised. Once in place, Administrative Environmental Courts will be competent to deal with complaints relating to the environment and appeals on EPA decisions (Section 34, EPA Act). Environmental Appeal Courts will function at the level of the Judicial Circuit Courts, with jurisdiction to hear appeals from the Environmental Administrative Court (Section 33, EPA Act). These decisions may be challenged in the Supreme Court.

5. WHAT TYPES OF REMEDIES DOES THE LAW ALLOW?

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

Orders of injunction to stop ongoing harm

Plaintiffs may litigate to seek an injunction to require a party to undertake or to refrain from doing a specific act, and may be granted by a court or administrative body.

Injunctions are normally issued as interim measures to avoid further environmental harm while the core subject of the matter is being resolved. These instruments are more commonly used in cases that involve development activities that may cause irreparable harm.

Liberia

Liberia's legislation grants both the responsible administrative authorities and the courts the right to order injunctive measures, upon the request of the applicants (Section 32.2.a, EPA Act): Applicants may request that the EPA or any other public authority take measures to prevent or discontinue any act or omission harmful to the environment (Section 32.2b, EPA Act). They also have the right to claim injunctions via the courts; courts may receive a request from an applicant (Section 11.1.a, National Wildlife Law; Section 13.13, Fisheries Law; Section 20.10, Forestry Reform Law).

Equally, courts may grant an injunction directly against a third party or the State in order to enforce legal provisions, without the need of applicants to have requested it. Injunctive relief provided by the Court may happen, for instance, in cases of accidents where the nature of the harm justifies an immediate action (e.g., oil spills, disposal of dangerous substances). The fact that a Court has ordered an injunction does not limit the right of any party to request other injunctions in the same case for other purposes (Section 5.8, Environmental Protection Law). The law requires the EPA to develop the rules and procedures implementing these rights further, though this has not been done so far. To date, there is no case law in Liberia that makes use of these rights to request and secure injunctive relief.

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

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

Liberia

Courts are entitled to order, either directly or upon request from an applicant, any ministry, agency, public authority, organisation and any public officer to take measures to prevent or discontinue any act or omission deleterious to the environment (Section 32.2.b, EPA Act). This can thus include reviews of policies and legislation. There have been several cases in Liberia seeking the government to comply or refrain from acting, however, this has not yet been tested in environmental cases.

Orders to remedy the harm that has already occurred

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

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

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

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

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

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

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

- **Market value:** This approach equates market sale prices, usually on the black market, to remedies – assuming that the value of biodiversity is only what it can bring in the market. Although familiar, this outdated approach is narrow, incomplete, and does little to remedy harm.
- **Price lists:** Some countries have developed price lists, with a monetary value for each species to be paid by the party who harms it. Although these approaches are

simple and familiar, they mistakenly conflate monetary fines with remedies. Paying a fixed amount does not help to remedy harm and may not meaningfully represent values for biodiversity.

- **Natural capital value:** This approach, known as natural capital accounting and total economic valuation, quantifies the amounts and monetary value of the ecosystem goods and services that are harmed in a case (e.g., pollination services, carbon storage). The approach can be thorough and may be possible in some contexts, but there is not enough relevant data available for most species, and the process is very demanding on plaintiffs, defendants, and courts.
- **Remedial actions:** The other main approach involves identifying the actions needed to remedy the harm that occurred in a case. This approach focuses on identifying meaningful remedial actions that respond to each type of harm, and then detailing the processes and budgets needed to undertake those actions. For example, deforestation of 5km² of protected forest is likely to harm many ecosystem goods and services such as carbon stock, biodiversity, timber stock, ecotourism, and human wellbeing. However, it is not necessary to quantify and place a monetary value onto each of those goods and services. Instead, it is important to consider what actions are needed to remedy the loss of 5km² of forest. These might include:
 - Actions to reduce/stop ongoing harm (e.g., injunctions);
 - Actions to remedy harm to nature (e.g., reforestation, animal rehabilitation, clean-up);
 - Actions to remedy harm to human wellbeing (e.g., educational programme, apology); and
 - Actions to compensate for financial harm (e.g., to income, property, tax).

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

Liberia

Liberia's legislation allows for a wide range of legal remedies, whether requested via the EPA's administrative procedures or via judicial processes via the courts. Remedies for harm to biodiversity may be determined by administrative authorities in administrative offences (Section 32, EPA Act), or by the courts in civil and joint criminal-civil cases (Section 90, Environmental Protection Law), based on their assessments of the harm and discretion.

There are no specific or binding legal rules determining how plaintiffs should form their claims for harm to the environment, and there are no historical cases to which to refer. However, legislation distinguishes among six types of remedies that may be requested via EROs (Section 90, Environmental Protection Law; Section 40, EPA Act) or via specific claims in citizens suits (Section 5, Environmental Protection Law; Section 32, EPA Act). Some specific remedies are also referenced in other legislation. These provide some voluntary, non-exhaustive guidance for types of the remedies that can be considered:

- **Restoration of the environment and natural resources:** An offender can be ordered to undertake restoration, which should be done so that the harmed system is as near as possible to the state it was in before the harmful activity occurred (Sections 90.1.a and 90.1.b, Environmental Protection Law; Sections 32.2.e and 40.1.a, EPA Act). Section 90.1.b specifically requires that, for the restoration of land, this should include *“the replacement of soil, the replanting of trees and other flora and outstanding geological, archaeological or historical features of the land or the area contiguous to the land.”* There are no further guidelines as to how restoration should be performed.
- **Monetary compensation:** Amounts of monetary compensation are determined by the EPA in cases of ERO, based on the harm to the environment, and the costs of required restoration work (Section 90.1.f, Environmental Protection Law; 40.1.d, EPA Act) or other activities stated within the order. Private plaintiffs may seek compensation as “victims of pollution” (Section 32.2.f, EPA Act). Although the law seems specific, one may assume that compensation may also be requested when harm has directly impacted citizens due to other drivers such as deforestation, although this has not yet been tested in Court.
- **Compensation for interim losses:** Citizens can request compensation for their private “interim losses” caused by pollution and any other losses connected to it, reflecting losses that resulted from the time when the harm occurred until the time when it was finally remedied (Section 32.2.f, EPA Act). Given the discretion of public authorities and judges, it may be assumed that these types of claims may also be granted in cases of biodiversity harm, although there is no case law to date that has interpreted this provision. However, provisions describing EROs do not consider the possibility that the EPA might request compensation for such interim losses.
- **Waste clean-up:** EROs may request the clean-up, removal or disposal of waste, defined as any matter deposited in the environment (Section 40.1.a, EPA Act and Section 90.1.e, Environmental Protection Law).

- **Charges or bonds:** The EPA or courts may issue charges or bonds (Box 4) within the ERO framework. These bonds will represent an estimate of the cost of any actions undertaken by an authorised person or organisation to restore the environment (Section 90.1.g, Environmental Protection Law).
- **Remedies to prevent further harm:** EROs (Section 40.1.c, Environmental Protection Law) and citizens claims (Section 32.2.g, EPA Act) may request remedies addressed to prevent further harm. Legislation does specify what types of additional remedies these might be.
- **Compensation for the costs of litigation:** Beyond the remedies requested via EROs or citizen suits, Circuit and Environmental Courts may decide to award plaintiffs with compensation to cover the reasonable costs of attorney and expert witness fees to any party, when considered appropriate (Section 5.7, Environmental Protection Law).
- **Compensation for enforcement costs:** When the harmful act is considered a criminal offence recognised in the Fisheries Law, the remedies may include compensation to the State for related enforcement costs, including any costs associated with the detection, apprehension, investigation or litigation of the case, and costs of detention and seizure (Section 13.7, Fisheries Law). The National Forestry Reform Law and the Wildlife Law do not include similar provisions.
- **Restitution:** Offenders of the Fisheries Law may be liable for restitution, i.e. paying back any gains made in the commission of the offence (Section 13.7, Fisheries Law).

Box 4: Refundable Performance Bonds Deposit

Some natural resources exploitation activities are likely to have significant adverse effects on the environment, for which Liberia's laws have created "Refundable Performance Bonds Deposits". These help to ensure that the polluter pays principle is respected, and require that companies holding Forest Utilisation Licences and Mining Licences pay a refundable performance deposit bond to the Liberia Trust Fund in advance of resource extraction (Section 5.1.e., Forestry Reform Law). Bonds values are set based on a reasonable estimate of the expected costs of environmental restoration expected post-extraction. Bonds are refunded at the end of their licence period if the EPA is satisfied with their observance and compliance with environmental rules. Where the Agency considers that there has been a breach of the EPA Act, it will give notice and confiscate the deposit bond. The refund of the bond does not release the operator from liability for any future damage caused by the activity. Any interest accruing from monies deposited is for the benefit of the Fund. Bonds may be issued for other purposes as well as described in Section 90.1.g. Environmental Protection Law.

Execution of remedies

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

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



Forest canopy in Liberia
Credit: blk24ga

Liberia

The execution of remedies depends on the type of remedy granted.

- **ERO orders issued by the EPA:** These ERO orders are supervised by EPA inspectors who oversee their execution by carrying out inspections, examinations and enquiries as necessary (Section 95, Environmental Protection Law). To date there are no records of a court issuing an ERO, and it is difficult to assess if and what execution mechanism that would entail. If an ERO is issued by the Court, its execution will likely be done by the EPA or FDA following the courts orders.
- **Monetary compensation to the State:** When remedies involve monetary compensation granted to the State, the amounts will be disbursed into the National Environmental Fund (Section 45.2.d, EPA Act). These amounts will later be allocated for expenditures in order to achieve the objectives of environmental protection as defined in the law. Fees, fines and performance bonds for the restoration of the environment will be deposited in a Trust Fund (Section 50, EPA Act).
- **Monetary compensation to individuals:** Monetary compensation granted to individuals and PIL litigants will be disbursed in their accounts. If the compensation is a result of a court order, payment will be done through the court.

Non-execution: Liberia provides specific guidance on the steps that the EPA shall undertake in cases of non-compliance with ERO orders issued via the administrative procedure (Section 93, Environmental Protection Law). The EPA may:

- Access the facilities, or land or any premises involved in the case, and take the necessary actions to enforce the order. Following this, the EPA may bring a civil suit against that person to recover the amounts it incurred as a result.
- Impose penalties as stated in the relevant legislation, such as monetary fines and suspension of licences.
- Initiate further criminal prosecution against the defendant, as the law stipulates that anyone who contravenes EROs commits a criminal offence. They are liable to a fine and/or imprisonment; depending on the legislation, these are listed as not exceeding US\$50,000 and 20 years (Section 107, Environmental Protection Law), or US\$40,000 and 10 years (Section 41, EPA Act).

For EROs issued by a court, the procedure for the execution of judicial decisions on the environment is prescribed by Chapter 44 (Enforcement of Judgments and Orders) of the Civil Procedure Law of Liberia.

6. WHAT ARE THE CHALLENGES AND OPPORTUNITIES IN LIBERIA?

On paper, the possibilities in Liberia to hold offenders liable for harming biodiversity are both diverse and expansive, presenting tremendous opportunities for improved accountability and environmental restoration. Most of these rights, however, have not been operationalised and so there is a lack of experience, expertise and judicial precedents from which to draw lessons. This presents unique challenges and opportunities for leveraging the country's existing liability legislation.

Challenges

Challenge of legal uncertainties and limited experience

Many of the existing environmental rights discussed in this analysis have not been operationalised. As a result, many concepts have not been tested, language has not been interpreted and many legal uncertainties remain, such as:

- The EPA may request remediation of environmental harm through EROs, but EROs are not explicitly mentioned in the National Wildlife Law, Forestry Reform Law or Fisheries Law. As a result, this may create uncertainty as to whether EROs may be issued in cases of biodiversity harm caused by deforestation, illegal fishing or illegal wildlife trade. Although this interpretation would be contrary to the environmental principles upheld by Liberia, the gap is still there, and should be closed by explicitly mentioning EROs in these three laws.
- Environmental legislation does not state the requirements for finding a defendant liable to provide remedies, such as relating to proving causation and the defendant's fault. It is uncertain how strict a court would be in terms of establishing their liability.
- No environmental thresholds or standards have been established to determine when liability is triggered. In other countries, case law shows that plaintiffs tend to prioritise litigation in cases of criminal offences and in cases of “significant” harm, such as large-scale events (e.g., pollution, forest fires) and harm to highly threatened species or habitats.
- Although legislation provides extensive scope for PIL, these rights have not yet been exercised for environmental matters. Previous case law in other matters in Liberia suggests that judges may limit civil society organisations and public interest groups from bringing environmental harm cases before the Courts, unless they can prove specific personal injury.

Resolving many of these issues likely relies less on legislation revision and reform, and more on attempts at implementation to build practical experience – with ERO’s issued by the EPA, and the submission of PIL claims and class action cases. Efforts are likely to face varied levels of success, but will help answer these types of questions, increase transparency, improve legal certainty and build capacity.

Challenges to exercising citizens’ legal rights

Despite the legal right to a fair remedy, non-State plaintiffs face a number of barriers that help explain why there are not yet been environmental civil cases brought by citizens and there are few cases brought by civil society organisations:

- **Financial burdens:** There are many costs involved in bringing a liability suit, including fees of litigators and experts, court fees for every judicial step taken (there are fees for cases at the First Instance, Appeal and Supreme Court levels), costs of issuing judicial documents, and the financial risks of losing a case (e.g., in civil cases the unsuccessful party is ordered to pay the costs).
- **Procedural requirements:** Potential plaintiffs often lack the logistical capacity to overcome procedural burdens.
- **Geographic accessibility:** Courts and administrative offices tend to be situated in urban areas, often far from the affected sites. Litigators, plaintiffs and witnesses may have to travel long distances just to submit single documents.
- **Fear:** Liberia has a history of reprisals against human rights and environmental advocates, and so plaintiffs may feel intimidated by defendants’ powers and status, and fear retaliation, threats, violence and Strategic Lawsuits Against Public Participation (SLAPPs).

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

Challenges over how to form and evaluate damage claims

Liberia's environmental legislation lists a generous number of remedies that may be claimed via EROs or judicial means, such as injunctions, orders to update, correct or implement policies, remediation, economic compensation, clean-up of sites, issues of bonds and requests for any other order to avoid further harm. Specific legislation applicable to biodiversity expands this list, adding the possibility to request the reimbursement of the costs related to the case and restitution of the money illicitly gained (Fisheries Law). However, there is no further implementing legislation determining how to characterise these remedies.

There are no specific binding legal rules in Liberia determining how plaintiffs should form claims for harm to the environment, and there are no historical cases to which to refer. In addition, there are no public records of any ERO being issued by EPA. There is therefore uncertainty among plaintiffs, prosecutors, judges, and defendants over how to develop claims for remedies. This is especially challenging where cases involve complex causal chains and technical issues unfamiliar to courts.

Overcoming this challenge could involve the development of science-based, meaningful guidelines for remedies and damage claims. Although many countries do not have detailed rules on how to form claims, a growing number are working on advisory guidelines to help inform the process of forming damage claims. Ideally the guidelines would expand the definition and description of the remedies provided by the laws but also include examples to facilitate their use.

Opportunities

Opportunity to develop guidance for litigation

The EPA is required to develop rules and procedures to guide the issuance of EROs (Section 40.2.d, EPA Act), and to propose legislation about the public right to seek protection of the environment (Section 32.3, EPA Act). This guidance has yet to be developed, and there is an opportunity for EPA to develop clear rules to pursue environmental remediation, for both the administrative and judicial approaches to securing remedies. New rules could help articulate the breadth and diversity of remedies possible, guide compensation calculations and, in the absence of legal thresholds to determine when civil liability is triggered, help plaintiffs prioritise cases for litigation. These would not only support various civil claims, but would also help guide judicial verdicts, and facilitate civil suits from individuals and civil society plaintiffs.

Opportunity to expand and codify meaningful approaches to remedies

Liberia's legislation provides a list of remedies that may be requested in cases of environmental harm (Section 5). At the same time, requires EPA to develop rules to characterise and determine how these remedies may be requested and granted (Sections 32.3 and 40.2.d, EPA Act). Building up on the opportunity to develop rules to articulate these rights, the EPA could also consider being more explicit about the broad scope of

remedies that are possible, reflecting the on-the-ground, meaningful remedial actions and many types of environmental values – including harm to species survival, many ecosystem goods and services, human relational values, and harm to reputation (Box 5).

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

Legislation in Liberia requests EPA to develop rules implementing EROs and the rights of parties to request remedies. These rules could be explicit about the types of remedies that may be requested and granted. This example is based on a hypothetical case of live chimpanzee trafficking, and explores an expanded set of possible remedial actions (Table 2).

Table 2. Example remedies in a hypothetical chimpanzee trafficking case

Types of remedial actions	Remedies to include in a damage claim
To restore harm to the (live) specimen(s)	<ul style="list-style-type: none"> ▪ Total cost of rescue and transport of live specimen ▪ Total cost of rehabilitation and maintenance of the specimen from the moment of seizure until their final destination has been decided (current and future costs of enclosure, food, veterinary care and compliance with all animal welfare regulations)
To restore harm to the species and the ecosystem	<ul style="list-style-type: none"> ▪ Total cost of extra enforcement patrolling and extra scientific monitoring of a specific area with chimpanzee population during a 10 year period, to ensure that the chimp population increases by a few individuals
To restore harm to humans, both financial and relational values (i.e., human wellbeing)	<ul style="list-style-type: none"> ▪ Total costs of an educational program in the affected community to highlight harms to many relational values that humans have for nature that were harmed by the defendant ▪ If the animals are publicly exhibited while they recover: an information board that explains the history of what happened and the remedial actions taken ▪ If the area where the animals came from is known for tourism: Financial compensation to local residents for the lost income from ecotourism (e.g., percentage of previous years' income) ▪ Public apologies
To restore harm to the State	<ul style="list-style-type: none"> ▪ Total costs of the undercover operation ▪ Financial compensation for harm to State's reputation, linked to its obligation to protect the environment

Opportunity to use EROs in cases of triggers of biodiversity loss

The use of EROs and civil liability in cases of environmental harm triggered by pollution is common in a number of countries, but it is rarely used in response to leading drivers of biodiversity loss, including illegal wildlife trade.⁵ Liberia's legislation is most explicit about the rights to remedies in cases of environmental harm. Although practical experience is lacking, there is a unique opportunity in Liberia to start issuing EROs for biodiversity harm caused by several triggers such as deforestation, habitat destruction or illegal wildlife trade.

EROs may be issued in relation to “any matter relating to the management of the environment and natural resources” (Section 90, Environmental Protection Law; Section 40, EPA Act). This includes biodiversity harm caused in the framework of actions regulated under the National Wildlife Law, Fisheries Law and the Forestry Reform Law (Box 2). When the provisions of these laws have been breached, we believe EROs may and should be issued:

- When the breach constitutes a non-compliance of the conditions set in a concession agreement or hunting permit, EPA has the competence to investigate the matter and take a decision on the types and scales of harm. This includes the issuance of an ERO if considered appropriate.
- When the breach constitutes a criminal offence where a criminal action is brought by the Public Prosecutor in collaboration with the FDA, this may very well include a parallel civil claim from the EPA or any public interest organisation (provided the conditions have been met) requesting the court to either issue an ERO itself, or to order EPA to issue it on the bases of the elements of the case.

Conclusion

Liberia's legislation provides great potential and multiple avenues for holding offenders liable for harming biodiversity: The country's main environmental laws acknowledge liability for environmental harm, including implicitly harm to biodiversity. The State also has a prominent role in issuing restoration orders against those who cause harm, even without the need to initiate judicial proceedings. Members of the public have the right to initiate civil cases to access remedies. Moreover, the list of remedies to be requested is extensive. Collectively, these rights are broader than in many other countries. However, with so little experience in operationalising them, there are also a number of challenges associated with interpretation, clarity and experience. The main opportunity is to start using, testing and better understanding these existing laws, which have tremendous potential to benefit people and the environment.

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