

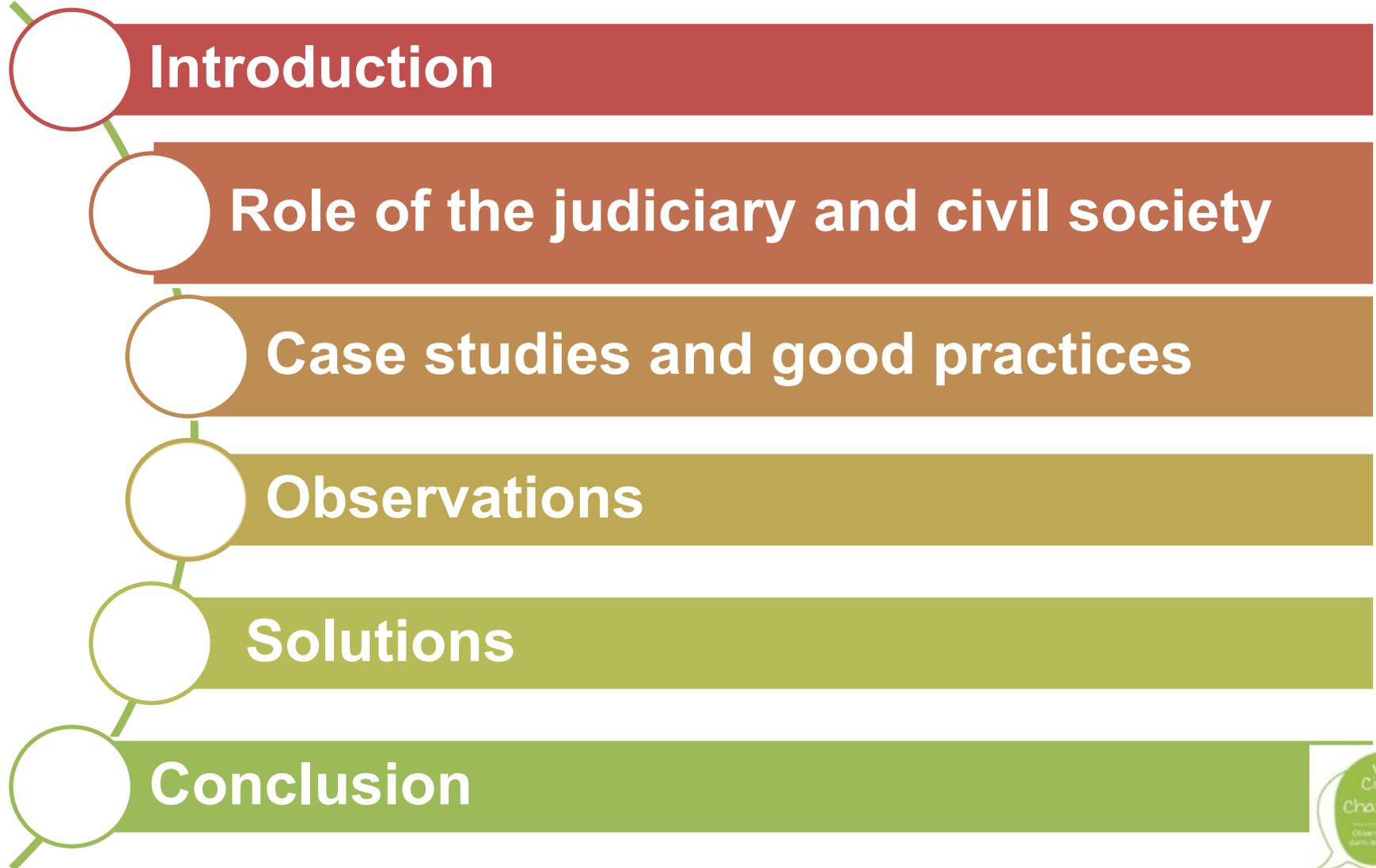


Independent monitoring and influence of the engagement of law enforcement agencies, the judiciary and the media: experiences of civil society in the DRC

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SOMMAIRE



Introduction

- ✓ The judiciary, through the courts and tribunals, plays an important role in the fight against anti-values in general, and specifically in the forestry sector to fight against the illegal exploitation of natural resources, through denunciation is everyone's obligation (art 53, AM 102).
- ✓ When cases concerning the exploitation of natural resources (timber) are brought before the trial court, the judge in his decision automatically allocates compensation on behalf of the state, which has suffered material loss through illegal logging (art. 135, forest code).

Role of the judiciary

Congolese forest law is specific in the way it extinguishes public action through settlement procedures and certain powers granted to the public prosecutor.

✓ Public Prosecutor's office

The PPO's role is to search for violations of the law, collect all the evidence in existence, in accordance with the principle of the legality of criminal offences/crimes and penalties, and to file action with the courts and tribunals. The PP then seize and confiscate any tools, vehicles and objects used to commit a forest infraction or which are the products thereof

The PPO checks the transaction report prepared by the forest inspector, having closed the case, whether the compensation amount t has been included. He may, despite the forest transaction, sue the forest offender if the amount of the transaction is less than half of the maximum fines or if this amount is not paid within the period provided for in the report (Art. 10, AM 104) . The public prosecutor can even appeal against a court ruling.

Role of the judiciary – cont'd..

✓ Courts and tribunals:

Courts and tribunals play an essential role, that of deciding the law, that is to say when they are called upon to rule on a case, they only refer to the law.

They rule in accordance with the law and when the law is not clear on an issue, they refer to theory, to case law and judge according to their conscience.

Role of civil society

- ✓ Civil society is an essential partner of the state in the efforts of prevention, protection, prosecution, independent monitoring, awareness raising and research.
- ✓ Civil society organisations must dialogue with the various development players in order to properly assume their role within the framework of good governance.
- ✓ **Role of a protector:** civil society has the duty to guard against any form of degradation or destruction due to illegal exploitation, bush fires, displacement, the damage or removal of boundary markers used to delimit forests (Art. 45 and 50, forest code)

Role of civil society – cont'd...

- ✓ **Role of expertise and watchdog:** civil society observes and controls the actions of public power (government), contributes to the smooth running of the country by bringing new ideas and new approaches to the discussion of the various issues to be addressed.
- ✓ Civil society ensures that the population participates in the management of public affairs (Res publica), that they are consistently included in the decision-making process. It acts as a counterweight vis-à-vis the state in complying with its obligations (guaranteeing the general interest), denouncing illegal acts and taking legal action against a decision that deprives the rights of the population.

Civil part:

It supports local communities and indigenous populations at the level of judicial bodies in order to obtain compensation for the damage suffered (Art. 134, Forest Code). In addition, a civil society organisation can claim damages for environmental damage caused by wrongdoing.

Good practices

In the DRC, these good practices are part of non-institutional mechanisms. These are the spaces of citizen power.

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Good practices

The case of the gang rape of women in the Salonga National Park: the population living in the surrounding areas of the park denounced the cases of rape of women and girls by the eco-guards of Salonga Park. APEM which is an NGO had carried out investigations whose results confirmed that there had been rape, the action had been brought before the Military Court of Ecuador and the Court criminally condemned the eco-guards and the ICCN as civilly responsible;

Civil society (Codelt ONG) brought legal action before the regional court in Gombe, over more than eight tons of ivory and pangolin scales that were seized in Singapore in July 2019. The trial is ongoing, Codelt had submitted a request for legitimate suspicion to the Court of Cassation;

Civil society (Codelt) had filed a petition with the Council of State for the cancellation of 9 forest concessions illegally allocated by MEDD;

Good practices

- ✓ The civil society (GASHE) had brought legal action before the Mbandaka regional court against the company MU2, for illegal logging. The court had acquitted the offender through settlement;
- ✓ Civil society (CNCEIB) denounced the presence of illegal timber at the ports of Kinshasa (Kinkole and Maluku). This action led the Minister of the Environment to make a field visit to observe the presence of several timber markets on the islands.
- ✓ In addition, some illegally sourced timber was transferred to the public prosecutor's office and violators were sanctioned through the settlement procedure without including compensation

Observations

- ✓ The judiciary's (PPO) lack of knowledge of forestry legislation;
- ✓ Lack of inspection by the Public Prosecutor's Office on the actions of forest inspectors and judicial police officers;
- ✓ Lack of a logging cases leading to a definitive ruling (conviction of operators)
- ✓ There is a divergence of views between the member structures of civil society, thus rendering its actions ineffective;
- ✓ Not taking into account the recommendations of civil society etc.

Solution

To effectively and sustainably engage the judiciary in law enforcement and the eradication of illegal acts, it is necessary to:

- ✓ Popularize and raise awareness around the laws;
- ✓ Frank collaboration between the member structures making up civil society and the judiciary (public prosecutor, courts and tribunals);
- ✓ Establish a permanent framework for exchange between state power and civil society;
- ✓ Take into account the recommendations of civil society etc.

Conclusion

- ✓ Civil society, as a partner of the state and a body made up of several members sharing the same ambitions, can be positively or negatively affected by the attitude of one or more of its members or the judicial authorities.
- ✓ To this end, it seemed important for civil society actors to be professional in their activities, that is to say to avoid defamation, slander and the dissemination of fake news;
- ✓ The judiciary plays a role in researching and finding violations of forest laws. It can go to court to convict illegal operators.

Thank you for your attention



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