

# Conservation Litigation in Liberia

## AN INTRODUCTION TO ENVIRONMENTAL LIABILITY IN LIBERIA

This brief introduces conservation litigation and highlights opportunities for action in Liberia. It explores how existing environmental liability provisions can be used to protect biodiversity.

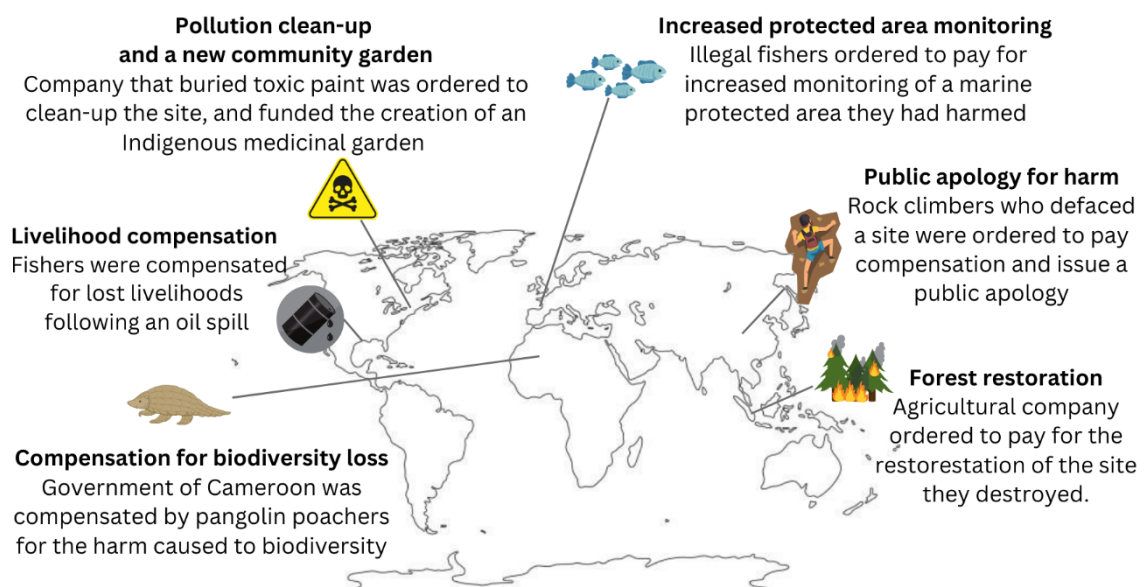
### The challenges facing biodiversity

Biodiversity faces growing threats from activities like illegal wildlife trade and deforestation. More than one million species now face extinction, with cascading impacts on ecosystems and human wellbeing. Mainstream conservation enforcement approaches are failing: small fines and imprisonment do not meaningfully reflect the scale of environmental harm, fail to deter offenders, and do little to restore nature.

### Opportunities through strategic liability litigation

Conservation litigation has transformative potential for biodiversity: it uses liability provisions that already exist in the law to hold offenders legally responsible for the harm they cause to biodiversity. Offenders can be required to undertake remedial actions, such as habitat restoration, species conservation, issue public apologies, and pay compensation. Cases serve not only to heal biodiversity, but can also drive new legislation, change practices, and shift social norms. This strategic litigation approach was instrumental in the fights for civil rights and public health against opioids and tobacco. This transformative effort can also serve the conservation sector.

Conservation litigation is already possible in countries around the world, usually based on their existing civil code and environmental laws. However, many people do not know that these legal opportunities exist, how to develop strong cases, or how significant these lawsuits could be. Although cases are still rare in most countries, promising examples are emerging and demonstrate the potential for this type of legal action.



## CONSERVATION LITIGATION IN LIBERIA

The opportunities to hold offenders liable for harming biodiversity in Liberia are diverse and very expansive – although most of these rights have yet to be explored in the country's courts, meaning that there are still many uncertainties over the processes, extent of rights, and how courts will engage new concepts. Future efforts will require careful consideration of the procedural and conceptual challenges to help clarify these rights and build successful litigation.

### Liberia's key liability provisions in:

- 2002 Environmental Protection Agency Act
- 2002 Environmental Protection and Management Law

Although there is no single, specific environmental liability law in Liberia, provisions across different pieces of legislation recognise that harm to biodiversity merits legal remedies. They create two key opportunities to access remedies: The first involves administrative procedures overseen by the Environmental Protection Agency (EPA) that allow them to order offenders to remedy the environment. The second is via judicial processes based on courtroom litigation of civil liability cases that seek verdicts ordering remedies such as restoration and monetary compensation. These rights are based heavily on Liberia's Environmental Agency Act and Environmental Protection and Management Law that allows Liberia's courts to receive requests from a wide range of stakeholders to prevent or discontinue any act or omission that they deem deleterious to the environment.

### What types of cases can secure remedies?

Liberia's legislation grants remedies to harm across a broad range of contexts. Legislation does not restrict what types of cases or harm are entitled to remedies, which suggests that they are possible regardless of whether the harmed species or habitats were listed as protected. In other countries where liability provisions are similarly broad, experience shows that plaintiffs usually prioritise litigation in cases that cause "significant" harm, such as large-scale pollution events, harm to highly threatened species and habitats, and forest fires, often involving criminal acts. Irrespective these broad rights, cases must meet specific criteria in order to hold the defendant legally liable:

- **Harm caused through an administrative violation.** A defendant can be found legally liable if they caused harm by breaching an administrative agreement, such as a legal logging concession, mining licence, fishing or hunting permit. In these cases, the EPA establishes if an administrative violation occurred, the extent of harm, and whether they merits remedies. This evaluation is managed outside of the courts, and the EPA can decide to issue an Environmental Restoration Order — a government administrative order against those that cause, or are likely to cause, environmental

harm, which requires offenders to prevent and/or remedy their impacts.

- **Harm caused by a criminal offence.** A defendant can also be liable for providing remedies to harm caused by criminal offences, such as illegal logging, illegal wildlife trade or illegal habitat destruction. Liability can be established by the EPA (in the process described above), or via enforcement and a judicial process involving courtroom litigation. In these types of cases, the Ministry of Justice will initiate a criminal prosecution against the offenders. The Forestry Development Authority, the authority mandated to ensure the sustainable management and conservation of Liberia's forest and related natural resources, may then join the Ministry of Justice's action as a civil party seeking remedies, forming a joint criminal-civil process. Alternatively, it may initiate its own civil litigation for remedies, likely following the criminal procedure. To date, these legal options have never been operationalised, so it is uncertain how the cases would be prioritised or developed. However, liability can only be established if the following elements are established:
  - **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, no cases in Liberia that have tested this in environmental cases, but causation is a requirement for the plaintiff to prove in general civil suits.
  - **Party's fault:** In most countries and contexts, an offender can only be held liable for causing harm if they demonstrate "fault", meaning that the harm was intentional or the result of negligence—which is often the cases in criminal offences. Liberian legislation does not state whether this "fault" requirement exists for environmental cases, although it is likely.

## Who can bring cases?

Legislation places the main responsibility of protecting the environment on the State, but Liberia also allows a range of stakeholders to bring liability cases:

- **State:** All biodiversity in Liberia is held in trust by the State, which has a duty to protect those resources. In cases of harm, government agencies may decide to use their own budgets to remedy harm, but they also have the right to request that offenders remedy the harm. The State can do this via the EPA's administrative process, or may take court action. Although this has not yet been operationalised, liability claims can be brought by Forestry Development Authority, either as an independent legal cause, or combined with an existing criminal prosecution brought by the Ministry of Justice.
- **Individuals:** Where cases of environmental harm affect an individual's private rights, such as physical or monetary harm, they can submit a request to the EPA asking it to act using its administrative powers. Alternatively, they can bring a private civil liability case themselves (citizen suits), although this is limited to cases against private parties (not the government), and harm due to violations of Liberia's biodiversity laws (e.g., forestry, wildlife, fisheries law).

- **Public Interest Litigation (PIL):** Individuals, legally established civil society organisations, and groups of citizens (class action lawsuits) can bring liability cases on behalf of a broader public interest, (e.g., behalf of an affected group that cannot access a legal system or afford to litigate, the public, or the environment itself). The legal rights for such PIL are very broad in Liberia, but not yet exercised in environmental cases and courts have limited its use in other contexts (e.g., employment law).

## What types of remedies are possible?

Liberia's legislation provides the right to different types of remedies from environmental harm. This is based on:

- **Injunctions to stop harmful actions:** Injunction can require a party to undertake or to refrain from doing a specific act, usually as a temporary measure to avoid imminent harm. Liberia's legislation grants responsible government agencies (e.g., EPA) the right to issue injunctions, based on their own evaluations or in response to petitions from members of the public. Citizens, civil society organisations and the government bodies can claim injunctions via the courts. Courts themselves can even grant an injunction independently, where they note harm justifies immediate action (e.g., oil spills).
- **Requests to correct, update, or enforce a policy:** Litigation can be used to order government agencies to act in ways that meet their legal commitments, such as by reviewing existing policies or legislation, or improving their enforcement of existing rules. This is common in many countries, but such cases have been brought in Liberia.
- **Orders to remedy harm:** Liberia's legislation allows for a wide range of possible remedies, whether requested via administrative procedures or via judicial processes. Which remedies apply are determined by either the EPA experts (for administrative) or judges (for judicial), and rely on their discretion, based on their assessment of the harm and the plaintiff's requests. There are no specific or binding rules for how plaintiffs should identify remedies, and there are no historical cases to which to refer.

Legislation identifies some possible types of remedies (Environmental Protection and Management Law, EPA Act). However, they are voluntary, not all are clear, it is unclear how they might apply to other drivers of harm (e.g., deforestation, wildlife crimes). Stated remedies include:

- Restoration of the environment and natural resources back to their state as they were before the harm;
- Monetary compensation, based on the harm to the environment, and the costs of required restoration work;
- Monetary compensation for "interim losses" caused by pollution, reflecting losses that resulted from the time when the harm occurred until the time when it was finally remedied;
- Waste clean-up;
- Compensation for the costs of litigation and enforcement actions

## What is the potential for conservation litigation in Liberia?

Liberian legislation provides great potential and multiple avenues for holding offenders liable for causing harm and for providing remedies. 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 results in considerable uncertainty – about legal principles, the scope of rights, legal procedures and how judges are likely to decide in these cases. Moreover, there is a lack of experience developing these types of litigation. This highlights the need to start building practical experience – with ERO's issued by the EPA, and the submission of PIL claims and class action cases.





**Conservation-Litigation.org** is an international network of lawyers, scientists and conservationists. We support strategic liability litigation as a creative legal response to the biodiversity crisis. We do this by providing novel legal analyses to reduce the technical barriers for action, by supporting novel litigation cases around the world, and by empowering others to litigate for biodiversity.

### More information

For a full analysis of Liberia's environmental liability laws and how they can help biodiversity, see: Rodriguez, M., Udommai, P., Phelps, J. 2023. Legal remedies for harm to biodiversity: An analysis of Liberia's environmental liability legislation. Conservation-Litigation.org.

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

