



UNEP/UNDP/DUTCH
Joint Project on Environmental Law
and Institutions in Africa



THE EAST AFRICAN SUB-REGIONAL PROJECT

**DEVELOPMENT AND HARMONISATION OF
ENVIRONMENTAL LAWS**

VOLUME 6

**REPORT ON THE
DEVELOPMENT AND HARMONISATION
OF LAWS RELATING TO WILDLIFE MANAGEMENT**



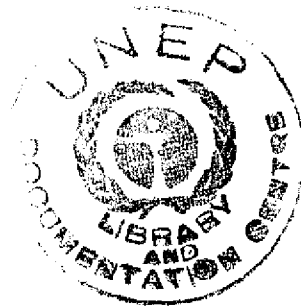
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LAW AND INSTITUTIONS IN AFRICA**

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**REPORT ON LEGAL AND INSTITUTIONAL
ISSUES IN THE DEVELOPMENT AND
HARMONISATION OF LAWS RELATING
TO WILDLIFE MANAGEMENT**

December 1999

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PREFACE

Environmental law is an essential tool for the governance and management of the environment and natural resources. It is the foundation of national and regional policies and actions to ensure that the use of natural resources is done equitably and sustainably.

In the East African sub-regional countries of Kenya, Tanzania and Uganda have, since 1995, been developing and harmonizing various environmental laws in selected sectors within their region. The process of developing and harmonizing environmental laws is intended to lead to the enactment or amendment of the internal legislative, regulatory and administrative framework of each country. Such change has been harmonized at a sub-regional level where the three countries have agreed on legal principles, definitions and substantive legal provisions to govern a segment or matter of the environment or natural resource sector.

The volumes produced by the UNEP/UNDP Joint Project on Environmental Law and Institutions in Africa, East African Sub-regional Project, are intended to build capacity in Kenya, Tanzania and Uganda in environmental law. The East African Sub-Regional Project is a component of the UNEP/UNDP Joint Project on Environmental Law and Institutions in Africa funded by the Dutch Government. The underlying presupposition is that the three countries share similar historical and legal heritage and that the physical and historical situation in East Africa offered an opportunity to initiate and encourage dealing with environmental issues according to problem-sheds. The historical facts are that (a) there is a history of regional cooperation among the countries from colonial times; and (b) there is shared legal tradition which derives from common law origins. These two historical facts were relied upon to support development and harmonization of legislation on selected themes in the commonly shared environment.

The UNEP/UNDP Joint Project on Environmental Law and Institutions in Africa is funded by The Royal Dutch Government, as a pilot project, to work with selected countries towards development of environmental law and institutions in Africa. The purpose is to enhance the capacity of the countries to develop and enforce laws relating to environment and natural resources. Phase I of the Project which commenced at the end of 1994, and is scheduled to end in December, 1999, involves seven countries, namely: Burkina Faso, Malawi, Mozambique, Sao Tome and Principe, Kenya, Tanzania and Uganda. While activities in the first four countries focus on entirely national activities, the work in the three East African countries are focused on issues which are essentially of sub-regional character. The management of the Joint Project is based at UNEP within its environmental law activities and is directed by a Task Manager, who works under guidance of a Steering Committee. Members of the Steering Committee are UNEP, UNDP, FAO, The World Bank, IUCN Environmental Law Centre and The Dutch Government.

The Process For Development and Harmonization Of The Laws

Representatives of the three governments met in February 1995 to work out general principles and modalities for their cooperation.

A second meeting was held in May, 1995, to discuss the general terrain of topics amenable to development and harmonization of laws. The final decision on six priority topics was taken at their third meeting in February 1996.

The six topics which were selected for the Project's activities are:

- (i) Development and harmonization of EIA Regulations;
- (ii) Development and harmonization of laws relating to transboundary movement of hazardous wastes;
- (iii) Development and harmonization of the methodologies for the development of environmental standards;
- (iv) Development and harmonization of forestry laws;

- (v) Development and harmonization of wildlife laws; and
- (vi) Recommendation for legal and institutional framework for the protection of the environment of Lake Victoria.
- (vii) The seventh topic, development and harmonization of laws relating to toxic and hazardous chemicals was taken up in 1998 when the work on the first six was virtually complete. The three countries considered this as one of the critical issues in environmental protection in the sub-region.

For each of the topics, the governments jointly worked out generic terms of reference. However, each national team subsequently worked out country-specific terms of reference to reflect national legal and institutional situations, existing initiatives on the same task as well as existing priorities. The respective national consultants were also selected by the National Coordinating Committees (NCC), working in consultation with an officer at the UNDP country office.

The national consultants have now completed their work. In each case, the reports have enjoyed reviews by the national panels constituted under the aegis of the respective NCCs. Draft reports, as they evolved, were circulated to the consultants in the three countries. In many cases, the consultants were able to take the reports of their counterparts into account in finalizing their reports. Therefore, very high degree of harmonization of reports had been achieved before the consultants could meet together.

At the end, a workshop to finally harmonize the reports was held in 1998 in Kisumu, Kenya and was attended by the consultants for each topic for substantive discussions of their reports and to agree on recommendations to their governments. The objectives of the workshop were to; (a) ensure that recommendations for policies and law for the respective topics as far as possible, are in harmony; (b) promote the development of legal and institutional machineries which are comparable in all the three East African countries in the absence of an over-arching sub-regional framework; (c) harmonize the normative prescriptions and institutional machineries and therefore create an opportunity for harmonized enforcement procedures; and (d) create an opportunity for dealing with the respective environmental problems according to the problem-sheds, which are essentially sub-regional. The workshop was facilitated by Professor David Freestone, Legal Advisor, International and Environmental Law Unit of The World Bank and Mr. Jonathan Lindsay, a Legal Officer in Development Law Service at the United Nations Food and Agricultural Organization.

Thereafter, a meeting for Permanent Secretaries responsible for environment from the three countries was held and attended by the national coordinators. The Permanent Secretaries as accounting officers and policy leaders in their ministries were fully briefed on the aspirations and activities of the project; how the project had developed and the process of harmonization. They assumed ownership of the outcome of the reports. They also resolved that the stage was well-set for development of a sub-regional binding instrument on environmental management. Their debate recognized that a legally binding instrument in the form of a protocol within the framework of the Treaty of East African Cooperation would take time to evolve and could involve a broad cross-section of ministries. For these reasons, they resolved that as an interim measure, they would sign a memorandum of understanding.

Subsequently, a Memorandum of Understanding on Cooperation in Environmental Management was entered into by the three governments on 22 October 1998 covering all the themes of the project and also covering other aspects which had not been envisaged in the project. One of the main features of the Memorandum of Understanding is a commitment to develop a protocol on environment management under the auspices of the proposed East African Treaty.

The governments of Kenya, Tanzania and Uganda are expected to take up the recommendations and the Memorandum of Understanding and implement the recommendations. In fact, the Permanent Secretaries specifically requested UNEP and its cooperating agencies in the Joint Project to assist in the development of the Memorandum of Understanding.

Meanwhile, the Joint Project has undertaken to produce the reports on the seven topics as stand-alone publications and as bases for national legislation. In addition, a report on the review of national projects related to environmental law and institutions has been prepared as part of the publications. The national reports were prepared by the National Coordinators in the three countries. This report is intended to assist in avoiding duplication of efforts and create a coherent synergy in reviewing and developing environmental laws.

This Volume comprises three reports prepared by the national consultants, harmonized at the joint workshop and finally accepted by the Permanent Secretaries. Its theme is the development and harmonisation of wildlife laws in the East African sub-region. The report identifies priority areas requiring harmonising wildlife management and proposes enactment of new laws and regulations.

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OVERVIEW

Introduction

Africa has wildlife resources which are unique and spectacular. It is the last place on mother earth where vast herds of animals roam in the open grasslands. The East African countries of Kenya, Tanzania and Uganda possess a substantial amount of this unique natural resource.

Wildlife resources in East Africa, however, are facing potential and actual threats of destruction and degradation as a result of human needs and interference. Issues of poverty and environmental degradation are heavily impacting on the wildlife resources.

The Governments of the three countries have made great strides in trying to maintain or enhance the productivity of wildlife resources by instituting policy, legal, institutional and management measures. These measures may bear no fruit if the people of the region do not implement them and if the region does not comply with the international agreed agenda in wildlife management.

This report, therefore, focuses on a legal and policy review and provides recommendations as a contribution to the overall wildlife management in East Africa. Country reports of Kenya, Tanzania and Uganda on the status of legal enactments and their enforcement are provided.

Kenya Country Report

Formal and organised wildlife management in Kenya dates as far back as the colonial period. The Kenyan report, therefore, reviews the historical development of wildlife policy and legislation from the colonial period to the present dates. There have been very many policy and legal instruments on wildlife management in Kenya. One of such reviews looks at the stakeholders who have interest in wildlife management in Kenya.

The report also reviews the Kenya Wildlife Society (KWS) study which addressed wildlife - human conflicts; compensation and revenue sharing; community participation; legal matters and land-use. The Report further, like those of Tanzania and Uganda, reviews existing international legal instruments on wildlife to which Kenya is or should be party. It is revealed in the review that a substantial number of legal instruments in Kenya do address the normative demands of international and regional wildlife related conventions. The report further reviews Kenya's treaty - practice by stating the steps usually taken in entering and implementing treaties. A number of laws which have been enacted to implement conventions and treaties are listed.

The Kenyan Report also makes a comparative study of treaty - practice in Uganda, United States and United Kingdom. To bring the issues of treaty practice to relevance with the wildlife legislation, a review is made of the national implementation of CITES in Kenya. In addition to CITES implementation, a review of national implementation of the Lusaka Agreement on Cooperative Enforcement Operations Directed at Illegal Trade in Wildlife and other related conventions is made.

The report acknowledges that a draft Wildlife Conservation and Management Bill, 1997 had been prepared. The Bill had been drafted as a result of the Five - Person Review Group which had identified key issues requiring urgent legislative intervention. This report, however, also reviews the Bill by identifying new areas and terms used in the draft. A commentary is also provided on the drafting style of the Bill where inconsistencies, weaknesses, wrong wording, errors and clarity issues are raised. The commentary also identifies missing elements of the Bill. Areas for regional harmonization are also identified in the Bill and other pieces of legislation. These areas of harmonization relate to management, enforcement, partnerships with communities, treaty practice and institutional matters. A conclusion is drawn that Kenya Wildlife legislation requires further in-put to ensure good or effective wildlife management.

The report concludes by providing draft implementing regulations for wildlife management. These regulations relate to diplomatic privileges for Lusaka Agreement; return or forfeiture of specimen regulations; and, headquarters agreement.

Tanzania Country Report

The Tanzania Country report covers only the mainland part as Zanzibar has a separate system of policy, legislation and institutional set-up for wildlife management. The report reviews the state of Tanzania's wildlife resources, where it is stated that the country is endowed with a rich resource base. Several of Tanzania's protected areas are of international recognition. A review of national policies for National Parks and the National Land Policy is made as a basis for providing the foundation for the legislative review. The latest policy is found in the Policy for Wildlife Conservation as was approved in 1998. Therefore, a detailed analysis of this policy is provided in the report.

The report further provides a detailed review of existing national wildlife laws and regulations in Tanzania. There are six principal laws and 13 subsidiary laws which are of primary importance. The Wildlife Conservation Act of 1974 being the principal legislation. A detailed analysis of the practices for wildlife conservation under existing legislation is provided. Other laws related to wildlife conservation, such as the Fish Act, the Mining Act, the Land Ordinance are analyzed. A number of deficiencies are identified in the existing legislation.

The report also provides a review of the institutional framework and mandates for wildlife conservation in Tanzania, with the Tanzania National Parks Authority (TANAPA) being the focal or main institution. A conclusion is drawn that the institutional framework for wildlife management remains sectoral.

Like the Kenyan and Ugandan reports, this report reviews regional and global conventions related to wildlife. An analysis of national implementation of the conventions and protocols is made. Treaty practice is also analyzed with a comparison from Kenya and Uganda. A detailed analysis of CITES implementation in Tanzania is also made simply because the Convention is a major treaty for wildlife conservation in Tanzania. It is evident that Tanzania has made a lot of effort in incorporating normative demands of international treaties in her domestic legislation.

The report makes useful recommendations for amendment of existing wildlife laws. The major recommendation being that the Wildlife Conservation Act of 1974 should be repealed and a biodiversity conservation and management legislation be enacted. This is intended to bring the law into conformity with the 1998 Policy for Wildlife Conservation, create a single institutional framework and also give the people more powers over management of wildlife resources.

In conclusion, the report contains a comprehensive and detailed draft law known as the Biodiversity (Conservation and Management) Act.

Uganda Country Report

Uganda's report takes a slightly different approach. This is due to the fact that a new wildlife legislation, that is, the Uganda Wildlife Statute, had been enacted in 1996. Therefore, the issues are more related to implementation than a comprehensive overhaul of the law. It is also shown in the report that a framework law on environmental management had been enacted and a Constitution for the nation promulgated in 1995. Against that background, the report traces the historical development of wildlife conservation from the pre-colonial period to the present. A state of the wildlife resources is also provided. The country report, just like that of Kenya and Tanzania, reviews existing policies and legislation relating to wildlife management. There exists a wildlife policy of 1995 which was translated into law. Other relevant policies such as forestry, rangelands, agriculture, wetlands, land use, are analyzed.

On wildlife legislation, a comprehensive review and analysis is provided right from the Constitution for sectoral laws and regulations. The report states that although Uganda has a new wildlife legislation, there are still gaps and inconsistencies which need to be ironed out. A detailed review is therefore made the Wildlife Statute, 1996.

A Ratification of Treaties Act 1998 has also been enacted. This is a major step to ensure that the country complies with her international obligations. In order that a full understanding of Uganda's main partners in wildlife management is made, a comparative study of Kenyas' and Tanzanias' wildlife policies and legislation is made. This study further provides areas which require harmonization in the East African region. Area for harmonization mainly relate to migratory species/ illegal trafficking, endangered species protection, enforcement and research.

The report, like that of Kenya and Tanzania, provides a detailed analysis and review of implementation of CITES and Lusaka Agreement. The major implementation laws being found in the Constitution, the Ratification of Treaties Act, 1998, the National Environment Statute, 1995 and the Wildlife Statute, 1996.

An implementation status of international and regional treaties and Conventions is also provided where details of state practice on implementation is analyzed. Due to the fact that Uganda has fairly new laws for wildlife conservation, the report recommends that the main issue to handle is the making of implementing regulations. Therefore, draft regulations on wildlife endangered species (or CITES) and cooperative enforcement directed at illegal trade (or Lusaka Agreement) are provided in the report.

Areas which have been agreed upon by the three countries that require harmonization in wildlife management are annexed to this report. What is required to be done is that the Governments of the three countries should enact the various draft legal instruments into law and implement the recommendations on issues for regional harmonization.

**KENYA COUNTRY
REPORT**

ACROYNMS

COBRA	CONSERVATION OF BIODIVERSITY RESOURCE AREAS
GOK	GOVERNMENT OF KENYA
IDA	INTERNATIONAL DEVELOPMENT AGENCY
KPA	KENYA PORTS AUTHORITY
KWS	KENYA WILDLIFE SERVICE
NGOS	NON GOVERNMENTAL ORGANISATIONS
NOSRC	NATIONAL OIL SPILL RESPONSE COMMITTEE
OAU	ORGANISATION OF AFRICAN UNITY
USAID	UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT

TABLE OF BIODIVERSITY-RELATED STATUTES IN KENYA

1. Agriculture Act, Cap 318.
2. Animal Diseases Act, Cap. 364.
3. Antiquities and Monuments Act, Cap 215.
4. Fisheries Act, Cap.378
5. Forests Act, Cap. 385.
6. Grass Fires Act, Cap 327.
7. Lakes and Rivers Act, Cap 409.
8. National Museums Act, Cap. 216
9. Plant Protection Act, Cap. 324.
10. Seeds and Plant Varieties Act, Cap. 326.
11. Suppression of Noxious Weeds, Cap 325.
12. Water Act, Cap 372.
13. Wildlife (Conservation and Management) Act, Cap 376.

KENYAN CASES

1. Abdikadir Sheikh Hassan & 4 Others Vs Kenya Wildlife Service (High Court of Kenya at Nairobi) Civil Case No. 2059 of 1996(unreported)
2. Hon. Raila Odinga Vs Hon Justice Abdul Majid Cocker (High Court of Kenya at Nairobi) Miss App. No. 58 of 1997 (Unreported)
3. Prof. Wangari Maathai & 3 Others Vs City Council of Nairobi & 2 Others (High Court of Kenya at Nairobi) Civil Case No. 72 of 1992 (Unreported)
4. Prof. Wangari Maathai Vs Kenya Times Media Trust Ltd (High Court of Kenya at Nairobi) Civil Case No. 5403 of 1989 (Unreported)
5. The Commissioner of Lands & Anor Vs Coastal Aquaculture Limited (Court of Appeal at Nairobi) Civil Appeal No. 252 of 1996 (Unreported).
6. Maina Kamanda & Anor Vs Nairobi City Council & Anor (High Court of Kenya at Nairobi) Civil Case No. 6153 of 1992 (Unreported)
7. Joseph Boro Ngera & Anor Vs Kenya Wildlife Service (High Court of Kenya at Nakuru) Civil Case No. 268 of 1992(unreported).
8. Anyama Mogoma Suondo Vs the Accounting Officer, Ministry of Tourism and Wildlife (High Court of Kenya at Mombasa) Miss Appl. No. 63 of 1990 (Unreported) And Civil Case No. 268 of 1989 Anyama Mugoma Suondo Vs The Attorney General

TABLE OF BIODIVERSITY RELATED TREATIES RELEVANT TO KENYA

1. International Convention for the Protection of Birds, Paris, 1950 (Kenya not yet a party).
2. International Plant Protection Convention, Rome, 1951 (Kenya is a party).
3. Agreement Concerning Cooperation in the Quarantine of Plants and their Protection against Pests and Diseases, Sofia, 1959 (Kenya is not a party).
4. International Convention for the Protection of New Varieties of Plants, Paris, 1961 (Kenya is not a party).
5. Phyto-Sanitary Convention for Africa, Kinshasa, 1967 (Kenya is not a party).
6. African Convention on the Conservation of Nature and Natural Resources, Algiers, 1968 (Kenya is a party).
7. Convention on Wetlands of International Importance Especially as Waterfowl Habitat, Ramsar, 1971 (Kenya is a party).
8. Protocol to Amend the Convention on Wetlands of International Importance Especially as Waterfowl Habitat, Paris, 1982 (Kenya not a party).
9. Convention Concerning the Protection of the World Cultural and Natural Heritage, Paris, 1972 (Kenya is a party).
10. Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter (as amended) London, Mexico City, Moscow, (Washington), 1972 (Kenya is a party).
11. Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter, 1972, London, 1996 (not yet in force and Kenya is not a party).
12. Convention on International Trade in Endangered Species of Wild Fauna and Flora, Washington, 1973 (Kenya is a party).
13. Convention on the Conservation of Migratory Species of Wild Animals, Bonn, 1979 (Kenya not a party).
14. United Nations Convention on the Law of the Sea, Montego Bay 1982 (Kenya is a party).
15. Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, New York, 1994 (Kenya is a party).
16. Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, New York, 1995. (Kenya not a party).
17. Vienna Convention for the Protection of the Ozone Layer, Vienna, 1985 (Kenya is a party).
18. Montreal Protocol on Substances that Deplete the Ozone Layer, Montreal, 1987 (Kenya is a party).
19. London Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer, London, 1990 (Kenya is a party).
20. Copenhagen Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer, Copenhagen, 1992 (Kenya is a party).

21. Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region, Nairobi, 1985 (Kenya is a party).
22. Protocol Concerning Protected Areas and Wild Fauna and Flora in the Eastern African Region, Nairobi, 1985 (Kenya is a party).
23. Protocol Concerning Cooperation in Combating Marine Pollution in Cases of Emergency in the Eastern African Region, Nairobi 1985 (Kenya is a party).
24. United Nations Framework Convention on Climate Change, New York, 1992 (Kenya is a party).
25. Convention on Biological Diversity, Rio De Janeiro, 1992 (Kenya is a party).
26. Agreement for the Establishment of the Indian Ocean Tuna Commission, Rome, 1993 (not yet in force) (Kenya not a party).
27. United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, Paris, 1994 (Kenya is a party).
28. Convention for the Establishment of Lake Victoria Fisheries Organization, Kisumu, 1994 (Kenya is a party)
29. Lusaka Agreement on Cooperative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora, Lusaka, 1994 (Kenya is a party).
30. Agreement on the Conservation of African - Eurasian Migratory Water birds, the Hague, 1995 (not yet in force) (Kenya not a party).

EXECUTIVE SUMMARY

This Report addresses the issues related to wildlife legislation in Kenya by-

- Reviewing of the policy framework for the management of wildlife resources in Kenya.
- Identifying existing regional and international legal instruments on wildlife management to which Kenya is, or should be, party; and evaluation of their national implementation where applicable, or recommendations for their national implementation as may be appropriate.
- Drafting legislative instruments and headquarters agreement.
- Reviewing of the draft Wildlife (Conservation and Management) Bill, 1997.

TASK 1: REVIEW OF THE POLICY FRAMEWORK FOR THE MANAGEMENT OF WILDLIFE RESOURCES IN KENYA

An analysis of Kenya's Wildlife Policy has been conducted, commencing with the establishment of a formal policy framework for the management of wildlife resources in Kenya which coincided with the official declaration of colonial rule in Kenya. Until then, the regulation of access to wildlife resources and its management were expressed in fundamental communal, social, cultural, ethical and economic values.

During the colonial period, policy on wildlife focused on the regulation of hunting, possession of and trade in wildlife trophies. This policy focus was exemplified by the various ordinances in Kenya on wildlife as well as the international conventions entered into by the colonial government. Some policy shifts occurred in 1945, when attention was given to protected of wildlife through the concept of protection areas and the vesting of all wildlife in the government, in addition to the regulation of hunting.

After independence, the policy on wildlife remained largely unchanged up to 1975 when the Government issued Sessional Paper No. 3 on the "Statement on the Future of Wildlife Management Policy in Kenya". The new changes in policy included the call for: (i) integrated wildlife management; (ii) recognition of both community and private participation in wildlife management; (iii) the centralization of the administrative machinery for wildlife management; and, (iv) the maximization of the economic value of wildlife resources in Kenya. Sessional Paper No. 3 was translated in 1976, into the Wildlife (Conservation and Management) Act, Cap 376 Laws of Kenya.

By the mid eighties, however, it had become clear that further policy adjustments were necessary to deal with chronic issues within the wildlife sector such as: (i) increase in wildlife-human conflicts (for example, non-compensation for wildlife related losses of human life, injuries, loss of crops or other property, competition for grazing land and other land-use conflicts, wildlife-related livestock illnesses, etc) (ii) the failure by the Government to achieve an integrated wildlife management approach (e.g. conflicting sector-specific policies on land use, haphazard establishment of lead agencies with competing and conflicting competencies over wildlife, proliferation of sector-specific legislation affecting wildlife management.); and, (iii) increased poaching and loss of wildlife species within protected areas.

As a result, the Wildlife (Conservation and Management) Act, Cap 376 was amended in 1989, vide the Wildlife (Conservation and Management) (Amendment) Act, Act. 16 of 1989, which established the Kenya Wildlife Service (KWS). In 1990, KWS issued its Operational Strategies (Zebra Book), which demonstrated new policy approaches to the conservation and management of wildlife in Kenya. In 1994, KWS commissioned a Five Person Working Group (The Review Group) to solicit public views and solutions to human-wildlife conflicts, compensation, economic utilization of wildlife resources, and promotion of the tourism industry. The Review Group issued its Report in December 1994, entitled "Wildlife -Human Conflicts in Kenya". In 1995, KWS commissioned Four Technical Studies on: (i) Wildlife Utilization; (ii) Land-Use Planning and Policies; (iii) Tourism Strategies and Pricing; and, (iv) Wildlife Legal Framework.

On the basis of the findings of the Review Group and the Four Technical Studies, together with the initiatives contained in the Zebra Book, the Government adopted a new Wildlife Policy in 1996. The new policy contains several policy shifts, key amongst them being: (a) the recognition of wildlife in terms of biodiversity; (b) the adoption of plurality of values in the management of wildlife; (c) recognition of the principle of inter-generational equity and the global character of wildlife resources; (d) revision of certain administrative mandates within the wildlife sector; (e) the need to institutionalise incentives for wildlife management (f) improved techniques for mitigating the effects of wildlife-human conflicts; and, (g) the establishment of the system of user -rights in respect of wildlife resources in Kenya.

The outcome of the new policy is the proposed Wildlife (Conservation and Management) Bill, 1997 (see Task IV).

TASK II: IDENTIFICATING EXISTING INTERNATIONAL LEGAL INSTRUMENTS ON WILDLIFE MANAGEMENT TO WHICH KENYA IS, OR SHOULD BE, PARTY, AND EVALUATING NATIONAL IMPLEMENTATION

Thirteen international and six regional conventions/protocols have been identified as those to which Kenya is or ought to be a party. Kenya's treaty practice has been discussed in detail and its key legal limitations identified (for example, (a) the absence of constitutional provisions requiring implementation of treaties through enabling national legislation or ratification of treaties by Parliament; (b) the non-inclusion of treaties not adopted through enabling national legislation amongst the laws of Kenya; and, (c) the absence of clear legal provisions on treaty practice in Kenya. The treaty practices of Uganda, US and United Kingdom (UK), have been discussed for comparative purpose.

The national implementation of each of the conventions or protocols identified is discussed with the attendant legal limitations in mind. The key elements of the conventions/protocols requiring enabling national legislation for their implementation have been identified and certain legislative proposals made, (for example, (i) The Wildlife (Conservation and Management) (Return or Forfeiture of Specimens) Regulations; (ii) The Diplomatic Privileges (Task Force on Co-operative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora) Order; and, (iii) Draft Headquarters Agreement between Government of Kenya (GOK) and the Task Force.

The Kenyan laws (existing or proposed) which deal with the substantive matters of the conventions/protocols identified, have been noted and the extent to which their provisions implement those conventions/protocols, has been clearly demonstrated. Where there are gaps, certain legislative proposals or administrative reforms have been suggested.

TASK III: DRAFTING LEGISLATIVE INSTRUMENTS AND HEADQUARTERS AGREEMENT

The draft legislative instruments have been prepared as a consequence of the analysis conducted under Task II are listed below:

- i. The Diplomatic Privileges (Task Force on Co-operative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora) Order: which is intended for the national implementation of the Lusaka Agreement.
- ii. The Wildlife (Conservation and Management) (Return or Forfeiture of Specimens) Regulations: which is intended for the national implementation of both CITES and the Lusaka Agreement.
- iii. The Headquarters Agreement between GOK and the Task Force: which is intended for the national hosting of the Task Force under the Lusaka Agreement.

TASK IV: REVIEW OF THE DRAFT WILDLIFE (CONSERVATION AND MANAGEMENT) BILL, 1997

The draft Wildlife (Conservation and Management) Bill, 1997, has been prepared in order to translate into law the policy initiatives of 1996. In reviewing the substantive provisions of the draft Bill, the key issues identified in the process of policy analysis requiring legislative intervention, have been taken into consideration. Such issues include: (a) the need for user-rights relative to wildlife resources; (b) liberalization of wildlife management outside the protected areas; (c) mechanisms for cost and revenue-sharing amongst wildlife stakeholders (d) environmental impact assessment for activities within protected areas; and, (e) compensation for wildlife related losses.

The review of the draft Bill has focused on:

- The objectives of the draft Bill;
- Definitions of terms in the draft Bill;
- Administrative/Institutional changes proposed in the draft Bill;
- Drafting requirements in respect of the Bill;
- Elements missing from the draft Bill;
- Certain issues of law on the draft Bill;
- Weaknesses in the substantive provisions of the draft Bill; and,
- Suggestions on the provisions of the Bill for Sub-regional co-operation and harmonization.

The outcome of this review is the conclusion that, the draft Bill still requires further work. The areas in need of improvement have been identified and suggested changes made.

CHAPTER ONE

1.0 INTRODUCTION

The establishment of a formal policy framework for the management of wildlife resources in Kenya coincided with the official declaration of colonial rule in Kenya. Until then, the regulation of access to wildlife resources and its management were expressed in fundamental communal, social, cultural, ethical and economic values. Various religious practices, art, literature and economic activities, were all a collective expression of human relationship with wildlife resources in Kenya. That human - wildlife relationship varied from one ethnic community to another, and from one geographical area to another.

In discussing the policy framework for the management of wildlife resources in Kenya, distinction must be made with respect to two historical epochs: colonial period and post-colonial period. In terms of official policy, as is commonly understood to be official expression of intent contained in various documents (such as, Sessional Papers, Development Plans, Policy Framework Papers), it must be re-emphasised that no such policy existed in Kenya prior to the formal establishment of colonial rule in Kenya.

During the colonial period, several ordinances were promulgated to regulate the access to and harvesting of wildlife resources in Kenya. The Game Ordinance (No 4 of 1898) marked the introduction of legislative control over the wildlife resources in Kenya. The Ordinance was subsequently repealed and replaced with several new legislation between 1898 and 1957. Several Game Regulations were issued under the successive Game Ordinances. In addition, certain species enjoyed special protection under Ordinances specific to them for instance, the Wild Birds Protection Ordinance (No. 13 of 1901)

and, the Ostriches Ordinance (No. 8 of 1907) among others.

With the advent of colonial rule, Kenya began to participate in the international wildlife agenda. In 1900, the Convention for the Preservation of Wild Animals, Birds and Fish in Africa was successfully negotiated and Kenya became a party thereto. In 1933, the Convention relative to the Preservation of Fauna and Flora in their Natural State in Africa was concluded and Kenya became a party thereto. In 1945, the National Parks Ordinance (No. 9 of 1945) was passed as law in Kenya and it formally established the notion of protected areas. It served as a precursor to the Wildlife (Conservation and Management) Act, Cap. 376 of the Laws of Kenya. The 1933 Convention served as a precursor to the African Convention on the Conservation of Nature and Natural Resources.

1.1 Evolution of Wildlife Policy in Kenya after Independence

After independence, certain policy shifts occurred. Even though the National Parks Ordinance of 1945 together with the Wild Animals Protection (Amendment) Ordinance (No.23 of 1953), as amended from time to time, continued to apply until 1976, when they were both repealed by the Wildlife (Conservation and Management) Act, Cap. 376, due to the dwindling nature of the wildlife resources in Kenya, the need for certain policy changes began to emerge. The colonial focus was on harvesting of wildlife resources. The key elements of the colonial Ordinances were as follows:

- Protection of certain wild animals and fish against the hunting of their trophies.

- Licensing for the hunting, possession and sale of game trophies.
- Authorisation for the destruction of wild animals causing damage to crops.
- Protection of young wild animals against hunting .
- Prohibition of hunting within areas declared to be game reserves and imposition of closed seasons for hunting.
- Registration of farmers practising ostrich farming, and regulation of dealings in ostrich products.
- Prohibition of hunting of game by natives.
- Imposition of penalties for activities in breach of the Ordinances or regulations made thereunder.
- The confiscation by Government of game trophies acquired in contravention of the Ordinances or regulations made thereunder.
- Regulation of hunting methods.
- The vesting of all wild animals in the Government.

In 1975, the Government prepared Sessional Paper No. 3 entitled "Statement on the Future of Wildlife Management Policy in Kenya." The key elements of Sessional Paper No.3 may be summarised as follows:

- it called for the integrated management of wildlife resources in Kenya;
- it emphasised the need for community and private participation in the management of wildlife resources in Kenya;
- it called for a centralized administrative structure for the management of wildlife resources in Kenya; and,
- it called for the maximization of the economic value of wildlife resources in Kenya.

Sessional Paper No. 3 emphasised the close relationship between wildlife and other environmental resources, the need to view the economic value of wildlife as part of the wider national economic output and their inter-relatedness; the realisation that wildlife management and conservation is part of the various systems of land-use; the appreciation of the potential human - wildlife conflicts and the need for

an integrated approach towards their solution; the need for economic incentives to communities and private land owners to encourage incorporation of wildlife with other forms of land-use, and the need for a clear and flexible legal regime for the management of wildlife in Kenya.

Sessional Paper No. 3 was translated in 1976, into the Wildlife (Conservation and Management) Act Cap 376. The new legislation, among other things, combined the former Game Department and the Kenya National Parks into a single agency, the Wildlife Conservation and Management Department, within the Ministry of Tourism and Wildlife. It also formally recognised that conservation and management of wildlife resources in Kenya would be divided between the Government (in protected areas) and private persons (ranchers).

Certain policy and legislative inadequacies began to appear in the late 1970s and early 1980s, relative to wildlife conservation and management. It became apparent that Sessional Paper No.3 and the Wildlife (Conservation and Management) Act of 1976, did not:

- (a) reduce the conflict between people and wildlife. This failure appears to have been caused by the lack of a competent administrative structure (in terms of clear institutional policies, adequate financial resources, objective and corruption - free criteria for compensating wildlife related losses), and inadequate legislative enforcement provisions;
- (b) achieve the desired goal of an integrated approach to the management of wildlife resources. This failure was more evident in the area of: land-use planning and policies; proliferation of uncoordinated sector-specific legislation; haphazard establishment of official lead agencies often with competing and conflicting competencies; and, ineffective approaches on local community participation;
- (c) achieve greater protection or conservation of wildlife within the gazetted areas. More wildlife is resident outside the protected areas where their survival rates appear to be higher than within the gazetted areas. Poaching has been more prevalent in the protected areas than in the private ranches.

Responding to the short-falls in Sessional Paper No. 3 and the Wildlife (Conservation and Management) Act of 1976, the Government reviewed the said Act, and Parliament promulgated the Wildlife (Conservation and Management) (Amendment) Act, of 1989. The 1989 Act established the Kenya Wildlife Service (KWS) as a parastatal (a body

corporate) to replace the Wildlife Conservation and Management Department. KWS was promptly exempted from the State Corporations Act (Cap 446), to grant it greater autonomy and flexibility in discharging its statutory obligations. In 1990, KWS issued its Operational Strategies (The Zebra Book) which clearly demonstrated a new approach to conservation and management of wildlife in Kenya.

In July 1994, KWS commissioned a Five- Person Review Group (the Review Group) to solicit public views and solutions to: human-wildlife conflicts; problems of wildlife control; compensation; economic utilization and relationships with KWS; and, tourism industry; and make independent findings on those issues. On December 19th, 1994, the Review Group issued its report entitled "Wildlife - Human Conflicts in Kenya". In addition, KWS commissioned Four Technical Studies on, namely: Wildlife Utilization; Land Use Planning and Policies, Tourism Strategies and Pricing, and the Legal Framework (the Four Technical Studies). On the basis of the findings of the Review Group and the Four Technical Studies, KWS initiated a new policy strategy which the Government adopted in 1996. The Wildlife Policy of 1996, commences with a Mission Statement as follows:

"The Government holds in trust for present and future generations nationally and globally the biological diversity represented by Kenya's extraordinary variety of animals, plants and ecosystems ranging from coral reefs to alpine moorlands and from deserts to forests. Special emphasis is placed on conserving Kenya's assemblage of large mammals found in few other places on earth."

The Mission Statement forms the corner-stone of the new policy orientation. It reveals the following aspects; that is, formal recognition:

- (a) of the principle of inter-generational equity (the idea that the present generation should ensure that in exercising its right to the beneficial use of the environment, the health, diversity and productivity of the environment and natural resources is maintained or enhanced for the benefit of future generations).

It does not, however, recognise the principle of intra-generational equity (the idea that the people within the present generation have the right to benefit equally from the exploitation of the environment and natural resources and that they have an equal entitlement to a clean and healthy environment);

- (b) of the principle of international co-operation in the management of shared wildlife resources or wildlife resources enjoying the status of international significance or importance (the idea that international cooperation is essential for the management of environmental resources of significant international importance or environmental resources shared by two or more states);

- (c) a departure from the original concept of "wildlife" and the embracing of the concept of "biodiversity", which includes species, habitats and ecosystem variability. The Policy Document explains this departure as follows:

"Biological diversity is therefore, being used in preference to wildlife both to reflect the broader intent of wildlife conservation.... and to underscore Kenya's commitment to the Biodiversity Convention. The term wildlife..... refers more narrowly than biodiversity to the larger animals...."

Recognising the widespread nature of biodiversity and the mixed jurisdictional responsibilities involved, the Mission Statement addresses the conservation of biological diversity within the framework of a broadened wildlife policy, and assumes collaborative efforts among government agencies and with the private sector. Thus, while the expanded wildlife policy should be seen as a major contribution to Kenya's conservation of biodiversity, it does not constitute a national biodiversity policy as such".

The shift from "wildlife" to "biodiversity" is designed to address the problems hitherto associated with the lack of an integrated management approach to wildlife. It calls for the harmonization of land-use planning and policies; co-ordination of official activities with cross-sectoral effects, integration of administrative jurisdictions over wildlife; increased cross-sectoral collaborative efforts with regard to both environmental planning; and, economic planning and the realisation that biodiversity management must be treated as part of the wider national economic and social goals.

- (a) of the plurality of values relative to wildlife management . This is more pertinent when seeking solutions to the wildlife -human conflicts. Different people have different value systems for analysing the importance of wildlife. In dealing with these competing and often conflicting value systems, different approaches should be adopted taking into account the principles of equity and fairness, and sensitivity to special needs of local communities and poverty alleviation;

- (b) the conservation of biological diversity calls for the expeditious identification and prioritization of options deemed to be of local, national, or global significance. There is need to define conservation priorities using clear-cut biological, economic and social criteria;
 - (c) there is need to provide incentives to encourage the conservation of wildlife resources. Such incentives may include measures for the mitigation of wildlife - human conflicts and distribution of benefits;
 - (d) the statutory mandate and role of KWS should be revised. It is presently deemed impractical for a single organisation to police and manage all wildlife resources in Kenya, given the diversity of land tenure systems which affect the location of those resources. It is thus, essential that the role of KWS be redefined to reflect the envisaged policy shifts. The institutional restructuring of KWS is also called for in order to give it a more stream-lined structure and devolution of its mandate to biogeographic regions; and,
 - (e) a new implementation strategy is needed to reflect the new policy initiatives. The new strategy is to be anchored on the idea of user-rights in order to foster partnerships, reconciliation of wildlife-human conflicts, and create a balance between incentives and enforcement requirements for the management and conservation of wildlife resources in Kenya.
- Trustees of communally owned land.
 - District wildlife fora (individual ranchers).
 - Government of Kenya.
 - Kenya Wildlife Service.
 - Forestry Department.
 - Geology and Mines Department.
 - District Development Committees and Sub-district Development Committees.
 - Local Authorities (County Councils).
 - National reserves and national parks.
 - Hoteliers and Tour Operators.
 - Beach operators.
 - Women groups.
 - Community enterprises.
 - Game Farmers.
 - Local NGOs.
 - International NGO'S.
 - International Community.

Sessional Paper No. 1 of 1994, on Recovery and Sustainable Development to the Year 2010, outlines in its Chapter 2, the Framework for Development in Kenya. In this Framework, environmental sustainability in the development process is regarded as essential, and to this end, the focus is toward a unified and integrated environmental policy, especially with regard to regulatory processes and standards, capacity-building in planning and policy analysis. Wildlife and tourism are recognised within this policy paradigm.

1.2 Stakeholder Interests and Existing Policy on Wildlife

The KWS Five Person Review Group in its Report (pg.6) identified the following legal persons as stakeholders in wildlife management:

- Local wildlife associations.
- Individual land owners.
- Group land owners.

The variety of the stake-holders indicate the variety of their views on wildlife conservation and management. They do not agree on “which types of utilization and benefits are preferable.” Certain issues, however, constitute common ground for various stake-holders. These issues are:

(i) Reconciliation of Wildlife-human Conflicts:

The KWS Five-Person Review Group Report (pg.2) considers wildlife human conflict “ . . .to be any and all disagreements or contentions relating to destruction, loss of life or property, and interference with rights of individuals or groups that are attributable directly or indirectly to wild animals”.

The Group then proceeded to divide wildlife-human conflicts into two broad categories:

- (a) True problems between wildlife and people which include “ . . effects of a personal nature such as injuries and death, as well as economic and psychological losses people suffer when wild animals destroy human life and property. Differences and losses traceable to policy and management (for example, processing of compensation claims)”.
- (b) Inter-personal conflicts which “ . . . include disputes related to competition and group interests centred on resources and the power to control wildlife benefits. They may also stem from dislike of new policies that will affect the balance of power or benefit certain groups”.

The causes of wildlife -human conflicts, as outlined in the Group Report (pg.5) are as follows:

- loss of agricultural crops due to damage by wild animals;
 - damage of forest plantation trees and seedlings by wild animals;
 - human beings killed or injured by wild animals;
 - loss of livestock killed by wild animals;
 - competition between livestock and wild animals for pasture and water;
 - destruction of infrastructure (fences, pipes, works) by wild animals;
 - competition for land space between communities and wild animals within and around protected areas;
 - hosting and transmission of major livestock diseases by wild animals;
 - security problems arising from invasion of human settlements by wild animals;
 - ineffective techniques for controlling problematic wild animals;
 - excessive institutional enforcement techniques for instance, shootings and whipping;
 - misconception of KWS as a donor agency (over expectations);
 - absence of compensation for destruction of property
- by wild animals;
 - low compensation for loss of human life caused by wild animals;
 - inefficiency and abuse of compensation procedures;
 - uncontrolled animal movements and migrations;
 - competition and lack of involvement in tourism business;
 - conflicts of interest over benefits accruing from wildlife;
 - licensing problems among operators of wildlife-related tourism activities;
 - security/safety of tourists within protected wildlife areas;
 - policy weaknesses causing uncertainty in potential investors;
 - land-use conflicts and inadequacy of policy for resolution;
 - illegal hunting and trade in wildlife products;
 - denial of a share of revenue and other benefits to stake-holders;
 - poverty;
 - negative social impacts of tourism; and,
 - negative environmental impacts of tourism.
- In dealing with the causes of wildlife-human conflicts, the Group recommended urgent policy and legislative review covering:
- (a) community participation.
 - (b) land use patterns and land tenure systems.
 - (c) compensation.
 - (d) tourism development.
- (ii) *Compensation and Revenue Sharing*
- Presently, compensation exists only for loss of life or

injuries. There is no compensation for crops, property and livestock destroyed by wild animals. Compensation problems are related to the existing policies and administrative procedures. These problems include:

- non-application of traditional compensation systems;
- the insufficiency of the compensatory figures - for example, a maximum of K.shs.30,000/= for loss of human life or injuries;
- the lack of public knowledge that compensation is paid by the Treasury and not KWS;
- the absence of compensation for loss or damage of crops, property and/or livestock caused by wild animals;
- slow and inefficient compensation payment procedures;
- absence of compensation guidelines and procedures;
- corruption in the absence of a transparent compensation system that clearly reveals amounts claimed and amounts paid; and,
- absence of an insurance scheme for compensation.

In terms of revenue sharing, the Group Report (pg.6) notes that:

“... neither KWS nor the people have clear ideas about who the stake-holders are, or what might constitute equitable distribution of wildlife benefits”.

The official policy, as declared in 1991 by the Government of Kenya, is that local authorities neighbouring protected areas should receive 25% (twenty five percent) of revenues collected at park gates, and that part of the revenues should benefit local communities around those protected areas. Most local authorities and local communities have not received their entitlement under this policy. The policy has also been under-mined by the fact that, it invites conflict of interests between local communities and local authorities or between various groups within the local communities. In addition, the requirement that KWS should be self-sufficient financially makes the full implementation of the policy impracticable, when revenue is not in excess of the operational costs of KWS.

It is thus essential that the policy on revenue sharing should

be reviewed so as to:

- identify a criteria for the determination of who the stake-holders are, or purposes of distributing financial and infrastructure benefits accruing from protected areas;
- set out guidelines and procedures for revenue sharing;
- establish a revenue sharing formulae that reconciles the competing interests of KWS in its quest toward financial integrity and self-sufficiency, and those of local authorities or local communities around protected areas;
- identify which activities should be supported by wildlife related revenues within the local authorities or communities around protected areas; and,
- determine whether costs and losses associated with wildlife conservation and management should be shared as well.

(iii) Community Participation

KWS has started a Community Wildlife Service (CWS) programme to:

- (a) foster partnership with local communities on the conservation and management of wildlife;
- (b) encourage private landowners to open their lands for occupation by wild animals;
- (c) encourage devolution of certain statutory responsibilities of KWS to private land owners whose land is inhabited by wild animals;
- (d) facilitate wildlife related revenue sharing and grant of consumptive user-rights to participating local communities and private persons;
- (e) assist with the establishment of wildlife related non-consumptive user rights in tourism enterprises (for example, camp-sites, cultural *manyattas*, camel-safaris, curio-shops, etc); and,
- (f) provide private training on wildlife conservation and management and the control of wild animals-related problems.

The CWS is a component of the Conservation of Biodiversity Resource Areas (COBRA) Project whose aim as outlined

in the Group Report (P.2) is to “ . . .increase socio-economic benefits from conservation and sustainable management of wildlife and natural resources in communities adjacent to Kenya’s national parks, with funds from USAID and IDA”.

Additional community-related KWS projects include the Wildlife for Development Fund, a fencing programme and the Rural Service Design Project. These initiatives, the Group noted, in their Report (P.9), are “conceptually sound, but (their) impact and cost-effectiveness have yet to be properly monitored and evaluated. Their horizontal coordination with those of law-enforcement sections of KWS and local stake-holder and non-target organizations is rather weak, allowing contradiction and conflict to emerge”. Most worrying is the Group’s observation in their Report (pg.6), that certain elements of CWS, in particular its Pilot-Utilization Scheme, is technically illegal since the ban on hunting (Legal Notice No. 12 of May 20th 1977; Act No. 5 of 1978; Legal Notice No. 181 of August 21, 1979) is still in force, and as such consumptive user-rights cannot be granted under the existing law.

From the foregoing, it is apparent that certain policy and legislative changes have to be made in order to facilitate the form of community participation through partnerships and benefit sharing as are reflected by the various KWS initiatives.

1.3 Review of the On-going Wildlife Law Reform Being Undertaken by the Kenya Wildlife Service

Introduction

The Kenya Wildlife Service (KWS), with financial assistance from the United States of America International Agency for Development (USAID), commissioned a study to review wildlife policy and laws in Kenya with a view to undertaking reform. The study has produced two reports and the present review is based on the Second Interim Report on Wildlife Reform in Kenya dated September, 1995.

The KWS Technical Study on Wildlife Legal Framework covered the following areas:

- media coverage of wildlife issues in Kenya with specific emphasis on past problems within the sector;
- comparative wildlife law in Kenya;
- wildlife issues covered by international instruments;
- land-use and land planning law in Kenya;

- a critique of Kenya’s wildlife and related law;
- actors and interest groups in the wildlife environments : their fears and expectations; and,
- emerging areas of reform.

The study produced a list of all legislation enacted in Kenya for the conservation and management of wildlife since 1898 to the present, including amendments. It also produced a list of current laws that incidentally deal with wildlife conservation and management. The substantive provisions of these legislative instruments were briefly highlighted. The study, however, focused on the Wildlife (Conservation and Management) Act, Chapter 376 of the Laws of Kenya (including the 1989 amendments vide the Wildlife (Conservation and Management) (Amendment) Act, 1989. The study further gave an overview of the wildlife literature situation in Kenya by highlighting academic publications, policy documents by the Government, press reports, workshop reports, among others.

The study examined land-use and land planning legislation in Kenya relative to wildlife conservation and management. This examination focused on land tenure systems and the Government’s residual policing powers and eminent domain. Lastly, the study highlighted wildlife issues (that is, subject matters) covered by international legal instruments. A list of such legal instruments was provided. For the purposes of the present review, focus will be given to the following areas of the KWS study:

- International legal instruments on wildlife; and,
- Land-use and land planning legislation relative to wildlife conservation and management.

1.3.1 International Legal Instruments on Wildlife

- The analysis of the international legal instruments on wildlife was conducted under the KWS study on the basis of categorization in accordance with their geographical applicability or by their content. A total of 31 instruments were examined under three broad categories:
 - (a) the first category covers instruments that apply to countries in the Eastern African Sub- region;
 - (b) the second category covers instruments that apply to Africa as a whole; and
 - (c) the third category covers instruments on broader

environmental issues, which are critical for the survival of wildlife.

The discussion that ensued did not strictly follow the categorization imposed on the international legal instruments. Mention was made of legal instruments which deal with wildlife habitat, pollution, regulation of hunting and collection of species.

In examining the implementation of the international legal instruments by Kenya, the KWS Study noted the aspects mentioned below:

- International legal instruments are of no use whatsoever, unless they are implemented at the domestic level.
- It is necessary that a mechanism be devised, which will facilitate assessment of the level of national enforcement of the principles enshrined in the international legal instruments.
- Kenya, like most other African countries, has not been able to benefit from the full potentiality of the international legal instruments. This is because, the study argues, Kenya has failed to provide adequate national infrastructure for the implementation of those legal instruments.

The KWS Study further notes that Kenya has not yet ratified certain important international legal instruments. The list provided is not accurate and should have been up-dated. For example, at the time the KWS Study Report was being produced, Kenya had ratified the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, (1971); yet the list provided indicates that this has not been done. Presently, Kenya is in the process of ratifying the protocol to the Fund Convention. The KWS Study, however, does not:

- describe the mechanisms by which the relevant international legal instruments should be implemented at the national level;
- elaborate on Kenya's treaty practice in a step by step format;
- discuss the effects of implementing the international legal instruments in the absence of enabling national legislation;
- prioritise the international legal instruments;

- identify specific provisions of the international legal instruments requiring incorporation into enabling municipal legislation; and,
- provide draft legislative enactments or publications for the national codification of the international legal instruments.

These matters have been covered in the present study under Tasks II and III.

1.3.2 Land-Use and Land Planning Legislation Relative to Wildlife Conservation and Management

The KWS Study examined the relevant law in place in Kenya relating to land-use and land planning . It focused on the two primary estates that an individual can hold in land in Kenya, namely :

- (a) the fee simple estate as codified in the Indian Transfer of Property Act, 1882; and,
- (b) the absolute proprietorship created under Sections 27 and 28 of the Registered Land Act, Chapter 300 of the Laws of Kenya.

The KWS Study further examined how the rights existing under the two land tenure systems are qualified through the regime of land-use and land planning legislation. Such qualification is mainly due to the police power the Government is allowed by the law to exercise in respect of land owned privately. The regulatory or police power may be exercised for the benefit of public health, safety , morals, security , among other categories. In addition, under the doctrine of eminent domain, the Government may compulsorily acquire private land for public purposes provided it makes good the loss to those who lose their property. Police power is conferred on the Government by different statutes such as: the Agriculture Act Cap 318 of the Laws of Kenya; the Land Control Act, Cap 302 of the Laws of Kenya; the Local Government Act, Cap 265 of the Laws of Kenya, the Forests Act, Cap 385 of the Laws of Kenya; the Town Planning Act, Cap 134 of the Laws of Kenya. The concept of eminent domain is provided for under Section 75 of the Constitution of Kenya.

The regime of land ownership relative to wildlife conservation and management in Kenya is as follows :

- (i) KWS is in-charge of protected areas (which constitute about 7% of the country's land).

- (ii) Over 70% of the country's wildlife is on private communal land, and is thus, managed by private citizens subject to applicable laws.

In Tanzania wildlife estate covers over 25% of the total land area. The estate is managed under five major management systems which are :

- (a) the national parks managed by the Tanzania National Parks ;
- (b) the game reserves, game controlled and open areas system, managed by the Wildlife Division of the Ministry of Natural Resources and Tourism;
- (c) the Ngorongoro Conservation Area managed by the Ngorongoro Conservation Area Authority;
- (d) the forest reserves managed by the Forestry Division; and,
- (e) game sanctuaries of which three are owned and managed by government, and the fourth one is privately run.

In Botswana, the Department of Wildlife and National Parks is responsible for wildlife management in the country. The game is distributed between :

- (a) national parks and game reserves (protected areas) which cover about 17% of Botswana's total surface area; and,
- (b) wildlife management areas (outside protected areas) which account for 20% of the surface area of Botswana. Wildlife in the management areas is often utilised for consumptive purposes such as hunting and capture of live animals, cropping, among other uses.

In Namibia, wildlife is distributed amongst :

- (a) private land owners;
- (b) game reserves, national parks and other government owned or proclaimed land; and,
- (c) communal land (through conservancy bodies).

The KWS Study recommends the integration of community participation in wildlife management. It does not, however, provide examples of relevant policy variables and models for implementation of community participation. Core issues such as location of authority and responsibility, linking

conservation and sustainable development objectives, conferment of proprietorship of wildlife to the communities who bear the costs of conservation, capacity concerns, and rights of secure and long-term access to land and resources, have not been addressed in the Study. A model such as the Communal Areas Management Programme For Indigenous Resources (CAMPFIRE) in Zimbabwe, could have been used for comparative value since it provides a good example of the empowerment of local communities who manage and use wildlife resources.

The KWS Study did not cover issues of wildlife economics. Wildlife must have economic value attached to it so as to enable it compete with other land use regimes for food supply, infrastructure, and other economic development activities. Economic value may be invested in wildlife by creating markets for its use and then, critically sharing the resulting revenues with local communities or through privatisation where the land owner collects the revenues and as appropriate, shares them with local communities, or, at least provides employment. Economic appraisal of wildlife is thus, an essential component of any sustainable wildlife management programme. It reconciles the competition between wildlife and alternative uses of land. Any economic model of wildlife conservation would have to embody a fundamental equation comprising the benefits of conservation, the direct costs of conservation (for example, monitoring, policing), and the benefits of some alternative uses of the land .

The KWS Study identified the following wildlife-related problems :

- (i) Poaching of wildlife and illegal trade in wildlife products and species.
- (ii) Mismanagement of national parks and game reserves.
- (iii) Inadequate and at times non existent compensation for injury to or loss of life, and damage to crops and private property.
- (iv) Conflict between human beings and wildlife as the pressure on land increases.
- (v) Competing interests between private ranchers and local communities.
- (vi) Lack of clear policy on ways of dealing with communities surrounding national parks and game reserves.
- (vii) The destruction of wildlife habitat like forests through official degazettement.

The KWS Study set a new agenda which can be summarized as follows:

- The need to involve communities or local people in wildlife conservation through carefully crafted consumptive and non-consumptive wildlife utilization programmes.
- Review and clearly articulate a land-use policy that would effectively reduce the human/wildlife conflicts and guarantee the continued survival of wildlife through effective land-use controls.
- Evolve an integrated and supra-national or regional approach to wildlife conservation and management so as to curb illegal trade in wildlife products.
- Ensure the equitable distribution of benefits from wildlife to the various interest groups.
- The need for a national insurance scheme to facilitate compensation of those who suffer injury or loss from wildlife.

In setting the new agenda, the KWS Study did provide insights on the need to harmonize Sub-regional laws and policies on wildlife management. This issue is more pertinent when discussing terrestrial ecosystems, trans-frontier species, and migratory trends of wildlife within the region. It is also important to discuss the need for harmonizing regulations affecting consumptive uses of wildlife and criminal penalties to be imposed when breaches of these regulations occur. Hunting of wildlife is allowed in Tanzania (tourist hunting alone earns about US\$14 million) while Kenya has imposed a total ban on hunting. Such disparity in policy and legal regulation cannot be useful when dealing with trans-boundary wildlife resources. These issues are addressed under Task IV.

KWS Study recommended the following legislative changes:

- (i) The substantive law on wildlife does not oblige KWS, private ranchers or Local Authorities to share gate revenues with local communities. If minimal revenue sharing is to take place, it would have to be provided for in the law.
- (ii) Section 145 (W) of the Local Government Act (Cap 265 of the Laws of Kenya) gives Local Authorities the power to engage in wildlife conservation. They can exercise it or refuse to do so. The law should be changed so that Local Authorities are duty bound to

act in favour of conservation of wildlife.

- (iii) Section 201 of the Local Government Act on the making of by-laws should be amended by incorporating a rider to the effect that when a Local Authority is making by-laws which concern wildlife, KWS or the relevant Ministry should approve them to ensure uniformity with other similar regulations developed by KWS.
- (iv) The definition of wildlife under section 2 Local Government Act Cap 376 is narrow and not exhaustive and as such should be re-thought in order to expand the jurisdiction of KWS.
- (v) The law should clearly state that wildlife is the property of the State irrespective of whether it is on private or public land. The state is then to grant wildlife utilization rights by way of concessions or licences. Such utilization rights may be granted for four categories of land:
 - private land (inhabited by wildlife);
 - trust land (inhabited by wildlife);
 - state or public land (not being in a protected area); and,
 - land adjacent to protected areas i.e dispersal and migration areas.
- (vi) The law should identify who is to protect biological resources not defined as wildlife and which are relative thereto.
- (vii) Cap 376 should be amended to allow for the registration of wildlife interest groups instead of registering such groups under the Companies Act (Cap 486 of the Laws of Kenya), Societies Act, (Cap 108 of the Laws of Kenya), Co-operative Societies Act (Cap 490 of the Laws of Kenya), and the Non-Governmental Organization Act (Act 19 of 1990 of the Laws of Kenya).
- (viii) a wildlife compensation fund should be established by law. Contributions into the fund should include part of gate revenues collected by KWS, Local Authorities or private ranchers, donations and gifts, and annual appropriation by the National Assembly.

The draft Environmental Management and Co-ordination Bill, 1998 addresses wildlife issues as follows:

- It deals with the protective management of wildlife habitats and ecosystems such as wetlands, forests and mountainous areas, environmentally sensitive areas, and conservation of biological diversity and genetic resources.
- It incorporates certain tools of environmental management such as restoration orders, audits and easements that may be used to further the objectives of wildlife conservation and management.
- It provides statutory *locus standi* which may enable private citizens to pursue judicial remedies beneficial to wildlife management and conservation.
- It incorporates environmental impact assessment as a statutory requirement for projects. This is important particularly in respect of proposed activities that impact on wildlife habitat, migration corridors and introduction of new species
- It provides for the establishment of an Environmental Tribunal which will supplement judicial activism in respect of wildlife management and conservation.

The draft Environmental Management and Co-ordination Bill does not seek to duplicate the substantive provisions of the Wildlife (Conservation and Management) Act but rather it addresses the issue of wildlife management from a wider environmental perspective. The draft Bill however, establishes the following relationship with other statutes relative to environmental management, (such as the Wildlife (Conservation and Management Act):

“The Authority (proposed National Environmental Management Authority) may, after giving reasonable notice of its intention so to do, direct any lead agency (e.g. KWS) to perform, within such time and in such manner as it shall specify, any of the duties imposed upon the lead agency by or under this Act or any other written law, and if the lead agency fails to comply, the Authority may itself perform or cause to be performed the duties in question, and shall be entitled to recover from the lead agency, the expense incurred by it in so doing.”

In addition, lead agencies such as KWS are represented in the statutory committees of the proposed National Environmental Management Authority.

CHAPTER TWO

2.0 REVIEW OF EXISTING INTERNATIONAL LEGAL INSTRUMENTS ON WILDLIFE TO WHICH KENYA IS OR SHOULD BE PARTY AND STATUS OF NATIONAL IMPLEMENTATION

The general objectives of this review are as follows-

- Establish the Sub-regional character of applicable legal instruments and whether they should be of priority interest to Kenya.
- Review and evaluate the extent to which existing national wildlife legislation has incorporated the normative demands of international and wildlife conventions and protocols to which Kenya is party.
- Make appropriate proposals and recommendations for the national implementation of international and regional wildlife conventions and/or protocols, to which Kenya is a party by way of national legislation.

As part of the fact-finding phase, the following international and regional wildlife conventions and/or protocols which Kenya has ratified/ acceded to and/or which are of priority interest and of sub-regional character, have been identified and obtained for review:

2.1 International Conventions/Protocols

- Convention Relative to the Preservation of Fauna and Flora in their Natural State, London, 1950.
- International Convention for the Protection of Birds, Paris, 1950.

- International Plant Protection Convention, Rome, 1951.
- Convention on Wetlands of International Importance Especially as Waterfowl Habitat, Ramsar, 1971.
- Protocol to Amend the Convention on Wetlands of International Importance Especially as Waterfowl Habitat, Paris, 1982.
- Convention Concerning the Protection of the World Cultural and Natural Heritage, Paris, 1972.
- Convention on International Trade in Endangered Species of Wild Fauna and Flora, Washington D.C, 1973.
- Convention on the Conservation of Migratory Species of Wild Animals, Bonn, 1979.
- United Nations Convention on the Law of the Sea, Montego Bay, 1982.
- Convention on the Protection and Use of Trans-boundary Water Courses and International Lakes, Helsinki, 1992.
- Convention on Biological Diversity, Rio de Janeiro, 1992.
- Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, Paris, 1994.
- UN Convention on the Law of Non-Navigational Uses of International Water Courses (New York, 1997).

2.2 Regional or Sub-regional Conventions/Protocols

- African Convention on the Conservation of Nature and Natural Resources, Algiers, 1968.
- Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region, Nairobi, 1985.
- Protocol Concerning Protected Areas and Wild Fauna and Flora in the Eastern African Region, Nairobi 1985.
- Protocol Concerning Cooperation in Combating Marine Pollution in Cases of Emergency in the Eastern African Region, Nairobi, 1985.
- Convention for the Establishment of the Lake Victoria Fisheries Organization, Kisumu, 1994.
- Lusaka Agreement on Co-operative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora, Lusaka, 1994.

The international and regional conventions and/or protocols listed herein above concern wildlife either directly or indirectly. Some of these conventions and protocols deal with issues of wildlife management as the core concern, while others cover matters that are incidental to, or closely connected with wildlife management. The order in which they have been listed does not signify their ranking in terms of priority interest to Kenya. A Table of Biodiversity-related Treaties relevant to Kenya is included in this Report.

As regards whether or not the existing national wildlife legislation incorporates the normative demands of the international and regional wildlife conventions and/or protocols identified herein above, the following statutes were identified and obtained for review:

- The Lakes and Rivers Act, Chapter 409 of the Laws of Kenya.
- The Kenya Ports Authority Act, Chapter 391 of the Laws of Kenya.
- The Maritime Zones Act, Chapter 371 of the Laws of Kenya.
- The Wildlife (Conservation and Management) Act, Chapter 376 of the Laws of Kenya.
- The Forests Act, Chapter 385 of the Laws of Kenya.

- The Fisheries Act, Chapter 378 of the Laws of Kenya.
- The Plant Protection Act, Chapter 324 of the Laws of Kenya.
- The Seeds and Plant Varieties Act, Chapter 326 of the Laws of Kenya.
- The Draft Environmental Management and Co-ordination Bill, 1998.
- The Antiquities and Monuments Act, Chapter 215 of the Laws of Kenya.
- The Carriage of Goods by Sea Act, Chapter 392 of the Laws of Kenya.

2.3 National Implementation of International and Regional Conventions/Protocols on Wildlife

International legal instruments on wildlife are considered to be part of public international law. Their national implementation is thus, treated as part of the relationship between international law and municipal law. This relationship revolves around the two theories of dualism and monism. Dualists regard both systems of law as distinct and separate. They argue that the two systems regulate different subject - matters. In their view the relationship between states is the primary concern of international law, while the relationship between fellow citizens and between the citizens and their government is the primary concern of municipal law. Dualists further contend that the application of international law by municipal courts would invariably require an act of national adoption by the relevant legislative authority. In terms of dualist theory, international conventions and/or protocols on wildlife would thus, require national legislative adoption in order to apply their provisions at the municipal level.

Monists on the other hand regard both international law and municipal law as part of the same legal system. They are both concerned with certain normative demands. The theoretical dichotomy between monism and dualism is often challenged by the argument that international law and municipal law apply in different spheres and that each is supreme in its own field. Conflicts between the two systems are thus rare; however, when such conflicts do occur, they are settled in accordance with the rules of a particular system applicable to the concerned sphere. For example, a state can neither plead its own internal laws in defence to a claim against it, lodged under international law nor can municipal law be regarded as invalid within

national jurisdiction simply because it is in conflict with some provision of international law.

Even though the obligations imposed by international legal instruments primarily rest on States, individuals are regarded as subjects of international law and thus, amenable to those obligations and international tribunals existing under international law.

In discussing the incorporation of international legal instruments on wildlife into national law, several points need to be considered as outlined below.

(i) Relevance of Customary International Law

The general practice is that customary rules of international law are regarded as rules of municipal law and are not required to be established by formal proof. They are thus, enforced as part of municipal law with the qualification that they are not inconsistent or in conflict with statutory provisions or judicial decisions of final authority. Rules of customary international law are thus, applied as if they are part of the *lex forum*.

Whenever the provisions of international legal instruments on wildlife embody rules of customary international law, their incorporation or application as part of municipal law in Kenya, this would be a matter of judicial notice requiring no formal proof. Such rules of customary international law would be evidenced, for example, by several legal material and literature, judicial decisions, recitals in treaties, over a reasonable period of time, and would generally and consistently be regarded as obligatory by majority of States. There is thus, no need for legislative enactments to incorporate rules of customary international law relative to wildlife management and conservation.

(ii) Relevance of Treaties

In general, the conclusion and ratification of treaties is regulated by municipal constitutional arrangements. In some countries such as Kenya, this is the prerogative of the Executive. Kenya's treaty practice is somewhat inconsistent in approach. For example, certain treaties have been concluded and ratified by the Executive and then incorporated through enabling national legislation; while a majority of treaties to which Kenya is party do not have enabling statutes.

The treaty practice of Kenya is discussed herein below, so as to lay a foundation for the discussion of the national implementation of international legal instruments on wildlife. The treaty practices of the United Kingdom, Uganda

and the United States are discussed for their comparative value purposes.

• **KENYA**

In Kenya, the decision to participate in the negotiations of a treaty, its conclusion and ratification, is the prerogative of the Executive. In the majority of cases, the negotiation, conclusion and ratification of treaties by Kenya is done without the involvement of the national legislature. This is because treaty-making is regarded under the Constitution of Kenya, as a function of Executive authority. Section 23 (1) of the Kenya Constitution provides as follows:

"The Executive authority of the Government of Kenya shall be vested in the President and, subject to this Constitution, may be exercised by him either directly or through officers subordinate to him."

In theory, however, treaty making functions may, on the basis of Parliamentary authority, be exercised by any person or authority other than the President. Section 23 (2) of the Kenya Constitution provides as follows:

"Nothing in this Section shall prevent Parliament from conferring functions on persons or authorities other than the President."

Kenya's treaty - practice may be divided into the following phases:

- (i) **Recommendation to negotiate a treaty:** This is normally done by the line-Ministry or Department concerned. The recommendation would be made to Cabinet for their consideration and approval.
- (ii) **Decision to negotiate a treaty:** In all cases, a Cabinet decision is required to enable Kenyan experts negotiate a treaty.
- (iii) **Negotiation of a treaty:** At the very minimum, a Kenyan team negotiating a treaty will be composed of a representative of the Attorney General and representatives of the line-Ministry or Department concerned. The general practice is that a cross-sectoral team representing key national stake-holders is involved in the actual negotiations of a treaty.
- (iv) **Decision to sign a treaty:** The authority to sign a treaty vests exclusively in the President or persons expressly authorised by him in writing. His authorisation must precede the signing of any treaty

by Kenya. However, the decision that Kenya should sign a treaty is made by Cabinet.

- (v) **Decision to ratify or accede to a treaty:** This is a collective decision of the Cabinet preceded by Cabinet briefs on the relevant treaty.
- (vi) **Treaty implementation:** This is normally done by the Executive.

Parliament is rarely involved in Kenya's treaty-making and implementation process. This is due to the absence of constitutional provisions requiring Parliamentary involvement. The Kenya Constitution, however, vests the legislative power of the Republic in the Parliament of Kenya, which consists of the President and the National Assembly (Section 30). As stated earlier, treaty-making in Kenya is not regarded as an exercise of legislative authority but rather, is seen as a function of Executive authority. This being the case, the treaties to which Kenya is a party (as a result of executive act) do not constitute part of the municipal law and cannot be applied by the local judicial authorities. Section 2 of the Judicature Act, Cap 8 of the Laws of Kenya, sets the laws of Kenya as follows:

- The Constitution;
- Statutes;
- English Common Law, Doctrines of Equity and Statutes of general application in force in England on the 12th August, 1897, and the procedure and practice observed in courts of justice in England at that date (all which apply subject to certain qualifications); and,
- African customary law in respect of civil cases (which apply subject to certain qualifications).

Treaties that are not incorporated by way of enabling legislation are not considered part of municipal law in Kenya, and as such the High Court, Court of Appeal and all subordinate Courts in Kenya cannot exercise their respective jurisdictions in conformity therewith.

The Constitution of Kenya establishes a system of governance based on the doctrines of separation of powers, constitutionalism and the rule of law. It vests the authority to make law on the legislature, and the authority to settle legal disputes in the Judiciary. The Constitution as stated earlier, grants legislative supremacy to the Parliament of Kenya.

The Parliament of Kenya has promulgated enabling legislation in respect of certain treaties. This act of legislative

adoption, however, does not amount to ratification by the Executive. The following are examples of enabling legislation passed by the Parliament of Kenya in respect of certain treaties:

- The Privileges and Immunities Act, Chapter 179 of the Laws of Kenya, which incorporates the provisions of the Vienna Convention on Diplomatic Relations, (1961).
- The Geneva Conventions Act, Chapter 198 of the Laws of Kenya, which gives effect to the provisions of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, (1949); Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (1949); Geneva Convention Relative to the Treatment of Prisoners of War (1949); and the Geneva Convention Relative to the Protection of Civilian Persons in Time of War (1949).
- The Bretton Woods Agreements Act, Chapter 464 of the Laws of Kenya, which provides for the acceptance by Kenya of the Agreement for the International Monetary Fund and the International Bank for Reconstruction and Development.
- The International Development Association Act, Chapter 465 of the Laws of Kenya, which incorporates the International Agreement for the Establishment and Operation of the International Development Association, in particular, the Articles of Agreement.
- The International Finance Corporation Act, Chapter 466 of the Laws of Kenya which provides for the acceptance by Kenya of the International Agreement for the Establishment and Operation of the International Finance Corporation.
- The Investment Disputes Convention Act, Chapter 522 of the Laws of Kenya, which gives legal sanction to the Convention on the Settlement of Investment Disputes Between States and Nationals of other States.

The International Monetary Fund Act, Chapter 467 of the Laws of Kenya, which provides for the acceptance by Kenya of An Amendment to the Articles of Agreement of the International Monetary Fund and Kenya's participation in the Special Drawing Account of the fund.

- The International Monetary Fund (Amendment of Articles) Act, Chapter 468 of the Laws of Kenya, which

provides for the acceptance by Kenya of Amendments to the Articles of Agreement of the International Monetary Fund adopted in 1976.

- The African Development Bank Act, Chapter 492 of the Laws of Kenya, which incorporates the Articles of Agreement Establishing the African Development Bank.
- The East African Development Bank Act, Chapter 493A of the Laws of Kenya, which incorporates the Treaty Amending and Re-enacting the Charter of the East African Development Bank.
- The Shelter Afrique Act, Chapter 493 C of the Laws of Kenya, which incorporates the Convention on the Constituent Charter of Shelter- Afrique.
- The Treaty for East African Co-operation Act, Chapter 4 of the Laws of Kenya (repealed by Act No. 7 of 1987), which gave effect to that Treaty.
- The East African Community Mediation Agreement Act, Chapter 4 of the Laws of Kenya which gives effect to certain provision of the East African Community Mediation Agreement.
- The Copyright Act, Chapter 130 of the Laws of Kenya, which recognises the Universal Copyright Convention.

Certain international legal instruments are treated as applied legislation. These include, for example, the Anglo-Italian Convention on the Session of Jubaland and the Exchange of Notes Constituting an Agreement Between the Government of the United Kingdom and the Government of Ethiopia, Amending the Description of the Kenya - Ethiopia Boundary.

Even though the majority of treaties to which Kenya is a party are not incorporated by way of enabling national legislation, Kenya does respect them and actually adheres to their provisions in practice. Certain legal questions, however, arise when discussing the provisions of such treaties in relation to individual rights, charge on public funds and criminal liability. In the absence of enabling national legislation, it is not possible to implement at the national level those provisions of any treaty affecting the liberty and rights of individuals, or requiring a charge on public funds or imposing criminal liability for certain actions. In Kenya for example, no person may be held criminally responsible for breach of treaty provisions where such provisions have not been incorporated into municipal law by way of enabling national legislation. Section 77 (8)

of the Constitution of Kenya provides as follows:

“No person shall be convicted of a criminal offence unless that offence is defined, and the penalty therefore is prescribed, in a written law.”

For example, provisions of an international legal instrument banning trade in specimen of species of wild fauna and flora, can only be implemented at national level on the basis of written municipal law defining the offence (ban) and prescribing the penalty thereof.

Article 99 (1) of the Constitution of Kenya provides an avenue by which Kenya meets its financial obligations under treaties even in the absence of an enabling national legislation. The Article provides as follows:

“..... all revenues or other moneys raised or received for the purposes of the Government of Kenya shall be paid into and form a consolidated fund from which no moneys shall be withdrawn except as may be authorised by this Constitution or by an Act of Parliament (including an Appropriation Act) or by a vote on account passed by the National Assembly under Section 101.”

Remittance by Kenya under Treaties to which it is a party are charged to the Consolidated Fund as annual estimates of the expenditure of the Government of Kenya. Consequently, where estimates for a particular financial year do not include amounts payable by Kenya under a Treaty, default in meeting its financial obligations under that treaty is automatic.

Where a treaty to which Kenya is a party affects the fundamental rights and freedoms of individual Kenyans, its national implementation must be by way of an enabling legislation. Such legislation, must be consistent with the Constitution of Kenya. In the absence of such an enabling national legislation, the provisions of that treaty cannot be implemented within the municipal province.

Kenya is currently making attempts to provide a statutory basis for the implementation of environmental law treaties to which it is a party. The proposed Environmental Management and Co-ordination Bill, 1998, contains provisions implementing the Biodiversity Convention, the Bamako and Basel Conventions on Hazardous Wastes, Ramsar Convention. It further provides the statutory mechanism by which the proposed Environment Management Authority will implement international legal instruments in the field of environment to which Kenya is a

party. The Wildlife (Conservation and Management) Act, Chapter 376 of the Laws of Kenya has the following provision:

Section 3A: "The functions of the (Kenya Wildlife) Service shall be to:

- (i) administer and co-ordinate international protocols, conventions and treaties regarding wildlife in all its aspects in consultation with the Minister".

• UGANDA

Uganda, like most African states made declarations, at independence, regarding the validity of treaties concluded on its behalf by the former colonial Government. On February 12, 1963, Uganda wrote to the United Nations Secretary General as follows, inter alia:

"In respect of all treaties validly concluded by the United Kingdom on behalf of the Uganda Protectorate, or validly applied or extended by the former to the latter before October 9, 1962, the Government of Uganda will continue on the basis of reciprocity to apply the terms of such treaties from the time of its independence unless such treaties are abrogated, or modified by agreement with other high contracting parties before December 31, 1963. At the expiry of this period, or of any subsequent extension of the period which may be notified in like manner, the Government of Uganda will regard such treaties, unless they must by the application of the rules of customary international law be regarded as otherwise surviving, as having terminated. The declaration extends equally to multilateral treaties".

Majority of African governments made similar declarations at independence and the international legal instruments in the field of environment to which they had been bound by former colonial governments, were equally affected.

The Uganda Constitution of 1995 vests the executive authority to make treaties in the President of Uganda. Article 123 (1) provides as follows:

"The President or a person authorised by the President may make treaties, conventions, agreements, or other arrangements between Uganda and any other country or between Uganda and any international organisation or body, in respect of any matter."

In Uganda therefore, as in Kenya, the decision to negotiate a treaty, the actual negotiation of a treaty, the decision to sign a treaty and the implementation of a treaty are all the prerogative of the Executive. The ratification of a treaty, however, is a process involving Parliament in Uganda unlike in Kenya where only the Executive is involved. Article 123 (2) of the Uganda Constitution provides as follows:

"Parliament shall make laws to govern ratification of treaties, conventions, agreements or other arrangements made under clause (1) of the Article."

The National Environment Statute (1995) and the Uganda Wildlife Statute (1996) of Uganda implement certain treaties in the field of environment .

The power to create an international obligation through the conclusion of a treaty is constitutionally vested in the executive arms of government in Kenya and Uganda. The ability to implement a treaty in Uganda requires the cooperation of Parliament, while this is not always the practice in Kenya. It is therefore, possible in theory, that Uganda may suffer incapacity or inability to perform a treaty obligation in the absence of positive legislative intervention. Such inability would not, however, affect the validity of the legal obligations concerned, since a state cannot adduce against another state, its own constitution with a view to evading obligations incumbent upon it under international law or treaties in force. It may be argued, however, that where it is provided in the treaty itself, a state can justify its failure to perform its obligations under the treaty because of any provisions or omission in its municipal laws, or because of any special features of its governmental organization or its constitutional system. In practice, the idea of subjecting the implementation of international obligation to municipal law requirements is a rare one.

• UNITED STATES

Article II, Section 2 of the Constitution of the United States of America provides that the President:

"Shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur."

Just like in Kenya and Uganda, treaties affecting the rights of individuals, charge on public funds and criminal liability, require legislative intervention for their incorporation into municipal law in the United States. The executive in the United States has the power to make a treaty but not to bind the United States. In order to make any treaty obligatory, the Senate must advise and consent to the

ratification of the treaty. It is only when a treaty is ratified by the President, with the advice and consent of the Senate, that it becomes obligatory on the United States. Similarly in France, a law authorising ratification must be passed before France can be bound by a treaty.

Not all agreements entered into by the United States with foreign states or international organizations, however, are submitted with the advice and consent of the Senate. Some agreements fall in the category of "Executive Agreements", which are considered to include all international agreements other than treaties. Such Executive Agreements are sometimes made under and in conformity with existing statutes or legislative implementation and appropriation, or under specific direction or authorization by the Congress.

Treaties, duly ratified by the President with the advice and consent of the Senate, automatically form part of the municipal law in the United States. Article VI of the Constitution of the United States of America provides as follows:

"This Constitution, and the Laws of the United States which shall be made in pursuance thereof and all Treaties made or which shall be made under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every state shall be bound thereby, any thing in the Constitution or Laws of any state to the contrary notwithstanding."

It may be noted that certain treaties do not, and are not intended to produce municipal effects and as such, legislative intervention may not be necessary for their national implementation.

• UNITED KINGDOM

Treaty-making competence rests with the Crown/Executive. Majority of treaties in the United Kingdom are implemented by way of national legislation. Where a treaty has been concluded and is binding on the United Kingdom under international law, the courts in the United Kingdom will not apply its provisions if it is in conflict with existing national legislation or lacks an enabling legislation, except where the treaty is self-executing.

In the United Kingdom, treaties requiring their (treaties) execution and application, a change in or addition to the law administered by Crown Courts; treaties requiring their application that the Crown shall receive some new powers not already possessed by it; treaties creating a direct or a

contingent financial obligation upon Great Britain; treaties involving secession of British territory; and treaties affecting the rights and obligations of the citizens, including criminal liability, require Parliamentary sanction before they can be applied municipally.

2.4 The National Implementation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) in Kenya

A resolution calling for an international Convention on regulation of export, transit and import of rare or threatened wildlife species or their skins and trophies, was passed in 1963 by the General Assembly of the International Union for Conservation of Nature and Natural Resources (IUCN). Several drafts were prepared between 1964 and 1967. In 1972, the United Nations Stockholm Conference on the Human Environment further under-scored the need for a convention and in 1973, 31 countries signed CITES in Washington D.C. It came into force in 1975.

CITES is principally concerned with the regulation of international trade in the specimens of species listed in the various appendices to the Convention. It has a wide scope of operation. Specimens under CITES are defined to include both the living and dead parts of the species included in the appendices, while the term "species" is used to refer to both the species, sub-species and any geographically separate population size thereof. The term "trade" is used to refer to export, re-export and introduction of specimen from the sea. This wide scope orientation of the Convention has contributed largely to its success in that, it envelopes the various facts of possible trade in wildlife products.

In discussing the efficacy of any international convention, due regard must be given to three basic issues:

- (i) The range, rigour and appropriateness of the substantive provisions of the Convention;
- (ii) The effectiveness of the implementation or enforcement mechanisms adopted by the Convention.
- (iii) The level of acceptance amongst the contracting parties as regards the provisions of the Convention.

As regards the range, rigour and appropriateness of the substantive provisions of CITES, it is worth noting that its scope is wide, as has already been pointed out above. It applies to all aspects of trade. Trade, under the Convention, therefore, is taken to include importation, exportation, re-

exportation and introduction from the sea of specimens of the species included in the appendices.

Appendix-I includes those species which are threatened with extinction due to trade or which may become extinct due to international trade in their specimens. Appendix-I species cannot be commercially traded except in the case of a few exceptions which nonetheless must still be non-commercial. These species enjoy the strictest rules against trade.

Appendix-II includes those species which, though not threatened with extinction, may become so if trade in other specimens is not regulated; and includes species that are alike and whose trade must be regulated in order to protect the primary species.

Appendix-III includes those species not included in the first two appendices, but which are subject to municipal regulation and which a state wishes to seek international assistance necessary for their protection. These species are included in the Appendix by states wishing to enjoy international co-operation in enforcing their domestic legislation.

The categorization of the various Appendices is conducive because it helps create a balance between the needs of conservation and utilization. Different parties have different needs for their wildlife and in putting species in the various appendices, a balance is achieved. It is not possible to delist species from Appendix-I or II or to down-grade any one species from Appendix-I to II, unless there is scientific evidence that the species in question enjoy stable population, is no longer endangered, or can withstand any threats of exportation in the absence of protection. These provisions have strengthened the Convention in that, the need for sustainable utilization of the wildlife species is recognized and enhanced.

The issue of trade is regulated through a permit system. Appendix-I species can only be exported, imported, re-exported or introduced into the sea with a valid CITES permit to be issued only if certain conditions are fulfilled.

An export permit for Appendix-I species will be granted only if:

(a) scientific evidence indicates that the exportation will not be detrimental to the survival of the species. Such finding must be based on the following factors:

- an estimate of the general population of the species concerned;

- an estimate of the quantity of the projected harvest;

- the estimates must be reasonable; and,

- any doubts as to the estimates are to be viewed in favour of conservation rather than exportation of the species concerned.

(b) the export permit will only be granted if the specimen of the species concerned have been obtained legally and not in contravention of any conservation legislation.

(c) if the specimen of the species is alive, the permit for export will be granted only if the specimen will be transported safely without any injury or damage to its health or threat (cruel treatment).

(d) the export permit will only be granted if an import permit has been granted by the country of destination.

Appendix-I species can only be re-exported, with re-export permit to be granted, if :

(a) the specimen of the species were imported into the re-exporting country according to CITES and therefore, legally;

(b) the specimen is alive, it will not be injured, damaged or threatened with cruel treatment during the impending journey; and,

(c) the importing country has issued an export permit.

Appendix-I species can only be imported, with an export permit to be granted only if:

(a) the specimen of the species have been legally acquired;

(b) the specimen is alive, the consignee will provide a suitable home for it at the point of destination; and,

(c) the specimen of species is imported for non-commercial purposes.

The same rules apply to Appendix-II species, with a few exceptions. Firstly, Appendix-II species may be traded for commercial purposes. This is because unlike Appendix-I species, Appendix-II species are not yet threatened with extinction but their protection is necessary and can only be procured through regulated trade in their specimens.

Secondly, Appendix-II species may be exported without an import permit.

In the case of Appendix-I, specimens of the species listed therein can only be introduced from the sea and with a permit to be granted if:

- (a) scientific evidence indicates that the introduction will not be detrimental to the survival of the species concerned;
- (b) the introduction is for non-commercial purposes; and,
- (c) the introduction is legal.

The same rules apply to Appendix-II species.

Another reason for the success of the Convention is that it sets out additional enforcement mechanisms alongside the permit system, namely:

- (i) **Penalties:** The Convention obliges the parties to penalise any acquisition or possession of specimens of Appendix species without valid CITES permits. Any possible contravention of the Convention is therefore, liable to be punishable by law; but this has a few weaknesses since the Convention does not set out any standard of penalties to be followed by the states. Sometimes the penalty imposed is not commensurate with the magnitude of the damage caused by illegal acquisition or possession of specimens.
- (ii) **Confiscation:** Of specimens of species acquired contrary to CITES. Confiscation is mandatory upon the contravention of the Convention in many states, but it also has its weaknesses such due to the difficulty and expense of storing, disposing of and sometimes re-introducing into the wild, the specimens of species confiscated. Sometimes the specimens confiscated are stolen and later sold or simply destroyed.
- (iii) **Ports of Entry or Exit:** The state parties are to create specific ports of entry or exit for wildlife products to be manned by qualified personnel. This is intended to enhance supervision of the movement of the specimens.

All the enforcement mechanisms taken together have helped in the effective enforcement of the Convention.

There are, however, some issues which require

improvement. Firstly, the fact that a CITES permit is not required for transit or transshipment of specimens as long as they remain in customs control, requires strict regulation. Whereas it is not considered to be a genuine import of specimens while they are in a country simply to change means of transport, sometimes unscrupulous traders manage to sell their products while on transit by bribing the customs officials. Secondly, new controls and standards are needed in the case of household or personal effects which can be traded without a permit. There is no limit as to the amount, value or quantity of what personal effects an individual can have or trade in. This needs to be controlled since people often deal in specimens of species listed in the Appendices through these loop-holes, for large-scale commercial purposes.

The other exceptions such as ranching, captive-breeding, artificial propagation, and scientific and exhibition needs, should be encouraged so long as the current requirements of conservation and non-commercial purposes remain in force. The other factor which has contributed to the success of CITES is its administrative system which allows frequent meetings of the contracting parties, and the submission of reports and records by those parties of the implementation process of the Convention, in their various jurisdiction. Frequent and predictable meetings help publicise the aims and objectives of the Convention, and are good fora for sharing experiences and exchange of conservation ideas and techniques.

The Convention requires that if contracting parties are to trade with non-contracting states, those contracting states must produce documentation equivalent to those imposed by CITES. This secures a universal application of the Convention.

Article-XIV of CITES deals with the relationship between the Convention and national legislation and between the Convention and other international conventions. As regards national legislation, the Article provides that contracting parties:

- (a) may adopt stricter domestic measures regarding the conditions of trade, taking possession or transport of specimens of species included in Appendices I, II and III, or the complete prohibition thereof;
- (b) may adopt domestic measures restricting or prohibiting trade, taking possession, or transport of species not included in Appendices I, II or III.

National legislation seeking to implement CITES should contain provisions dealing with the following matters:

(i) The Basic Concepts and Definitions:	-	Species
The key concepts of CITES are as follows:	-	Specimens
• Regulation of international trade in specimens of species of wild fauna and flora, that is, export, re-export and import of live and dead animals and plants and of parts and derivatives thereof.	-	Trade (export, re-export and introduction from the sea)
• The institution and administration of a permit and certificate system where relevant permits and certificates are issued when certain conditions are met, in order to allow the exportation, re-exportation and importation of consignments of specimens into a country.	-	Permit
• The designation of competent national management authorities responsible for issuing of the relevant permits and certificates, subject to advice from a scientific authority designated for that purpose.	-	Certificate
• The listing of conditioned exemptions such as those concerning transit and transshipment of specimens, specimens acquired before the Convention became applicable to them, specimens for personal use or household effects, captive bred specimens and artificially propagated plants, specimens collected by scientists and bred in captivity (in scientific institutions), and specimens for travelling exhibitions.	-	Management authority
	-	Scientific authority
	-	Artificial propagation
	-	Bred in captivity
	-	Commercial purposes
	-	Controlled environment
	-	Country of origin
	-	Cropping
	-	Date of acquisition
	-	Derivative
The national legislation should also contain the following criteria for purposes of classifying the various species:	-	Parts and derivatives
- Species that are threatened with extinction and for which trade must be subject to either prohibition or strict regulation and only authorized in exceptional circumstances.	-	Party
- Species that are not now or presently threatened with extinction but which may become so unless trade is strictly regulated, or species that look alike and which are controlled because of their similarity in appearance to other regulated species, thereby facilitating a more effective control;	-	Personal/Household effects
- Species that are subject to national regulation within the jurisdiction of a contracting party and for which the cooperation of other parties is needed in order to prevent or restrict their exploitation.	-	Pre-Convention specimen
	-	Primarily commercial purposes
	-	Ranching
	-	Readily recognizable
	-	Tourist souvenir specimen
In developing the national legislation implementing CITES, the following terms, as used in the Convention, should be defined and included in the legislation:	-	Extinction
	-	Threatened with extinction
	-	National regulation
	-	Look-alike species

- Convention
- Mark
- Non-party
- Confiscation
- Detrimental trade
- Equivalent documentation
- Exhibition
- Scientific purposes
- Genetic material
- Illegal trade
- Ports of entry and exit
- Possession of illegal specimens.

The national legislation implementing CITES should contain provision for the following penal sanctions:

- (a) confiscation of illegal specimens;
- (b) obligation to reimburse expenses incurred as result of confiscation of specimen traded in violation of the convention;
- (c) imprisonment;
- (d) confiscation of items used in facilitating the illegal acquisition and trade in the specimen concerned;
- (e) confiscation of the proceeds of illegal acquisition and trade in specimens.

All the suggested legislative enactments should be incorporated into the Wildlife (Conservation and Management) Act, Chapter 376 of the Laws of Kenya, or in regulations issued thereunder as may be appropriate.

2.5 The National Implementation of the Lusaka Agreement on Co-operation Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora

The Lusaka Agreement on Co-operative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora

(the Lusaka Agreement), was inspired by the recognition “...that international illegal trade in Africa’s wild fauna and flora is continuing despite existing national legislation and relevant international legal instruments”. Its objective is “...to reduce and ultimately eliminate illegal trade in wild fauna and flora” through adequate co-operative enforcement operations. For this purpose, the Lusaka Agreement establishes a permanent Task Force for Co-operative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora (“The Task Force”).

The Task Force is to, *inter alia*, facilitate co-operative activities among national institutions concerned with carrying out investigations of violations of national laws pertaining to illegal trade, and to collect, process and disseminate evidence or information as the case may be, relating to conducting investigations or to illegal trade in general. The Lusaka Agreement unlike CITES, is solely concerned with illegal trade. CITES on the other hand deals mainly with the facilitation of legal trade. The Lusaka Agreement does not have an appendix system by which trade is defined as illegal or legal as is the case with CITES. It leaves the issue of legality of trade exclusively to national laws. The Task Force is a body of wildlife law enforcement officers (with national law enforcement authority) who are then empowered to conduct cross-border investigations under-cover or otherwise. The Lusaka Agreement thus, confers upon the officers of the Task Force supra-national law enforcement authority.

There are several provisions of the Lusaka Agreement which require national legislation for their implementation. These issues include the following:

(i) Legislative and administrative enactments necessary for the establishment of a national bureau:

Article 6 of the Lusaka Agreement provides *inter alia* as follows:

“To facilitate the implementation of this Agreement each party shall:

- a. designate or establish a governmental entity as its National Bureau”.

Contracting parties who have established wildlife law enforcement bodies may designate such bodies as their national bureaux for the purposes of the Lusaka Agreement. The other contracting parties that do not have such wildlife law enforcement bodies are obliged to establish competent national bodies as their national bureaux for the purposes of implementing the Lusaka Agreement.

The national bureaux constitute the nerve center for co-operative operations. They are intended "...to provide to and receive from the Task Force information on illegal trade" and "...co-ordinate with the Task Force investigations that involve illegal trade". The national legislation establishing a national bureau must therefore, contain provisions granting it investigative competence and the ability to interact with external agencies.

(ii) Legislative and administrative enactments necessary for the granting of essential privileges and immunities to the officers of the Task Force;

Article 5 (11) of the Lusaka Agreement provides *inter alia*, that:

In discharging its functions, "... the Director, other Field Officers and the Intelligence Officer of the Task Force shall enjoy, in connection with their official duties and strictly within the limits of their official capacities, the following privileges and immunities:

- (a) Immunity from arrest, detention, search and seizure and legal process of any kind in respect of words spoken or written and all acts performed by them; they shall continue to be so immune after the completion of their functions as officials of the Task Force.
- (b) Inviolability of all official papers, documents and equipment.
- (c) Exemption from all visa requirements and entry restrictions.
- (d) Protection of free communication to and from the headquarters of the Task Force.
- (e) Exemption from currency or exchange restrictions as is accorded representatives of foreign governments on temporary official missions."

Granting of such privileges and immunities require legislative and administrative enactments. In the case of Kenya, they will be covered under the Headquarters Agreement between the Republic of Kenya and the Task Force for the location of the seat of the Task Force in Nairobi (a draft is attached hereto). The Headquarters Agreement will be negotiated on the basis of Article 9 of the Lusaka Agreement. In Kenya, the statutory basis for the Headquarters Agreement will be the Privileges and Immunities Act, Chapter 179 of the Laws of Kenya. In addition, an administrative order will be issued under the

said Act (Section 9 thereof) so as to give a statutory basis for the privileges and immunities (a draft Order is attached hereto) granted.

The Headquarters Agreement shall in addition to granting of the stipulated privileges and immunities recognise;

- (a) the international legal personality of the Task Force and confirm its legal capacity to discharge its functions within the territory of Kenya.
- (b) the right of the Task Force to carry out under-cover operations whenever this is necessary and appropriate;
- (c) the dispute resolution mechanisms stipulated under Article 10 of the Lusaka Agreement;
- (d) the functions of the Task Force as stipulated under Article 5 (9) of the Lusaka Agreement.

(iii) Legislative and administrative enactments defining the following terms:

- Agreement area.
- Biological Diversity.
- Conservation.
- Country of original export.
- Country of re-export.
- Field Officer.
- Illegal trade.
- Specimen.
- Wild fauna and flora.

- (iv) Legislative and administrative enactments permitting the return to the country of original export or country of re-export any specimen of species of wild fauna and flora confiscated in the course of illegal trade. (draft Regulations are attached hereto)

Kenya's implementation of the Lusaka Agreement is fairly straight forward. The following points may be noted:

- (a) The Wildlife (Conservation and Management) (Amendment) Act, Act No. 16 of 1989, establishes

the Kenya Wildlife Service (KWS). Section 3 of the Act provides as follows:

“There is hereby established a uniformed and disciplined service to be known as the Kenya Wildlife Service.

The Kenya Wildlife Service shall be a body corporate with perpetual succession and a common seal and shall have power to sue and be sued in its corporate name, to acquire hold and dispose of movable and immovable property for the purposes of the Service and this Act.”

(b) The functions of KWS, as stipulated in the Act includes:

Section 3 A 1(a), (f), and (j):

“Formulate policies regarding the conservation, management and utilization of all types of fauna (not being domestic animals) and flora;

Sustain wildlife to meet conservation and management goals;

Administer and co-ordinate international protocols, conventions and treaties regarding wildlife in all its aspects.”

(c) KWS enjoys, by virtue of its constituent statute, investigative competence as well as the ability to interact with external agencies. Kenya has already designated KWS as its National Bureau for purposes of the Lusaka Agreement. As regards the essential privileges and immunities, a Headquarters Agreement, as indicated above, would suffice. A statutory framework for granting such privileges and immunities already exist under the Privileges and Immunities Act aforesaid. No new legislation is thus, essential.

(d) Section 2 (the interpretation section) of the Wildlife (Conservation and Management) Act, may be amended by introducing new definitions of those terms listed in (3) above. These terms have been used in the Lusaka Agreement and their national application require legislative intervention.

(e) The issue of returning to the country of original export or country of re-export any specimen of species of wild fauna and flora confiscated in the course of illegal trade, may be addressed through subsidiary legislation under the Wildlife (Conservation and Management) Act. Section 67 of the Act provides as follows:

“The Minister may make regulations for the better carrying into effect of the provisions of this Act...”

Such regulations may be titled as: “The Wildlife (Conservation and Management) (Return or Forfeiture of Specimens) Regulations”.

A draft of such regulations is annexed hereto.

2.6 The National Implementation of the African Convention on the Conservation of Nature and Natural Resources

In Africa, the fundamental social, cultural, ethical and economic values of environmental resources have been recognised in the various facets of human life. Thus, African religious practices, art and literature are all a collective expression of human relationship with the natural environment. Civilization has therefore, been deeply rooted in nature and this has shaped human culture and influenced all artistic and scientific achievements across the continent.

Environmental management in Africa falls within three distinct historical epochs: the pre-colonial period, the colonial period, and post-colonial period. Before the incursion of European settlers into Africa, environmental management and the conservation of nature and natural resources was largely regulated by cultural practices. Species of plants essential for medical and religious purposes could not be destroyed except under special circumstances. Even though wild animals were hunted, this was largely for subsistence purposes with a few exceptions such as the use of specimens of certain wild animals species as part of royal regalia amongst kingdoms and community states. The socio-economic formation of many parts of Africa made the conservation of biological resources an imperative endeavour, for example, the main pre-colonial activities such as crop and cattle farming required a symbiotic relationship with the environment.

Juristic regulatory control of human co-existence with wildlife in Africa commenced with the advent of colonialism and the subsequent or attendant disruptive harvesting practices of the white settler communities. Driven by the ambitions of imperialism, the European settlers saw Africa as a source of not only minerals, but also of flora and fauna Europe could not give or harness, either because of its climatic conditions or as a result of complete degradation. The commercialization of wildlife resources provided the impetus for game hunting along-side the scientific needs for biological resources as raw materials for research. With

Africa effectively partitioned in 1885, at the Berlin Conference, between the various European powers of the time, a system of written laws was introduced in various parts of Africa to control human activities vis-à-vis the environment. The entire spectrum has been explained by one eminent African scholar as follows:

“From Article 35 of the General Act of the Berlin Conference of 1885, it is clear that the colonial powers regarded judicial capacity as a crucial factor in the establishment of imperial authority. It is thus not surprising that Britain's first signal of organised administration, the East African Order in Council 1897, was concerned first and foremost with the establishment of jurisdiction, laws and judicial organisation (namely, the juridical framework for the principles of Eminent Domain and Police Power)”¹

The traditional African practices designed to afford protection of the natural environment were thus, effectively replaced by a new topology of environmental legislation both internal and supra-national. It is against this background that this work seeks to analyse the effectiveness of the African Convention on the Conservation of Nature and Natural Resources of 1968 (herein referred to as the Algiers Convention).

2.6.1 Aims and Objectives of the Algiers Convention

Prior to the Algiers Convention, two international instruments existed for the purposes of conserving African wildlife. The first international instrument intended to facilitate the conservation of African flora and fauna was signed in London in 1900, which was an agreement between France, Germany, Britain, Italy, Portugal and Spain, the then colonial powers governing much of Africa. The preamble to the 1900 Convention stated its objective as the desire

“...to prevent the uncontrolled massacre and to ensure the conservation of diverse wild animal species in Africa which are useful to man or inoffensive.”²

The 1900 Convention titled “The Convention for the Preservation of Wild Animals, Birds and Fish in Africa”, had a narrow approach to the notion of conservation and substantially restrictive interpretation of the entire life-

support system and the interdependent mechanisms of the African ecosystem. The main underlying driving force was the need for a concerted effort to regulate and maintain the viability of commercial exploitation of the African wild flora and fauna. This need has been expressed in the following words by Lyster:

*“As long ago as 1900 the teeming herds of African wild animals were starting to diminish, and the primary goal of the Convention was to preserve a good supply of game for trophy hunters, ivory traders and skin dealers.”*³

Whereas the 1900 Convention afforded protection of species on the basis of their usefulness, rarity, danger of disappearance or simply their age, it was largely a product of economic necessity and did not encompass other wider objectives of conservation such as aesthetic and recreational considerations. Due to this narrow approach, the Convention required the destruction of certain species considered unworthy of protection mainly because of the difficulties experienced by hunters. But the most important conservation technique of all times received recognition under this Convention. It was the first treaty to encourage the establishment of nature reserves and prohibit human activities injurious to the existence of species within the reserves.⁴

The 1900 Convention was replaced by the 1933 Convention Relative to the Preservation of Fauna and Flora in their Natural State, signed in London, which was also a multi-lateral instrument between African colonial governments, and Belgium, Egypt, France, Britain, Italy, Portugal, South Africa and Sudan. The principle objective of the 1933 Convention was to preserve supplies of species which were economically valuable or popular with trophy hunters. It had, however, two basic strong points. Firstly, the 1933 Convention emphasized the need to create protected areas such as national parks and strict nature reserves for purposes of conservation; and, secondly, the Convention dispensed with the narrower perception of a dichotomy between useful species worthy of protection and ‘offensive’ species unworthy of protection.

The 1900 and the 1933 Conventions therefore, replaced the unwritten, though effective, traditional conservation techniques with a new regime of ensembled norms, statutes treaties and administrative regulations intended to promote the rational use of natural resources.

¹ J.O. Ojwang: *Constitutional Development in Kenya*, Acts Press, Nairobi, Kenya 1990, pg. 32.

² Preamble to the 1900 Convention, quoted in Lyster S, : *International Wildlife Law*, Groutius 1985, at pg. 112.

³ Lyster, *Ibid at*; pg. 112.

⁴ *Ibid at* pg. 113.

In 1968, the Organisation of African Unity's recommendation for greater conservation strategies within the newly independent African states led to the signing of Algiers Convention which supersede the 1933 Convention. The Algiers Convention has the following objectives:

- (i) Conservation, utilization and development of soil, water, flora and fauna resources in accordance with scientific principles.⁵
- (ii) Protection of animal and plant species that are threatened with extinction, or which may become so, and the habitat necessary for their survival.⁶
- (iii) Creation of conservation areas such as strict nature reserves, national parks, special reserves, game reserves, botanical gardens, sanctuaries, etc., necessary for the protection of species.⁷
- (iv) Conservation of both land-based and aquatic habitats situated inside or outside conservation areas.⁸
- (v) Integration of conservation aspects/measures into the development plans and processes of the various contracting states.⁹
- (vi) Regulation of trade in and transport of species and trophies.¹⁰
- (vii) Encouragement and promotion of research in conservation, utilization and management of natural resources.¹¹
- (viii) Popularization of environmental education.¹²
- (ix) The encouragement of inter-state co-operation on matters of conservation.

The above objectives form the *corpus* of the entire spectrum of duties the contracting states under-take to perform. They further explain the implementation process of the Convention. The notable feature of the Convention is that, it specifically views the use of law as an effective tool for environmental management positively. The Convention

expressly provides for legislation, decrees, regulations and administrative instructions necessary to ensure its implementation. The implementation of the Convention is therefore, by way of statutory regulation, and in determining the effectiveness of the Convention, due regard must be given to the municipal laws of the contracting states. The basic questions then are:

- To what extent has Kenya implemented the provisions of the Convention by way of legislative enactments? Alternatively, how far have the aims and objectives of the Algiers Convention been embodied in the municipal laws of Kenya?
- Has the absence of a definite and empowered body to police the implementation or enforcement of the Convention reduced its efficacy? Alternatively, is the Convention efficacious without an administrative structure to oversee its enforcement and/or implementation?

The reason for lack of an established administrative structure to police the enforcement of the Convention lies in a general post-colonial antipathy towards foreign or simply outside interference in what may have been perceived as the internal affairs of a state. The issue at stake was therefore, the sovereignty of the newly independent contracting states. The notion of national sovereignty has often been used to limit the binding nature of international environmental duties as well as to avoid certain obligations arising therefrom. It is imperative therefore, that this work examines, albeit briefly, the notion of national sovereignty and its place within the international framework for environmental conservation.

Two African scholars have explained the relevance of the notion of national sovereignty in the following words:

"The relevance of the notion of national sovereignty has in recent years come under scrutiny, especially in relation to the globalization of economic activities, internationalization of ecological problems and trans-boundary flow of information the

⁵ Article II.

⁶ Article VIII (1).

⁷ Article X.

⁸ Article VI and VII.

⁹ Article V(1), VI(1), VII(1), XIV, etc.

¹⁰ Article IX.

¹¹ Article XII.

¹² Article XIII.

*notion takes prominence, especially in international negotiations on environmental matters, advances in technology and concerns over access to natural resources, have helped to keep the traditional aspects of the notion alive”.*¹³

We analyse the relevance of the notion of national sovereignty in ecological matters against the background of international concern for human environment. At the United Nations Conference on the Human Environment in 1972, at Stockholm, the developing countries were conscious not to compromise their long-term industrialization objectives by submitting to a strict international environmental law regime more suited to developed countries, the latter having caused the larger portion of current global environmental problems. As a compromise, Article 21 of the Stockholm Declaration embodied the notion of state sovereignty and provided as follows:

“States have the sovereign right to exploit their own resources pursuant to their own environmental policies”

Even though the Algiers Convention came into existence some four years before the Stockholm Declaration, its silence on the issue of an administrative structure to police its implementation is grounded, largely on the spirit of Article 21 of the Stockholm Declaration. Moreover, the notion of national sovereignty has also been seen as a necessary measure of self preservation. Nations or states like human beings, claim a right to preserve themselves. It may be relevant to consider whether the emphasis on national sovereignty will prove an impediment in this regard.¹⁴

It is also worth noting that the silence of the Algiers Convention on an administrative body could have been the result of practical financial considerations. The costs of maintaining such a secretariat could have simply been prohibitive to the intentions of the contracting states. Lyster has rightly observed that most African governments have insufficient funds and technical expertise to enforce the obligations required of them by the Convention.¹⁵ Moreover, the Organization of African Unity (OAU) simply

does not have the requisite financial resources to oversee the implementation of the Convention on a permanent basis.¹⁶

If the lack of a secretariat was largely due to the post-colonial antipathy towards what could be perceived as a breach of the notion of state sovereignty, then it is submitted herein that this was rather a narrow perception of the notion of sovereignty in a world that has increasingly become inter-dependent. The whole idea was probably that the Convention would be left to the conventional doctrine of “*pacta sunt servanda*”. Undoubtedly the existence of a secretariat with regard to any international (multilateral) convention, carries with it certain advantages. The secretariat will act as a central pool in various ways. It will facilitate the flow of information between the parties concerned and where possible and necessary, undertake comparative studies. A secretariat generally gives a common direction to be pursued by the parties in implementing the conventions concerned. Practice has also shown when that secretariats hold periodic meetings it helps publicize the content and spirit of the relevant treaties. Moreover well funded secretariats often attract some of the finest experts and researchers in the fields concerned. These benefits are therefore, missing in the case of the Algiers Convention; but whether the lack of a secretariat has compromised the efficacy of the Algiers Convention is to be revealed by the subsequent discussion of the national implementation of the obligations under the treaty.

2.6.2 National Implementation of the Convention

In order to meaningfully appreciate the implementation of the Algiers Convention, one point must be understood from the very beginning. The Convention requires implementation by way of legislation. It sees the system of binding legal norms as the essential mechanism of implementation. Therefore, it imperative that we the role of law in environmental management is discussed briefly.¹⁷

Law is concerned with the rules that govern the behaviour of the ordinary citizens. Law has been seen as a body of legal rules binding human beings collectively or singly. In other words it is the action of individuals, whether such action is joint or several, which is at the root of all law.¹⁸

¹³ Article XVI.

¹⁴ Article XI and XVI (2).

¹⁵ Juma and J.B. Ojwang, *Ecopolicy 2: Transfer and Sustainable Development* (International Policy Issues); Acts Press, Nairobi, Kenya, 1992 at pg. 2

¹⁶ Odera Oruka H. (1986): *The Philosophy of Foreign Aid*. Nairobi, Kenya Economic Association at pg. 2 quoted in C. Juma *et al*, *Ibid.*, at pg. 4-5

¹⁷ Lyster, *Supra*; at pg. 127-128.

¹⁸ The Organisation of African Unity was instrumental in the creation of the Convention and has elaborate duties towards its implementation. See the Preamble to the Convention and Article XVI to XXV, all inclusive, of the Convention which outline the role of the Organisation within the realm of the Convention.

In its widest sense the term "law" includes any rule of action; that is to say, any standard or pattern to which actions are or ought to conform to it.¹⁹ Law has an imperative character in that, it has always been an important element in the management of natural resources. It has served two basic purposes, in that, one hand, ecological laws have been "use-oriented," that is, concerned with resource allocation and exploitation; and on the other hand, they have been "resource-oriented," that is, concerned with the rational management and conservation of natural resources.²⁰ It is human action that is harmful to the environment and as such an attempt towards the achievement of environmental management should be directed to the source of environmental degradation (essentially human activity).

A majority of African states have passed legislative enactments for environmental management of species and their habitats in accordance with the Algiers Convention. A few examples would suffice. In Western Africa, Ghana has passed the Wild Animal Preservation Act²¹ in pursuance of several legislative instruments giving effect to the Algiers Convention and have been adopted.²² Sierra Leone has passed the Wildlife Conservation Act 26 of 1972. Indeed this Act is specifically intended to implement the Algiers Convention within Sierra Leone. In East Africa, Tanzania has passed The Wildlife Conservation Act of 1974²³, while Kenya has also passed The Wildlife (Conservation and Management) Act.²⁴ Similar legislation have been passed in Zambia and Zimbabwe in the Central and Southern regions of Africa, respectively.

The minimum content of these African legislation may be summarised in two-fold as shown below.

- (i) To empower competent executive authorities to establish conservation areas such as strict nature reserves, national parks, special reserves, game

reserves, botanical gardens and sanctuaries, necessary for the protection of species. Several such conservation areas have been established within the various African countries as required by Articles VIII and X of the Algiers Convention.²⁵ In Ethiopia, there are the Awash National Park and the Nachisar and Harrar Game Reserves. Awash National Park lies 120 miles east of Addis Ababa and is home to mammals and birds such as Oryx, Zebra, Kudu, Reedbuck, Kori bustard, Abyssinian roller, Ostrich and Carmure bee-eater. Lake Awassa and Lake Abiata in the Awash National Park are famous for water birds, including an important colony of white pelican. The other two Game Reserves are home to crocodiles, hippopotamus and fish-eating eagles.

Lake Nakuru in Kenya is a bird sanctuary and was recently declared a Ramsar Site.²⁶ It is a habitat to large flock of lesser and greater flamingos and boasts of an impressive list of other water-birds, including Cap pigeon, Crowned plover and three-banded plover. Mammals like Reed-buck and Water-buck also depend on the swampy margins of the lake for their grazing and other food requirements. There is the Masai Mara Game Reserve which boasts of savanna vegetation and extensive *acacia* forest and is home to large herds of Topi and Roan antelope and over fifty species of birds of prey. This Kenyan Game Reserve has abundant different types of species of animals including Wildebeests, Elephants, Lions, Giraffes, to mention but a few. It is only rivalled by the Tsavo National Park which is Kenya's largest park covering about 22,015 sq. km (8,500 square miles) of savanna and grassland.

The Serengeti National Park in Tanzania forms an important habitat for the large herds of mammals that migrate annually across the boundaries of Kenya,

¹⁹ The term "Environmental Management" has been thus, defined: "The control or management of the environment essentially means measures taken to balance the natural resources. The measures may be of two kinds: one aspect may be to ensure balanced utilisation so as to prevent over exploitation, or to restore those that have been utilised to strenuous levels. The other aspect may be measures taken to prevent (the) introduction of any substances or energy which might immediately or in the long run, cause deleterious consequences to the natural resources. This second aspect is known as pollution control". C.O. Okidi, *Management of Natural Resources and the Environment for Self-Reliance*. (1984) 14 Journal of Eastern African Research and Development, 92 at 93.

²⁰ Starke, J.G.: *Introduction to International Law*. 10th Edition, Butterworths, pg. 74.

²¹ Williams, Glanville: *Salmond on Jurisprudence*. 11th Edition, London pg. 20.

²² Ogolla, B.D.: *Environmental Management Policy and Law*. Vol 22 No. 3; June, 1992 105 Press, pg. 166; see also UNEP (1990): *Legal and Institutional Arrangements for Environmental Protection and Sustainable Development in Developing Countries*. UNEP, Nairobi, pg. 1.

²³ Environmental Impact Assessment "means an examination analysis and assessment of planned activities with a view to ensuring environmentally sound and sustainable development". UNEP: *Environmental Impact Assessment, (Decision 14/25 of the Governing Council of UNEP, of 17th June, 1987)* pg. 1. See also UNEP, *New Directions in Environmental Legislation and Administration Particularly in Developing Countries*, UNEP, Nairobi 1989, pg. 14.

²⁴ Chapter 43 of 1961.

²⁵ For example, The Wildlife Reserves Regulations of 1971, Legislative Instrument 710; see Lyster, Op cit pp. 124 - 127.

²⁶ Act 27 of 1972.

Tanzania and Uganda. This vast grassland steppe is home to Wildebeests, Zebras, Gazelles, Lions, Leopards, Cheetahs and Hyenas, and a variety of unusual birds such as Schalow's Turaco, Wattled plover and Red-throated tit. In Zambia, Kafue National Park, which is the country's largest park consists of upland plateau with alternating *acacia* woodland and grassland. It is famous for the large number of Antelope species including Orbit, Kudu, Impala, Eland and Sitatunga. Black rhinoceros is another characteristic animal of the area. On the southern shores of Lake Tanganyika on the Zambian side, there is the Sumbu Game Reserve. This reserve covers several different habitats from the delta-like margins of the lake up to stony hill-sides.

- (ii) To regulate human activity within the conservation areas, these statutes defined which activities are outlawed within the conservation areas. They further provide the mechanism by which relevant executive authorities may permit the performance of certain activities within the conservation areas.

To explain this second function further, below is a further examination of the Wildlife (Conservation and Management) Act of Kenya. This is an Act of Parliament intended to consolidate and amend the law relating to the protection, conservation and management of wildlife in Kenya. Under Sections 6(I) and 18(I) of the Act, the Minister for the time being responsible for Wildlife, may declare any area of land to be a National Park or a National Reserve, respectively. He may also declare any area of land to be a sanctuary by virtue of Section 19(I) of the Act.

The Minister has powers to prohibit certain activities within the National Parks, National Reserves and Sanctuaries where such activities would be detrimental to the species and their habitat in that area. Section 15(I) of the Act provides as follows:

*"Where the Minister, is satisfied that it is necessary, for ensuring the security of the animal or vegetable life in a National Park or in a National Reserve or in a local sanctuary or for preserving the habitat and ecology thereof, may prohibit, restrict or regulate any particular acts in any area adjacent to the Park, Reserve or sanctuary..."*²⁷

Moreover, the general offences that may be committed in the National Parks under Sections 13(2) (3) of the Act

includes: the setting of fire to the habitat; the introduction of any alien animal or vegetation into the parks ²⁸ or reserves; and, stampeding of any animals in the Parks or Reserves.

On a general note, majority of the African statutes prohibit the cutting or removal of wild species within the conservation areas, outlaws growing of domesticated species within those areas, and also prohibit the disturbance of the flora and fauna situated therein. Activities such as fishing or hunting are outlawed except with written permission from responsible state organs. No human settlements and no agricultural activities are permitted within these areas. In the absence of express authority to the contrary, carrying out such prohibited activities, is an offence.

2.7 The National Implementation of the Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region (Nairobi, 1985)

The main objective of this Convention is to protect and manage the marine environment and coastal areas of the Eastern African region. The Convention is not yet in force. Kenya has acceded to the Convention. The key obligations of the Parties to the Convention are as follows:

- To take all appropriate measures to prevent, reduce and combat pollution of the Convention area (Article 4) particularly pollution from ships (Article 5), dumping (Article 6) land based sources (Article 7), exploration of the sea bed (Article 8), and air-borne pollution (Article 9).
- Protect and preserve rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species and other marine life in specially protected areas (Article 10).
- Co-operate in dealing with pollution emergencies in the Convention area (Article 11).
- Take all appropriate measures to prevent, reduce and combat environment damage in the Convention area resulting from dredging, land reclamation and other engineering activities (Article 12).
- Develop guidelines for the planning of major development projects in the Convention area, assess

²⁷ Act 12 of 1974.

²⁸ (Chapter 376 of the Laws of Kenya) as amended by Act 16 of 1989.

the environmental effects of development projects likely to cause significant adverse changes in the Convention area, and develop procedures for dissemination of information and consultation among the parties in such assessments (Article 13).

- Co-operate in scientific research and monitoring in the Convention area and exchange of data collected (Article 14).
- Co-operate in the development of rules and procedures to govern liability and compensation for damage caused by pollution in the Convention area (Article 15).

Kenya's Maritime Zones Act (Cap 371 of the Laws of Kenya) and the draft Environmental Management and Co-ordination Bill, 1998 incorporate the normative provisions of the 1985 Convention without making direct reference to the Convention. Section 4 of the Maritime Zones Act defines Kenya's continental shelf as synonymous with the two hundred nautical miles exclusive economic zone. The exclusive economic zones of the various parties to the Convention constitute the Convention area.

The draft Environmental Management and Co-ordination Bill, 1998, contains provisions implementing the normative demands of the 1985 Convention in respect of the protection of Kenya's coastal Zone.

The draft Bill provides for:

- (i) the protection of environmentally sensitive areas along the coastal area by promoting and preserving the ecology and natural environmental systems of the area (Article 10 of the Convention);
- (ii) the preparation and implementation of an integrated coastal zones management plan covering:
 - (a) an inventory of all structures, roads excavation, harbours out-falls, dumping-sites and other works located in the coastal zone (Article 12 of the Convention);
 - (b) an inventory of the state of the coral reefs, mangroves and marshes found within the coastal zone;
 - (c) an inventory of all areas within the coastal zone of scenic value or of value for recreational purposes;
 - (d) an inventory of areas within the coastal zone of special value for research such as fisheries and other marine

life (Article 14 of the Convention);

- (e) an estimate of the quantities of sand, coral sea-shells and other substances being removed from the coastal zone and the resultant erosion;
- (f) and estimate of the impact of erosion on the coastal zone;
- (g) an estimate of fresh water resources available in the coastal zone; and,
- (h) an estimate of the extent, nature, cause and source of coastal pollution and degradation (Articles 4, 5, 6, 7, 8, 9 and 11 of the Convention).

The draft Environmental Management and Co-ordination Bill further makes environmental impact assessment, environmental audit, environmental monitoring, and environmental restoration orders and easements statutorily mandatory in certain circumstances. These provisions are designed to achieve objectives similar to those contained in Article 13 of the 1985 Convention.

In Kenya, marine pollution is not a rare occurrence. Significant pollution is the result of shipping activities and land based activities. The Kenya Ports Authority Act (Cap 391) which establishes the Kenya Ports Authority (KPA), empowers the Authority to deal with pollution along the coastal zone resulting from maritime activities. KPA is unable to deal effectively with pollution disasters along the coast and as a result, a voluntary group known as the National Oil Spill Response Committee (NOSRC) has evolved.

NOSRC is a voluntary body involving the following entities: Esso Kenya Ltd; Agip Kenya Ltd; Caltex Oil Kenya Ltd; Kobil/Kenol Kenya Ltd; Total Oil Kenya Ltd; Kenya Petroleum Refineries Ltd; Kenya Pipeline Company Ltd; National Oil Corporation of Kenya Ltd; East African Storage Company Ltd; Kenya Ports Authority; Mobil Africa Ltd; Shell Developments; Kenya Navy; Kenya Wildlife Services; and Wananchi Marine.

The chief concern of NOSRC is to coordinate all available resources to combat and control oil pollution along the territorial waters of Kenya, a geographical area stretching about 100 nautical miles into the Indian Ocean. NOSRC should be turned into a statutory body by way of enabling legislation. Amongst its functions should be the implementation of pollution conventions, treaties or agreements.

2.8 The National Implementation of the Protocol Concerning Co-operation in Combating Marine Pollution in Cases of Emergency in the Eastern African Region

The principal objective of the Protocol is to provide a framework for co-ordinated response major spillages of oil and other harmful substances in the Convention area.

The key obligations of the contracting Parties under the Protocol are:

- to co-operate in under-taking all necessary measures for the prevention and remedy of marine pollution incidents, including development of legislation and contingency plans, and exchange of relevant information (Articles 3 and 4 of the Protocol);
- to establish procedures for the rapid reporting of marine pollution incidents (Article 6); and,
- to provide assistance to each other (among contracting Parties) in the event of marine pollution incidents including assessment, notification, consultation; and remedy of the incident (Article 7); and such measures to be under-taken through sub-regional agreements as appropriate (Article 8).

Kenya has ratified this Protocol. In discussing the implementation of the Protocol, due regard should be given to the discussion on the implementation of the 1985 Convention. The draft Environmental Management and Co-ordination Bill makes it an offence to pollute the sea or an environmental segment thereof. It further provides that in addition to any custodial sentence, or otherwise, that a court may impose upon a polluter: the court may further direct that the polluter: (i) pays the full costs of cleaning up the polluted environment and of removing the pollution; (ii) cleans the polluted environment and removes the effects of pollution; or, (iii) pays adequate compensation, restoration or restitution to the victims of his pollution.

2.9 The National Implementation of the Protocol Concerning Protected Areas and Wild Fauna and Flora in the Eastern African Region

Membership to this Protocol is open to contracting Parties to the 1985 Convention. The key objective is to provide for the protection of threatened and endangered species of flora and fauna, and important natural habitats, in the Eastern African Region. To this end the parties agree to:

- take all appropriate measures to protect the endangered species of flora and fauna listed in Annexes 1 and III to the Protocol against capture, killing, destruction of their habitat, possession and sale (Articles 3 and 4);
- regulate the harvest and sale of threatened or depleted fauna species, listed in Annex-III, and protect critical habitats of breeding stocks of such species, listed in Annex-IV (Article 6);
- take measures to prevent the introduction of potentially harmful alien species (Article 7);
- as necessary, establish protected areas to safe-guard important ecosystems, including particularly those ecosystems that provide habitat for species of fauna and flora that are endangered, endemic, migratory or economically important; taking into account the traditional activities of local populations (Articles 8 and 11);
- co-operate in the development of guidelines for selection and management of protected areas (Articles 9 and 10), and co-ordinate the establishment of protected areas to ensure adequate protection of frontier areas and creation of a representative network of protected areas in the region (Articles 13 and 16);
- take measures to ensure that the public is informed about protected areas and has the opportunity to participate in protection efforts (Articles 14 and 15), and to encourage scientific research (Article 17); and
- co-operate in providing technical and management assistance to each other (Articles 18 and 19).

This Protocol is mainly a sub-regional version of CITES, and certain aspects of the Algiers Convention and Biodiversity Convention. Just like CITES, the Protocol is concerned with threatened and endangered species of flora and fauna. It adopts the listing formulae or approach used in CITES regime (by way of annexes). It further regulates the harvest and sale (trade in) of specimens of threatened or depleted species. To this end, its implementation in Kenya is synonymous with the implementation of CITES. The Protocol further calls for the establishment of protected areas to safe-guard important ecosystems and habitats for species of fauna and flora that are endangered, endemic, migratory or economically important. In this regard, the Protocol embodies the management approach of protected areas as adopted in the Algiers Convention. Its national

implementation is thus synonymous with the implementation of the Algiers Convention (as already discussed).

The Protocol obliges Parties thereto to take measures to prevent the introduction of potentially harmful alien species. There are several statutory provisions in Kenya dealing with the issue of alien species. For example, Section 13 (2) (f) of the Wildlife (Conservation and Management) Act provides as follows:

“Any person who, without authorization knowingly introduces any animal or domestic animal or vegetation into a National Park shall be guilty of an offence.....”

Section 8 (I) of the Plant Protection Act, Cap 324 of the Laws of Kenya provides as follows:

“The Minister may, by order prohibit, restrict or regulate the importation and exportation of any plants....., and of any animals or insects likely to affect any plant with any pest or disease.”

Section 8 (2) (e) further provides that the Ministerial Order may prohibit the importation of plants or classes of plants except at specified ports or places of entry. Section 15 of the Seeds and Plant Varieties Act, Cap 326 of the Laws of Kenya empower the Minister to control the importation of potentially deleterious seeds. Section 69 (e) of the draft Environmental Management and Co-ordination Bill provides as follows:

“The Authority shall..... prescribe measures adequate to ensure the conservation of biological resources in situ and shall issue guidelines for: (e) Prohibiting and controlling the introduction of alien species into natural habitats.”

The provisions of the Protocol relating to protected areas are generally implemented in Kenya under the Wildlife (Conservation and Management) Act. Sections 6, 18, and 19 of the Act empowers the Minister to declare National Parks, National Reserves and Local Sanctuaries, respectively, as protected areas. The Minister is further empowered to make regulations governing activities within the protected areas.

The Protocol requires the contracting Parties to take measures to ensure that the public is informed about protected areas and has the opportunity to participate in protection efforts (Articles 14 and 15) and to encourage

scientific research. The following provisions of the Wildlife (Conservation and Management) Act are pertinent in this regard:

“Section 3A: The functions of the Service (KWS) shall be to:

- (e) *provide wildlife conservation education and extension services to create public awareness and support for wildlife polices;*
- (g) *conduct and co-ordinate research activities in the field of wildlife conservation and management”.*

The draft Environmental Management and Co-ordination Bill, 1998, also contains provisions on public participation and the role of research in environmental management. Section 3 (5) (a) of the draft Bill provides that the High Court of Kenya shall, when exercising its jurisdiction over environmental matters, be guided by the principle of public participation in the development of policies, plans and processes for the management of the environment. The draft Bill further contains provisions relating to research in environmental matters (Section 9(1) (h)). Section 3 (5) © of the draft Bill obliges the High Court of Kenya to exercise its jurisdiction over environmental matters with due regard to the principle of international co-operation in the management of environmental resources shared by two or more states. This provision is very important in relation to terrestrial ecosystems/trans-boundary ecosystems, and in respect of managing disasters over shared resources.

2.10 The New Approach to Treaty Implementation in Kenya as Regards the Environment

As stated earlier, KWS has the mandate, under section 3A(j) of the Wildlife (Conservation and Management) Act, Cap 376, to

“...administer and co-ordinate international protocols, conventions and treaties regarding wildlife in all its aspects in consultation with the Minister”.

This mandate applies to the stage of treaty implementation. It is merely a delegated authority from the executive. The mandate does not relate to the other stages of treaty practice such as the recommendation to negotiate a treaty, decision to negotiate a treaty, actual negotiation of a treaty, decision to sign a treaty and decision to ratify or accede to a treaty. The legal and administrative problems highlighted in the preceding chapters as regards Kenya's treaty-practice

remain applicable. It is doubtful as to whether KWS can exercise its stated mandate in the absence of municipal legislation implementing the treaties, conventions or agreements envisaged under section 3A (j) of the Wildlife (Conservation and Management) Act.

It may then be stated that KWS can only exercise its statutory mandate in respect of treaties, conventions and agreements that are either self-executing or that do not require enabling national legislation for their implementation.

In order to set up a new approach to treaty practice relative to environmental management, the draft Environmental Management and Co-ordination Bill, 1998 proposes the following approach:

- (a) The proposed National Environmental Management Authority shall “initiate legislative proposals and submit such proposals to the Attorney General who, if satisfied with the proposals, shall take the action required to formulate laws on the basis of such proposals for the management of the environment or the implementation of relevant international conventions, treaties or agreements in the field of environment, as the case may be” (Section 9 (1) (g)).
- (b) The Authority is further empowered to oversee the implementation of the relevant treaties and to establish an appropriate registry thereof.

ANNEX 1

3.0 THE DIPLOMATIC PRIVILEGES (TASK FORCE ON CO-OPERATIVE ENFORCEMENT OPERATIONS DIRECTED AT ILLEGAL TRADE IN WILD FAUNA AND FLORA) ORDER

1. This Order may be cited as the Diplomatic Privileges (Task Force On Co-operative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora) Order.

(A) The Task Force

2. The Task Force shall have the legal capacities of a body corporate and, (except in so far as in any particular case it has expressly waived its immunity), immunity from suit and legal process. No waiver of immunity shall be deemed to extend to any measure of execution.
3. The Task Force shall have the inviolability of official archives and premise occupied as offices as is accorded in respect of official archives and premise of an envoy of a foreign sovereign Power accredited to Kenya.
4. The Task Force shall have the exemption or relief from taxes and rates, including taxes on the importation of goods, as is accorded to a foreign sovereign Power.
5. The Task Force shall have exemption from taxes on the importation of goods directly imported by the Task Force for its official use in Kenya or for exportation, or on the importation of any publications of the Task Force directly imported by it, such exemption to be subject to compliance with such conditions as the Commissioner of Customs and Excise may prescribe for the protection of revenue.
6. The Task Force shall have exemption from prohibitions and restrictions on importation or exportation in the case of goods directly imported or exported by the Task Force for its official use and in the case of any publication of the Task Force directly imported or exported by it.
7. The Task Force shall have the right to avail itself, for telegraphic communications sent by it and containing only matter intended for publication by the Press or for broadcasting (including communications addressed to or dispatched from places outside Kenya), any reduced rates applicable for the corresponding service in the case of Press telegrams.

(B) Representatives of Members; the Chairperson of the Governing Council; Members of the Task Force

8. (1) Except in so far as any privilege or immunity is waived, in the case of representatives of member governments of the governments they represent, and in the case of the Chairperson of the Governing Council by the Task Force, and in the case of members of the Task Force, representatives of member governments, the Chairperson of the Governing Council of the Task Force and members of the Governing Council of the Task Force, shall enjoy-
 - (a) while exercising their functions as such, and during their journey to and from the place of meeting, immunity from personal arrest or detention and from seizure of their personal baggage and inviolability for all papers and documents;
 - (b) immunity from legal process of every kind in respect of words spoken or written and all acts done by them in their capacity as representatives; and,
 - (c) While exercising their functions and during their journey to and from the place of meeting, the exemption or relief from taxes as is accorded to an envoy of a foreign sovereign Power accredited to Kenya, except relief allowed shall not include relief from customs and excise duties or purchase tax except in respect of goods imported as part of their personal baggage. They shall not, where the incidence, of any form of

taxation depends upon residence, be deemed to be resident in Kenya during any period when they are present in Kenya whilst exercising their functions or during their journey to and from the place of meeting. The provisions of this sub-paragraph shall not apply to Kenyan citizens, or persons whose usual place of abode is in Kenya.

- (ii) For the purpose of the application of this Order, “representatives of member government” includes their official staff, accompanying them, as delegates, deputy delegates, advisers, technical experts or secretaries of delegations.

(C) High Officials

- 9. Except in so far as in any particular case any privilege or immunity is waived by the Task Force, officers of the Task Force holding the offices of Director, Field Officers and Intelligence Officers shall be accorded in respect of themselves, their spouses and their children under the age of twenty-one the immunity from suit and legal process, the inviolability of residence and the exemption or relief from taxes as are accorded to an envoy of a foreign sovereign Power accredited to Kenya and his spouse and children, including exemption from income tax in respect of emoluments received by them as officers of the Task Force.

(D) Persons Employed on Missions on Behalf of the Task Force

- 10. Except in so far as in any particular case any privilege or immunity is waived by the Task Force, persons employed on missions on behalf of the Task Force shall enjoy:
 - (a) while exercising their functions as such, and during their journey to and from the place of meeting, immunity from personal arrest or detention and from seizure of their personal baggage and inviolability of all papers and documents relating to the work of the Task Force; and,
 - (b) immunity from legal process of every kind in respect of words spoken or written and all acts done by them in the exercise of their functions. Such immunity shall continue notwithstanding that the person concerned is no longer employed on missions on behalf of the Task Force.

(E) Other Officials of the Task Force

- 11. Except in so far as in any particular case any privileges or immunity is waived by the Task Force, all officials of the Task Force, other than those referred to in paragraph 9, shall enjoy:
 - (a) immunity from suits and legal process in respect of words spoken or written and all acts done by them in the course of the performance of their official duties;
 - (b) exemption from income tax in respect of emoluments received by them as officers and servants of the Task Force;
 - (c) immunity from national service obligations;
 - (d) immunity from immigration restrictions and alien registration in respect of officers and servants, and their spouses and dependent relatives;
 - (e) the privileges in respect of exchange facilities as are accorded to official of equivalent status forming part of diplomatic missions to the Government;
 - (f) the facilities for officers and servants, and their spouses and dependent relatives for repatriation in times of international crisis as are afforded to diplomatic missions to the Government; and,

- (g) exemption from tax or duty on the importation of furniture, personal property and household effects on an officer or servant first arriving to take up his post in Kenya.

(F) General

- 12. The names of the persons specified from time to time in exercise of the powers conferred by Sub-section (3) of Section 2 of the Diplomatic Privileges Extension Act (now repealed) as being entitled to the immunities and privileges referred to in this Order, shall be set forth in a list compiled and published from time to time showing regard to each person a reference to the notice prepared under the said Sub-section (3) and specifying the dates between which the office or employment in question was held.

Signed:
MINISTER FOR FOREIGN AFFAIRS

3.2 REGULATIONS UNDER SECTION 67 - THE WILDLIFE (CONSERVATION AND MANAGEMENT) (RETURN OR FORFEITURE OF SPECIMENS) REGULATIONS

1. These Regulations may be cited as the Wildlife (Conservation and Management) (Return or Forfeiture of Specimens) Regulations.
2. In these Regulations, unless the context otherwise requires:
 - “country of original export” means the country where the specimen first originated or was taken.
 - “country of re-export” means the country into which the specimen has been previously imported.
 - “illegal trade” means export, re-export, import and introduction from the sea of any specimen in contravention of any written law in Kenya or the national laws of a country which is a Party to any international legal instrument, to which Kenya is also a party, regulating trade in such specimen.
 - “introduction from the sea” means transportation, into the territory of a Party, of specimens of any species which were taken from the marine environment under the jurisdiction of any state.
 - “Party” means a state for which any international legal instrument, to which Kenya is a party, regarding trade in wildlife products in all its aspects has entered into force.
 - “species” means any species, sub-species or geographically separate population thereof;
 - “specimen” means any animal or plant, whether alive or dead and includes any readily recognizable part or derivative thereof.
3. The Director or any officer of the Service or an agent of the Director duly authorised in that behalf, may return to the country of original export or country of re-export any specimen of species of wild fauna and flora confiscated in the course of illegal trade, provided that:
 - (a) the country of original export of the specimen(s) can be determined;
 - (b) the country of re-export is able to show evidence that the specimen(s) re-exported were imported by that country in accordance with the provisions of its own national laws; and,
 - (c) the cost of returning such specimen(s) is borne by the country receiving the specimen(s), unless there is an alternative offer to bear costs to which both the Party returning the specimen(s) and the party receiving the specimen(s) agree.
4. Where confiscated specimen(s) of species of wild fauna and flora cannot be returned to the country of original export on the grounds that the requirements of Regulation 3 remain unfulfilled within a reasonable period, the Director may apply to a court of competent jurisdiction, for an order that such specimen(s) shall be forfeited to the Government, and the court may make such order in relation to the application as it thinks just provided that:
 - (a) the specimen(s) shall be entrusted to the Service; or,
 - (b) a rescue center or such other place as the Service deems appropriate.

3.3 AGREEMENT BETWEEN THE TASKS FORCE ON CO-OPERATIVE ENFORCEMENT OPERATIONS DIRECTED AT ILLEGAL TRADE IN WILD FAUNA AND FLORA AND THE REPUBLIC OF KENYA REGARDING THE HEADQUARTERS OF THE TASK FORCE IN KENYA

The Task Force and the Republic of Kenya:

Recalling that the First Governing Council for Co-operative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora, in response to an offer by the Government of Kenya, has by resolution of , 1997, decided that the seat of the Task Force shall be located at Nairobi;

Considering that it is desirable to conclude an agreement complementary to the Lusaka Agreement on Co-operative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora to regulate questions not envisaged in that Convention arising as a result of the establishment of the headquarters of the Task Force at Nairobi;

Have agreed as follows:

ARTICLE I

DEFINITIONS

Section 1

In this Agreement:

- (a) The expression "the Task Force" means the Task Force for Co-operative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora established under Article 5 of the Lusaka Agreement on Co-operative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora and includes the following:
 - (i) the Governing Council for Co-operative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora (hereinafter referred to as "the Governing Council");
 - (ii) the Director, Field Officers and Intelligence Officer of the Task Force;
- (b) the expression "Director" means the Director of the Task Force or any officer designated to act on his behalf;
- (c) The expression "officials of the Task force" means the Director and all members of the staff of the Task Force, except those who are locally recruited and assigned to hourly rates;
- (d) The expression "the Government" means the Government of the Republic of Kenya;
- (e) The expression "appropriate Kenyan authorities " means such government, municipal or other authorities in the Republic of Kenya as may be appropriate in the context and in accordance with the laws and customs applicable in the Republic of Kenya;
- (f) The expression "laws of the Republic of Kenya" includes:
 - (i) the Constitution of the Republic of Kenya ; and,
 - (ii) legislative acts, regulations and orders issued by or under authority of the Government or appropriate Kenyan authorities;

- (g) The expression “headquarters seat” means:
 - (i) the headquarters area with the building or buildings upon it, as may from time to time be defined in supplemental agreements referred to in Section 3 of Article II hereof; and,
 - (ii) any other land or building which may from time to time be included temporarily or permanently, therein in accordance with this Agreement or by supplemental agreement with the Government;
- (h) The expression “Member State” means a State which is a Contracting Party to the Lusaka Agreement on Co-operative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora done at Lusaka, Zambia on September 8th 1994; and,
- (I) The expression “National Bureau” means a governmental entity with the competence encompassing law enforcement, designated or established by a Party to the Lusaka Agreement under Article 6 thereof.

ARTICLE II

THE HEADQUARTERS SEAT

Section 2

- (a) The permanent headquarters of the Task Force shall be in the headquarters seat, and shall not be removed therefrom unless the Governing Council should so decide. Any transfer of the headquarters temporarily to another place shall not constitute a removal of the permanent headquarters unless there is an express decision by the Governing Council to that effect.
- (b) Any building in or outside of Nairobi which may be used with the concurrence of the Government for meetings convened by the Task Force shall be temporarily included in the headquarters seat.
- (c) The appropriate Kenyan authorities shall take whatever action that may be necessary to ensure that the Task Force shall not be dispossessed of all or any part of the headquarters seat without the express consent of the Governing Council.

Section 3

The Government grants to the Task Force, and the Task Force accepts from the Government, the permanent use and occupation of a headquarters seat as may from time to time be defined in supplemental agreements to be concluded between the Task Force and the Government.

Section 4

- (a) The Task Force shall for official purposes have the authority to install and operate a radio sending and receiving station or stations, to connect at appropriate points and exchange traffic with National Bureau radio networks. the Task Force as a telecommunications administration will operate its telecommunications services in accordance with the International Telecommunication Convention and the Regulations annexed thereto. The frequencies used by these stations will be communicated by the Task Force to the Government and to the International Frequency Registration Board.
- (b) The Government shall, upon request, grant to the Task Force for official purposes appropriate radio and other telecommunications facilities in conformity with technical arrangements to be made with the International Telecommunication Union.

Section 5

The Task Force may establish and operate research, documentation and other technical facilities. These facilities shall be subject to appropriate safeguards which, in the case of facilities which might create hazard to health or safety or interfere with property, shall be agreed with the appropriate Kenyan authorities.

Section 6

The facilities provided for in Sections 4 and 5 may, to the extent necessary for efficient operation, be established and operated outside the headquarters area. The appropriate Kenyan authorities shall, at the request of the Task Force make arrangements, on such terms and in such manner as may be agreed upon by supplemental agreement, for the acquisition or use by the Task Force of appropriate premises for such purposes, and for the inclusion of such premises in the headquarters seat.

ARTICLE III

EXTRATERRITORIALITY OF THE HEADQUARTERS SEAT

Section 7

- (a) The Government recognizes the extra-territorial character of the headquarters seat, which shall be under the control and authority of the Task Force as provided in this Agreement.
- (b) Except as otherwise provided in this Agreement or in the Lusaka Agreement, and subject to any regulation enacted under section 8, the laws of the Republic of Kenya shall apply within the headquarters seat.
- (c) Except as otherwise provided in this Agreement or in the Lusaka Agreement the courts or other appropriate organs of the Republic of Kenya shall have jurisdiction, as provided in applicable laws, over acts done and transactions taking place in the headquarters seat.

Section 8

- (a) The Task Force shall have the power to make regulations, operative within the headquarters seat, for the purpose of establishing therein conditions in all respects necessary for the full execution of its functions. No law of the Republic of Kenya which is inconsistent with a regulation of the Task Force authorised by section shall, to the extent of such inconsistency, be applicable within the headquarters seat. Any dispute between the Task Force and the Republic of Kenya as to whether a regulation of the Task Force is authorised by this section, or as to whether a law of the Republic of Kenya is inconsistent with any regulation of the Task Force authorised by this Section, shall be promptly settled by the procedure set out in Section 30. Pending such settlement, the regulation of the Task Force shall apply and the law of the Republic of Kenya shall be inapplicable in the headquarters seat to the extent that the Task Force claims it to be inconsistent with the regulation of the Task Force.
- (b) The Director shall from time to time inform the Government, as may be appropriate, of regulations made by him in accordance with Sub-section (a).
- (c) This Section shall not prevent the reasonable application of fire protection or sanitary regulations of the appropriate Kenyan authorities.

Section 9

- (a) The headquarters seat shall be inviolable. No officer or official of the Republic of Kenya, or other person exercising any public authority within the Republic of Kenya, shall enter the headquarters seat to perform any duties therein

except with the consent of, and other conditions approved by, the Director. The service of legal process, including the seizure of private property, shall not take place within the headquarters seat except with the express consent of, and under conditions approved by, the Director.

- (b) The Task Force shall prevent the headquarters seat from being used as a refuge by persons who are avoiding arrest under any law of the Republic of Kenya, who are required by the Government for extradition to another country, or who are endeavouring to avoid service of legal process.

ARTICLE IV

PROTECTION OF THE HEADQUARTERS SEAT

Section 10

- (a) The appropriate Kenyan authorities shall exercise due diligence to ensure that the tranquillity of the headquarters seat is not disturbed by any person or group of persons attempting unauthorized entry into or creating disturbances in the immediate vicinity of the headquarters seat.
- (b) If so requested by the Director, the appropriate Kenyan authorities shall provide a sufficient number of police for the preservation of law and order in the headquarters seat.

Section 11

- (a) The appropriate Kenyan authorities shall take all reasonable steps to ensure that the amenities of the headquarters seat are not prejudiced and that the purposes for which the headquarters seat is required are not obstructed by any use made of the land or buildings in the vicinity of the headquarters seat.
- (b) The Task Force shall take all reasonable steps to ensure that the amenities of the land in the vicinity of the headquarters seat are not prejudiced by any use made of the land or buildings in the headquarters seat.

ARTICLE V

PANIC SERVICES IN THE HEADQUARTERS SEAT

Section 12

- (a) The appropriate Kenya authorities shall exercise, to the extent requested by the Director, their respective powers to ensure that the headquarters seat shall be supplied with the necessary public services including, without limitation by reason of this enumeration, electricity, water, sewerage, gas, post, telephone, telegraph, local transportation, drainage, collection of refuse and fire protection, and that such public services shall be supplied on equitable terms.
- (b) In case of any interruption or threatened interruption of any such services, the appropriate Kenyan authorities shall consider the needs of the Task Force as being of equal importance with those of essential agencies of the Government, and shall take steps accordingly to ensure that the work of the Task Force is not prejudiced.
- (c) The Director shall, upon request, make suitable arrangements to enable duly authorised representatives of the appropriate public services bodies to inspect, repair, maintain, reconstruct and relocate utilities, conduits, mains and sewers within the headquarters seat under conditions which shall not unreasonably disturb the carrying out of the functions of the Task Force.
- (d) Where gas, electricity, water or heat is supplied by appropriate Kenyan authorities, or where the prices thereof are under their control, the Task Force shall be supplied at tariffs which shall not exceed the lowest comparable rates accorded to Kenyan governmental administrations.

ARTICLE VI

COMMUNICATIONS, PUBLICATIONS AND TRANSPORTATION

Section 13

- (a) All official communication directed to the Task Force or to any officials of the Task Force, at the headquarters seat, and all outward official communications of the Task Force, by whatever means or in whatever form transmitted, shall be immune from censorship and from any other form of interception or interference with their privacy. Such immunity shall extend, without limitation by reason of this enumeration, to publications, still and moving pictures, films and sound recording.
- (b) The Task Force shall have the right to use codes and to dispatch and receive correspondence and other official communications by courier or in sealed bags, which shall have the same privileges and immunities as diplomatic couriers and bags.

Section 14

- (a) The Government recognizes the right of the Task Force freely to publish and broadcast within the Republic of Kenya in the fulfillment of its purpose.
- (b) It is, however, understood that the Task Force shall respect any laws of the Republic of Kenya, or any international conventions to which the Republic of Kenya is a party, relating to copyrights.

Section 15

The Task Force shall be entitled (for its official purposes) to use the rail and road facilities in the Republic of Kenya, at tariffs which shall not exceed the lowest comparable passenger fares and freight rates accorded to Kenyan government administration.

ARTICLE VII

FREEDOM FROM TAXATION

Section 16

- (a) The Task Force, its assets, income and other property shall be exempt from all forms of direct taxes, provided, however, that such tax exemption shall not extend to the owner or lessor of any property rented by the Task Force.
- (b) While the Task Force will not generally claim exemption from indirect taxes which constitute part of the cost of goods purchased by or services rendered to the Task Force, including rentals, nevertheless when the Task Force is making important purchases for official use on which such taxes or duties have been charged or are chargeable, the Government shall make appropriate administrative arrangements for the remission or refund of such taxes or duties. With respect to such taxes or duties, the Task Force shall at all times enjoy at least the same exemptions and facilities as are granted to Kenyan governmental administrations or to chiefs of diplomatic missions accredited to the Republic of Kenya, whichever are the more favourable. It is further understood that the Task Force will not claim exemption from taxes which are in fact no more than charges for public utility services.
- (c) In any transaction to which the Task Force is party, the Task Force shall be exempt from all taxes, recording fees, and documentary taxes.
- (d) Articles imported or exported by the Task Force for official purposes shall be exempt from customs duties and other levies, and from prohibitions and restrictions on imports and exports.

- (e) The Task Force shall be exempt from customs duties and other levies, prohibitions and restrictions on the importation of service automobiles, and spare parts thereof, required for its official purposes.
- (f) Articles imported in accordance with Sub-Sections (d) and (e) of this Section, may be sold by the Task Force in the Republic of Kenya at any time after their importation or acquisition, subject to the Government regulations concerning payment by the buyer of customs duties and other levies.

ARTICLE VIII

FINANCIAL FACILITIES

Section 17

- (a) Without being subject to any financial controls, regulations or moratoria of any kind, the Task Force may freely:
 - (i) purchase any currencies through authorized channels and hold and dispose of them;
 - (ii) operate accounts in any currency;
 - (iii) purchase through authorized channels, hold and dispose of funds and securities;
 - (iv) transfer its funds, securities, and currencies to or from the Republic of Kenya, to or from any other country, or within the Republic of Kenya; and,
 - (v) raise funds through the exercise of its borrowing power or in any other manner which it deems desirable, except that with respect to the raising of funds within the Republic of Kenya, the Task Force shall obtain the concurrence of the Government.
- (b) The Task Force shall, in exercising its rights under this Section, pay due regard to any representations made by the Government in so far as effect can be given to such representations without prejudicing the interests of the Task Force.

ARTICLE IX

SOCIAL SECURITY AND PENSION FUND

Section 18

The Task Force may establish a staff pension fund which shall enjoy legal capacity in the Republic of Kenya and shall enjoy the same exemptions, privileges and immunities as the Task Force itself.

Section 19

The Task Force shall be exempt and from all compulsory contributions to, and officials of the Task Force shall not be required by the Government to participate in, any social security scheme of the Republic of Kenya.

Section 20

The Government shall make such provision as may be necessary to enable any official of the Task Force who is not afforded social security coverage by the Task Force to participate, if the Task Force so requests, in any social security scheme of the Republic of Kenya. The Task Force shall, in so far as possible, arrange, under conditions to be agreed upon, for the participation in the Kenyan social security system of those locally recruited members of its staff who do not participate in the Task Force staff pension fund or to whom the Task Force does not grant social security protection at least equivalent to that offered under Kenyan law.

ARTICLE XI

TRANSIT AND RESIDENCE

Section 21

- (a) The Government shall take all necessary measures to facilitate the entry into and sojourn in Kenyan territory, and shall place no impediment in the way of the departure from Kenyan territory of the persons listed below and; it shall ensure that no impediment is placed in the way of their transits to or from the headquarters seat and shall afford them any necessary protection in transit:
- (i) Members of any National Bureau engaged in an activity associated with the functions of the Task force.
 - (ii) officials of the Task force, their families and other members of their households.
 - (iii) Persons, other than officials of the Task Force performing missions authorized by the Task Force or serving on committees or other subsidiary organs of the Task Force.
 - (iv) Representatives of contracting parties to the Lusaka Agreement and other persons invited by the Task Force to the headquarters seat on official business. The Director shall communicate the names of such persons to the Government before their intended entry.
- (b) This Section shall not apply in the case of general interruptions of transportation, which shall be dealt with as provided in Section 12 (b), and shall not impair the effectiveness of generally applicable laws relating to the operations of means of transportation.
- (c) Visas, where required for persons referred to in this Section, shall be granted without charge and as promptly as possible.
- (d) No activity performed by any person referred to in Sub-Section (a) in his official capacity with respect to the Task Force shall constitute a reason for preventing his entry into or his departure from the territory of the Republic of Kenya or for requiring him to leave such territory.
- (e) No person referred to in Sub-Section (a) shall be required by the Government to leave the Republic of Kenya save in the event of an abuse of the right of residence, in which case the following procedure shall apply:
- (i) No proceeding shall be instituted to require any such person to leave the Republic of Kenya except with the prior approval of the Minister for the time being responsible for Foreign Affairs of the Republic of Kenya;
 - (ii) In the case of a representative of a Member State, such approval shall be given only after consultation with the government of the Member State concerned;
 - (iii) In the case of any other person mentioned in Sub-Section (a), such approval shall be given only after consultation with the Director, and if expulsion proceedings are taken against any such person, the Director shall have the right to appear or to be represented in such proceedings on behalf of the persons against whom such proceedings are instituted.
- (f) This Section shall not prevent the requirement of reasonable evidence to establish that persons claiming the rights granted by this Section come within the classes described in Sub-Section (a) , or the reasonable application of quarantine and health regulations.

Section 22

The Director and the appropriate Kenyan authorities shall, at the request of either of them consult as to methods of facilitating entrance into the Republic of Kenya, as to the use of available means of transportation, by persons coming from abroad who wish to visit the headquarters seat and who do not enjoy the privileges provided by Section 21.

ARTICLE XI

REPRESENTATIVES OF THE TASK FORCE

Section 23

Representatives of Member States to meetings of or convened by the Task Force, and those who have official business with the Task force, shall while exercising their functions and during their journey to and from Kenya, enjoy the privileges and immunities provided under this Agreement.

ARTICLE XII

OFFICIALS OF THE TASK FORCE

Section 24

Officials of the Task force shall enjoy within and with respect to the Republic of Kenya the following privileges and immunities:

- (a) Immunity from legal process of any kind in respect of words spoken or written, and of acts performed by them in their official capacity, such immunity to continue notwithstanding that the persons concerned may have ceased to be officials of the Task Force.
- (b) Immunity from seizure of their personal and official baggage.
- © Exemption from taxation in respect of the salaries, emoluments indemnities and pensions paid to them by the Task Force for services past or present or in connection with their service with the Task Force.
- (d) Exemption from any form of taxation on income derived by them from sources outside the Republic of Kenya.
- (e) Exemption from registration fees in respect of their automobiles.
- (f) Exemption, with respect to themselves, their spouses, their dependent relatives and other members of their households, from immigration restrictions and alien registration.
- (g) Exemption from national service obligations, provided that, with respect to Kenyan nationals such exemption shall be confined to officials whose names have, by reason of their duties, been placed upon a list compiled by the Director and approved by the Government; provided further that should any official, other than those listed, who are Kenyan nationals, be called up for national service, the Government shall, upon request of the Director, grant such temporary deferments in the call-up of such officials as may be necessary to avoid interruption of the essential work of the Task Force.
- (h) Freedom to acquire or maintain within the Republic of Kenya or elsewhere foreign securities, foreign currency accounts, and other movables and the right to take the same out of the Republic of Kenya through authorized channels without prohibition or restriction.

- (I) Freedom to purchase one dwelling house within the Republic of Kenya for strictly personal use, and the right to finance such purchase through local mortgage arrangements under the same conditions applicable to Kenyan citizens.

In the event of sale of such house, the right to take out of the Republic of Kenya, through authorized channels, the proceeds of the sale, after repayment of any outstanding local loan or local mortgage, in transferable currency.

- (j) The same protection and repatriation facilities with respect to themselves, their spouses, their dependent relatives and other members of their households as are accorded in time of international crisis to members, having comparable rank, of the staff of chiefs of diplomatic missions accredited to the Republic of Kenya.
- (k) The right to import for personal use, free of duty and other levies, prohibitions and restrictions on imports:
- (i) their furniture, household and personal effects, in one or more separate shipments, and thereafter to import necessary additions to the same;
- (ii) one automobile, and in the case of officials accompanied by their dependents, two automobiles every three years, unless the Task Force and the Government agree in particular cases that replacements may take place at an earlier date, because of loss, extensive damage or otherwise;
- (iii) reasonable quantities of certain articles including liquor, tobacco, cigarettes and foodstuffs, for personal use or consumption and not for gift or sale; the Task Force may establish a commissary for the sale of such articles to its officials and members of delegations. A supplemental agreement shall be concluded between the Executive Director and the Government to regulate the exercise of these rights.
- (l) Automobiles imported in accordance with Sub-Section (m) (ii) of this Section may be sold in the Republic of Kenya at any time after their importation, subject to the Government regulations concerning payment by the buyer of customs duties;

Section 25

- (a) The Director shall communicate to the Government a list of officials of the Task Force and shall revise such list from time to time as may be necessary.
- (b) The Government shall furnish persons within the scope of this Article with an identity card bearing the photograph of the holder. This card shall serve to identify the holder in relation to all Kenyan authorities.

ARTICLE XIII

EXPERTS ON MISSION FOR THE TASK FORCE

Section 26

Experts (other than officials of the Task Force) performing missions authorized by, serving on committees or other subsidiary organs of, or consulting at its request in any way with, the Task Force shall enjoy, within and with respect to the Republic of Kenya, the following privileges and immunities so far as may be necessary for the effective exercise of their functions.

- (a) Immunity in respect of themselves their spouses and their dependent children from personal arrest or detention and from seizure of their personal and official baggage.
- (b) Immunity from legal process of any kind with respect to words spoken or written, and all acts done by them, in the performance of their official functions, such immunity to continue notwithstanding that the persons concerned may no longer be employed on missions for, serving on committees of, or acting as consultants for, the Task Force, or may no longer be present at the headquarters seat or attending meetings convened by the Task Force.

- (c) Inviolability of all papers, documents and other official material.
- (d) The right, for the purpose of all communications with the Task Force, to use codes and to dispatch or receive papers, correspondence or other official material by courier or in sealed bags.
- (e) Exemption with respect to themselves and their spouses from immigration restrictions, alien registration and national service obligations.
- (f) The same protection and repatriation facilities with respect to themselves, their spouses, their dependent relatives and other members of their households as are accorded in time of international crisis to members, having comparable rank, of the staff of chiefs of diplomatic missions accredited to the Republic of Kenya.
- (g) The same privileges with respect to currency and exchange restrictions as are accorded to representatives of foreign Governments on temporary official missions.
- (h) The same immunities and facilities with respect to their personal and official baggage as the Government accords to members, having comparable rank, of the staff of chiefs of diplomatic missions accredited to the Republic of Kenya.

Section 27

Where the incidence of any form of taxation depends upon residence, periods during which the persons designated in Section 26 may be present in the Republic of Kenya for the discharge of their duties shall not be considered as periods of residence. In particular, such persons shall be exempt from taxation on their salaries and emoluments received from the Task Force during such periods of duty.

Section 28

- (a) The Director shall communicate to the Government a list of persons within the scope of this Article and shall revise such list from time to time as may be necessary.
- (b) The Government shall furnish persons within the scope of this article with an identity card bearing the photograph of the holder. This card shall serve to identify the holder in relation to all Kenyan authorities.

ARTICLE XIV

SETTLEMENT OF DISPUTES

Section 29

The Director shall make provision for appropriate methods of settlement of:

- (a) Disputes arising out of contracts and disputes of a private law character to which the Task Force is a party; and, in consultation with the Government.
- (b) Disputes involving an official of the Task Force who, by reason of his official position, enjoys immunity, if such immunity has not been waived.

Section 30

Any dispute between the Task Force and the Government concerning the interpretation or application of this Agreement or of any supplemental agreement, or any question affecting the headquarters seat or the relationship between the Task Force and the Government, which is not settled by negotiation or other agreed mode of settlement shall be referred for

final decision to a tribunal of three arbitrators: one to be chosen by the Director, one to be chosen by the Minister for the time being responsible for Foreign Affairs of the Republic of Kenya, and the third, who shall be chairman of the tribunal, to be chosen by the first two arbitrators. Should the first two arbitrators, fail to agree upon the third within six months following the appointment of the first two arbitrators such third arbitrator shall be chosen by the President of the International Court of Justice at the request of the Governing Council.

ARTICLE XVI

GENERAL PROVISIONS

Section 31

The Republic of Kenya shall not incur, by reason of the location of the headquarters seat of the Task Force within its territory, any international responsibility for acts or omissions of the Task Force or of officials of the Task Force acting or abstaining from acting within the scope of their functions, other than the international responsibility which the Republic of Kenya would incur as a party to the Lusaka Agreement.

Section 32

Without prejudice to the privileges and immunities accorded by this Agreement, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the Republic of Kenya. They also have a duty not to interfere in the internal affairs of the Republic of Kenya.

Section 33

- (a) The Director shall take every precaution to ensure that no abuse of a privilege or immunity conferred by this Agreement shall occur, and for this purpose shall establish such rules and regulations as may be deemed necessary and expedient, for officials of the Task Force and for such other persons as may be appropriate.
- (b) Should the Government consider that an abuse of a privilege or immunity conferred by this Agreement has occurred, the Director shall, upon request, consult with the appropriate Kenyan authorities to determine whether any such abuse has occurred. If such consultations fail to achieve a result satisfactory to the Director and to the Government, the matter shall be determined in accordance with the procedure set out in Section 30.

Section 34

This Agreement shall apply irrespective of whether the Government maintains or does not maintain diplomatic relations with contracting party concerned and irrespective of whether the contracting party concerned grants a similar privilege or immunity to diplomatic envoys or nationals of the Republic of Kenya.

Section 35

Whenever this Agreement imposes obligations on the appropriate Kenyan authorities, the ultimate responsibility for the fulfillment of such obligations shall rest with the Government.

Section 36

The provisions of this Agreement shall be complementary to the provisions of the Lusaka Agreement. In so far as any provisions of this Agreement and any provision of the Lusaka Agreement relate to the same subject matter, the two provisions shall, wherever possible, be treated as complementary, so that both provisions shall be applicable and neither shall narrow the effect of the other.

Section 37

This Agreement shall be construed in the light of its primary purpose of enabling the Task Force at its headquarters in the Republic of Kenya fully and efficiently to discharge its responsibilities and fulfill its purposes.

Section 38

Consultations with respect to modification of this Agreement shall be entered into at the request of the Task Force or the Government. Any such modification shall be by mutual consent.

Section 39

The Task Force and the Government may enter into such supplemental agreements as may be necessary .

Section 40

This Agreement shall apply *mutatis mutandis*, to such other offices of the Task Force as may in future be set up with the consent of the Government in the Republic of Kenya.

Section 41

This Agreement shall cease to be in force:

- (a) by mutual consent of the Task Force and the Government; or,
- (b) if the permanent headquarters of the Task Force is removed from the territory of the Republic of Kenya, except for such provisions as may be applicable in connection with the orderly termination of the operations of the Task Force at its permanent headquarters in the Republic of Kenya and the disposal of its property therein.

Section 42

This Agreement shall enter into force upon signature and shall replace any interim agreement hitherto governing the establishment and operation of the Task Force headquarters in the Republic of Kenya.

DONE at Nairobi in the English Language, on this..... day of199.....

For the Task Force
Director

For the Republic of Kenya:
Minister for Foreign Affairs

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CHAPTER FOUR

4.0 REVIEW OF THE DRAFT WILDLIFE (CONSERVATION AND MANAGEMENT) BILL 1997

4.1 Introduction

Following the policy initiatives of KWS, in particular the Wildlife Policy of 1996 reviewing Sessional Paper No. 3 of 1975 entitled a "Statement on the Future of Wildlife Management Policy in Kenya", and on the basis of KWS' Four Technical Studies on Wildlife Utilization, Land-Use Planning and Policies, Tourism Strategies and Pricing and the Legal Framework, and the Report of the Five-Person Review Group (1994) (entitled Wildlife-Human Conflicts in Kenya), a draft Wildlife (Conservation and Management) Bill, 1997 has been prepared.

Prior to reviewing the substantive provisions of the draft Bill, it is useful to recapitulate the key issues identified in the process of the policy analysis as requiring legislative intervention. In addition, a brief recapitulation of the short-falls of the existing legal framework in relation to treaty implementation need also be given as a foundation for reviewing the draft Bill. Such recapitulation is important as it provides a check-list of the key issues that the proposed Bill must address from a policy and treaty implementation perspective.

In order to address the policy short-falls identified by the Five-Person Review Group and the Four Technical Studies, a new Wildlife Policy (1996) has been prepared. The new policy initiative identifies the following key issues as requiring urgent legislative intervention.

- The need for clear legal provisions on hunting which

allow user-rights beyond KWS Director's Special Authorization to Hunt, which is intended for application in special and limited circumstances such as research and does not provide for commercial operations. In this respect, the new legislation should make sport hunting in its old form illegal in Kenya but allow sustainable wildlife utilization through systematic cropping.

- The facilitation of the liberalization of wildlife management outside the protected areas by developing certain statutory rights and responsibilities of communities and private land owners. In this regard, the law should encourage rather than prohibit certain sustainable socially relevant uses of wildlife outside protected areas.
- The law should allow economic activities that add value to wildlife products in order to improve wildlife related revenues.
- The law should provide for cost and revenue-sharing among the various wildlife stake-holders.
- The law should specify wildlife utilization zones, in particular according to the ecological potential of the various zones. Areas with the highest wildlife potential should be declared as protected zones; areas with medium wildlife potential should be declared as pastoral zones; and areas with minimal wildlife potential should be declared as agricultural zones.
- The need to provide for flexible administrative mechanisms and procedures for hierarchical wildlife-human conflict management.

- The need to provide for the registration of wildlife experts for purposes of cropping, handling and processing of wildlife products and maintenance of wildlife health.
 - The vesting of all wildlife on the State subject to the grant of user-rights.
 - The vesting of policy oversight over wildlife resources on the State subject to a consultative process.
 - The need for legal provisions requiring environmental impact assessment for tourist facilities within protected areas.
 - The need to provide for a hierarchy of priorities within protected areas (conservation of the entire ecosystem, tourism, education and research having the highest priority) and outside the protected areas (where utilization and conflict-mitigation strategies being of the highest priority).
 - The need to provide for a compensation insurance scheme for wildlife related loss of human life or injuries thereto, with procedures for equitable and prompt payment of claims at district level.
- Administrative or institutional changes proposed;
 - Drafting Comments;
 - Missing elements;
 - Certain issues of law; and,
 - Weaknesses in substantive provisions.

Objective /Preamble

The stated object of the Bill is as follows:

“..... to repeal the Wildlife (Conservation and Management) Act Chapter 376 of the laws of Kenya as amended by Act No. 16 of 1989 and to enact a comprehensive law relating to the protection, conservation and management of biodiversity in Kenya; and for purposes connected therewith and incidental thereto”;

Two new elements are introduced by the statement of objects viz:

“enact a comprehensive law ”
and
“biodiversity”

By “comprehensive law” it is assumed that certain issues hitherto outside or missing from the existing law will now be addressed. More fundamental is the adoption of the notion of “biodiversity” as opposed to “wildlife” which existed heretofore. The adoption of that notion implies the expansion of the spectrum of items covered by the Bill. It may then be said that the choice of “biodiversity” to replace “wildlife” is a natural consequence of the desire “ to enact a comprehensive law.” The law would only be comprehensive if it focuses on biodiversity (that is, all animal and plant forms and the processes upon which they depend and of which they form a part including genetic as well as species, habitat and ecosystem variability) and not the narrow notion or definition of wildlife.

Interestingly, however, the Bill is not entitled “Biodiversity (Conservation and Management) Act”, but rather continues to carry the “wildlife” logo. A possible explanation for this may lie with the idea that the changes proposed relate more to the substantive aspects of the legislative regime than to its form.

In reviewing the Preamble of the Bill, one is struck by the length of the seven paragraphs. It may be useful to delete from the Preamble issues that require substantive

Even though the new policy initiative of 1996, identifies the global interest in, and international value of Kenya's biodiversity, and implies the need for international cooperation in its management, it does not address the legal limitations on Kenya's treaty implementation. The Wildlife (Conservation and Management) (Amendment) Act, provides, in Section 3A(f) that KWS shall “administer and co-ordinate international protocols, conventions and treaties regarding wildlife in all its aspects in consultation with the Minister”. What the Act, including the new Wildlife Policy, does not state is that the various protocols, conventions and treaties alluded to in Section 3A(f) of the Act cannot be implemented as part of the laws of Kenya in the absence of enabling national legislation enacted by Parliament. This omission in the Policy is discussed in detail under Task 2.

4.2 Review of the Provisions of the Bill

We now proceed to review the substantive provisions of the draft Wildlife (Conservation and Management) Bill, 1997, under the following headings:

- Objectives/Preamble;
- Definitions;

elaboration and focus on key objects of the new legislation for purposes of precision and clarity. In this regard a new Preamble is proposed as follows:

“WHEREAS:

The State holds in trust for the present and future generations the biodiversity within Kenya:

It is necessary that an appropriate legal and institutional framework be established for the protection, conservation and management of biodiversity within Kenya so as to ensure optimum returns in terms of economic, cultural recreational, aesthetic, scientific, environmental and security gains:

It is important that co-operation amongst the various stakeholders in the biodiversity within Kenya be enhanced so as to ensure the highest possible and beneficial participation of local communities in its protection, conservation and management, minimize human-wildlife conflicts, promote sustainable tourism, facilitate partnerships within the wildlife sector and strengthen the regulatory and enforcement mechanisms;

AND WHEREAS:

International cooperation in the protection, conservation and management of biodiversity is essential to the sustainable utilization of biological resources:

NOW THEREFORE BE IT ENACTED by the Parliament of Kenya, as follows:”

Definitions:

The following new terms have been added to the interpretation section of the present Wildlife (Conservation and Management) Act, Chapter 376 of the Laws of Kenya, by the Bill:

(i) an expanded definition of the term “aircraft” which now includes “gliders, sea-planes, roto-crafts, gyro-planes, helicopters, ornithopters” and other machines that can derive support in the atmosphere from the reactions of the air, other than the reaction of the air against the earth’s surface.

The definition, however, requires drafting improvement by listing the examples given in an alphabetical sequence.

(ii) the concept of “species” has been introduced in the definition of “animal”. However, the term “species”

is not defined anywhere in the Bill. The following definition of “species” is thus proposed:

“Species” means any species, sub-species or geographically separate population thereof.

(iii) New terms introduced and defined in the Bill include:

- Conservation
- Conservation area
- Ecosystem
- Eco-tourism
- Endangered species
- Government securities
- Habitat
- Management Agreement
- Management plan
- Member of the armed wing
- National Wildlife Association
- Partnerships
- Other species
- Pest and vermin
- Personal or household effects
- Principal Act
- Ranger
- Sanctuary
- Specimen
- Stakeholder
- Threatened species
- Wildlife
- Wildlife user rights

- Zonal wildlife association

appoints licensing officers under the Act. The Director will be the appointing authority.

(iv) Certain terms have been defined as follows:

“authorized officer” - has been expanded to include a fisheries officer and a customs officer.

“competent authority” has been re-defined without any limitations being imposed. The distinction between government land, trust-land and private land has been eliminated. The reference is now put on ownership of land by any person or entity under any written law or customary law.

“dangerous animal” has been expanded by providing that the term includes “such other animal designated as a dangerous animal by the Director”.

“dealer” has been expanded to include any person who “transports or conveys any trophy”.

“hunt” has been expanded to include “the harvesting of any wild plant”

(v) The following definitions have been deleted:

- “appointed day”

- “game animal”

- “game bird”

- “game licence”

- “local sanctuary”

- “private land”

- “senior officer”

- “subordinate officer”

- “trustees”

- “vegetable”

(ii) **Disciplinary Code of the Service:** is to be prepared by the Director (with the approval of the Board of Trustees) and not by the Board of Trustees as currently exists under Section 3F (I) of Act No. 16 of 1989.

(iii) **Disciplinary penalties:** are now expanded to include surcharge.

(iv) **Desertion and Absenteeism:** the following new provisions have been introduced:

(a) Desertion from the Service is now made a criminal offence punishable by imprisonment for a period not exceeding six months or a fine not exceeding five thousand shillings or both.

(b) Surrender of Service property upon desertion from the Service must be made within seven days from the date of such desertion and failure thereby is a criminal offence punishable by imprisonment for one year or a fine not exceeding ten thousand shillings or both.

(v) **Wildlife Scouts:** The Director may now appoint Wildlife Scouts to assist with the implementation of the Act. Wildlife Scouts must, prior to their appointment, complete successfully a basic course on Wildlife laws, regulations and related matters.

(vi) **Ministerial Powers:** The Minister is now required to seek the advice of the Director before declaring any area of land to be a National Park, National Reserve, Sanctuary, Protection Area or Botanical Reserve or Garden; or, before declaring the cessation of any area of land to be any of the foregoing.

(vii) **Rules:** The Director and not the Minister will now make rules for the management of National Parks, National Reserves or Sanctuaries managed by the Service.

(viii) **Prohibition of Hunting Weapons:** The Director and not the Minister will now regulate what type of weapons may be used for hunting.

(ix) **Importation of Trophies:** The Director and not the Minister will now authorise the importation of prohibited trophies.

4.2 Administrative/Institutional Changes Proposed by the Bill

Several administrative/institutional changes are proposed in the Bill. These include the following:

(i) **Licensing:** The Minister is no longer the person who

- (x) **Captive Breeding:** The Director will now issue permits for captive breeding of animals.

The administrative/institutional changes proposed in the Bill appear to be for a dual purpose, viz:

- to give the Minister responsible for wildlife issues a role of policy oversight; and,
- To transfer regulatory functions within the wildlife sector to the Service, away from the Minister.

These changes are acceptable since the sector is not one in which the Service is open to competition. The Service is involved in the wildlife sector from a regulatory perspective and not business side. It is therefore, impartial enough to conduct regulatory functions over the various stake-holders within the wildlife sector. In addition, the Service is technically and administratively more competent to perform the regulatory functions than the Minister over the wildlife sector.

4.3 Some Drafting Comments on the Bill

The draft Bill still requires a lot of drafting input. The cross references are not consistent. Several wrong words have been used. Spelling errors appear in certain sections. For example, the following sections are in need of drafting improvement:

- Definition of "rates" and the use of the phrase "rule, regulations" as is the case in Section 89(2) (P.94).
- Definition of "Protection Area" appears as "protected area" in Section 2 (P.18).
- Definition of "Board of Trustees" is sometimes referred to simply as "the Board" which is wrong. See Sections 16 (1) (P.30) and 23(2) © (p.35).
- The reference to "National Parks" and spelling of "sanctuary" are wrong in some sections of the Bill. See Section 23(1) and (2) (a) on P.35.
- There is reference to "appointed day" (in Sections 20(2) (3) (P.33) and 54(1) (P.60) but the term has been deleted from the definitions.
- The word "liable" as opposed to "able" has been used in Section 41(2) (p.50).

These examples show the need for further editorial work as well as technical input by draftsmen.

4.4 Some Elements Missing from the Bill

There are certain important elements that are not provided for in the draft Bill. The reasons for the omission of these elements is not clear, but it may be speculated that their inclusion in the draft Environmental Management and Co-ordination Bill, 1998, is part of the reason.

Examples of the missing elements are:

- provisions on wildlife easements;
- provisions on bonds by developers for sound wildlife related behaviour within National Parks, Reserves, Sanctuaries or Protection areas;
- provisions on wetlands;
- provisions on indigenous forests;
- provisions on the fundamentals of biodiversity (as appears in the Convention)
- provisions on environmental impact assessment for developments within areas under KWS jurisdiction with cross-referencing to the Environmental Management and Co-ordination Bill;
- provisions on a wildlife compensation insurance scheme.

These elements should be addressed in some detail in the draft Bill.

4.5 Certain Issues of Law on the Bill

(i) *Cultural/Traditional interests:*

Some sections of the draft Bill appear to extinguish the cultural or traditional interests certain communities enjoy over wildlife and within protected areas. For example, the collection of honey or beeswax or the trapping thereof in a National Park is an offence under section 27(3) © of the Bill. It is now a common practice that prior to the imposition of legal restriction of any kind over any area of land, due regard should be given to the interests of the communities resident around the relevant resource. It is also a requirement that certain executive actions prejudicial to the traditional interests of the indigenous communities customarily resident within or around a resource are not to be taken without a process of due consultations and their consent first being obtained.

It is in the light of the fore-going that Sections 27(1) and 25 (3) © of the Bill should be further discussed. It should also be recognised that traditional or cultural interest, may be secured through official gazettelement.

(ii) *Subsidiary Legislation:*

The Bill grants certain delegated powers to the Minister and the Director over some administrative issues. Two areas that may attract legal debate relate to the following provisions on delegated powers:

Section 30 (1)(f) which states that:

“The Director may make rules for any or all of the following matters-

- (f) offences for which payment of fines without appearing in court under this Act is allowed”.

Section 59 (2) (f) states as follows:

“The Director may by rules:

- (f) impose penalties, in respect of any breach of the rules, not exceeding a fine of one hundred thousand shillings or imprisonment for a term not exceeding three years or both”.

The question that arises is whether the Director, and not the Minister is the appropriate person to exercise the delegated powers under the two sections. In attempting to answer that question, the following points on subsidiary legislation, as enunciated by the Interpretation and General Provisions Act, Chapter 2 of the Laws of Kenya need to be highlighted:

- Offence includes a breach of, or failure to comply with, any written law, for which a penalty is provided. Written law includes any subsidiary legislation for the time being in force. Subsidiary legislation includes any legislative provision made through the exercise of delegated powers under a written law, such as rules, by-laws, regulations, etc. (Section 2 of the Cap 2).
- There may be annexed to the breach of subsidiary legislation a penalty, not exceeding six thousand shillings or such terms of imprisonment not exceeding six months, or both, which the authority making the subsidiary legislation may think fit. (Section 31 (e) of Cap 2).
- All rules and regulations made under an Act shall, unless a contrary intention appears in the Act, be laid

before the National Assembly without unreasonable delay (Section 34(1) of Cap 2).

- Delegated powers may only be exercised by the authority upon whom the Act confers such powers (Section 43 of CAP 2).

There are provisions suggested in the Bill which are in conflict with some of the key requirements of CAP 2. For example, Section 59 (2) (f) of the Bill violates the provisions of Section 31 (e) of CAP 2. In addition, there is no requirement in the Bill that all subsidiary legislation made thereunder, shall be laid before the National Assembly without undue delay.

It may also be argued that the power to prescribe offences and impose penalties therefor should be exercised by a Minister, being politically responsible to Parliament and a member thereof. Such powers are not suited for the Director and may be challenged under the maxim “*Delegatus Non Potest Delegare*”

(iii) *Appointed day:*

The phrase “appointed day” is used several times in the Bill (Section 20 (2) and Section 54(1) are instructive) yet it has been deleted from the interpretation section of the Bill. In order to avoid confusion, it may be useful to replace any reference to “appointed day” with the following phrase:

“any written law existing and in force prior to the commencement of this Act”.

(iv) *Principal Act:*

Reference is also made to “Principal Act” in the Bill (Section 2). This should be deleted since the phrase “Principal Act” is only used when existing statutes are being amended and not when they are being repealed.

4.6 Weaknesses in the Substantive Provisions of the Bill

Certain provisions of the Bill lack clarity, consistency and are not comprehensive in their coverage of the subject-matter at hand. The areas of the Bill with weak provisions are:

(i) *The Tribunal:*

Section 117(I) of the Bill proposes the establishment of an Appeal Tribunal to be known as the Wildlife Conservation and Management Service Appeal Tribunal. The following

weaknesses are apparent in respect of the provisions of the Bill on the Appeal Tribunal:

- The period of appointment for members of the Appeal Tribunal is not stated.
- The situations under which the office of a member of the Appeal Tribunal may become vacant are not enumerated.
- The Appeal Tribunal is not expressly exempted from the rules of evidence as applies to a court of law.
- There are no provisions in the Bill requiring that the proceedings of the Appeal Tribunal be opened to the public save where for good cause, it otherwise directs.
- The Bill does not outlaw any acts which may interfere with the work of the Appeal Tribunal, for example, failure or refusal to attend proceedings of the Appeal Tribunal or knowingly giving false evidence before it.
- There are no provisions in the Bill on the quorum of the Appeal Tribunal.
- The jurisdiction of the Appeal Tribunal is not clearly defined in the Bill, that is, the matters that are appealable to the Appeal Tribunal should be stated.
- The powers of the Appeal Tribunal when disposing of any matter are not spelt out in the Bill.
- There are no provisions in the Bill on appeals against the decisions of the Appeal Tribunal.
- There are no provisions in the Bill for the immunity of the members of the Appeal Tribunal.
- The remuneration for the members of the Appeal Tribunal is not addressed in the Bill.

The provisions of the Bill in respect of the Appeal Tribunal are grossly inadequate and should be revamped. It is suggested that a new set of provisions should be made under a separate part of the Bill on the Appeal Tribunal.

(ii) *The Implementation of International Legal Instruments relative to Wildlife:*

Under Section 5 (W) of the Bill, the Service is to, *inter alia*, “advise the Government on the ratification and implementation of international conventions regarding wildlife in all its aspects”. This new proposal is even

narrower than the old Section 3A (f) of Act No. 16 of 1989, which provided that the Service shall “administer and co-ordinate international protocols, conventions and treaties regarding wildlife in all its aspects in consultation with the Minister”.

Other than its narrow focus, Section 5 (W) of the Bill does not address the legal limitations identified and discussed hereinbefore in respect of Kenya’s treaty practice.

(iii) *Compensation:*

The provisions of the Bill on compensation are severely flawed in terms of conceptualization and presentation. On a general note, those provisions do not address in detail the recommendations of the Five-Person Review Group on compensation. The following specific weaknesses are apparent:

- The provisions on compensation do not recognise the traditional compensation systems suggested by the Five-Person Review Group.
- The composition of the Wildlife Compensation Committee is questionable. For example, why would the Capital Markets Authority be represented in such a committee? The Capital Markets Authority’s constituent statute does not grant it the discretion to engage in the activities of such a Committee. The Public Investment Committee of the National Assembly should not be represented in the Committee since its role in law is one of oversight over the executive arm of Government, and not administrative functions such as compensation. The Ministry responsible for agriculture is not represented in the Committee yet the destruction of crops and damage to livestock is set for compensation under section 114 of the Bill. The Attorney-General is not represented in the Committee, he being the principal legal adviser to the Government, including the Service.
- The system of compensation envisaged is at national level and not district level.
- Certain phrases are used in the Bill in reference to compensation without clear meaning being subscribed thereto, such as “in the course of normal wildlife utilization activities” in section 104(I)(b). It is not clear what this phrase means in law.
- The two-tier compensation system, that is, for personal injury and death on the one hand, and damage to crops, livestock and other property on the other hand,

requires further refinement and reflection. The administrative structures proposed for the two systems is confusing. Further work is thus required.

(iv) *Locus Standi*:

The provisions of the Bill on *Locus Standi* require further work in order to address the current weaknesses as follows:

- The provisions of the Bill do not expressly extinguish the common law limitations of personal loss or injury as a requirement for representative action, or action in the public interest.
- The provisions of the Bill do not set out the possible remedies that may be granted by the High Court in order to ensure the full implementation of the Act.
- The particulars of the applications made under Section 100(3) of the Bill are not necessary since:
 - (a) that is the work of the Rules Committee established by Section 81 of the Civil Procedure Act, Cap 21; and,
 - (b) the nature of pleadings will depend on the method by which the High Court is being moved when an application is made under Section 100 of the Bill.

They should therefore, be deleted.

- Section 91 (5) of the Bill attempts to limit the jurisdiction of courts in Kenya in granting injunctive relief against the Service as was recently the case in *Abdikadir Sheikh Hassan And 4 Others Vs Kenya Wildlife Service (HCCC NO. 2059 OF 1996 AT NAIROBI)* over the translocation of the "Hirola". A similar provision exists in respect of the Kenya Posts and Telecommunications Corporation. The legal effect of this provision is that it may be used to deny private people their legal entitlement and appropriate relief in situations where damages cannot suffice. It is unjust and operates directly in conflict with the provisions of the Bill on (i) *Locus Standi* and (ii) partnerships with local communities and private land owners. It will serve as a disincentive to such partnerships. It should be deleted so that the discretion of the courts is not fettered and the confidence of the public in the honesty and professionalism of the Service is not eroded.

4.7 Specific Suggestions on the Provisions of the Bill for Sub-regional Co-operation and Harmonization

The suggestions made here in below for inclusion in the provisions of the draft Bill are the result of the aspects mentioned below:

- (a) The Sub-Workshop on Development and Harmonization of Wildlife Laws (4-5 February 1998) of the Workshop on the Development and Harmonization of Environmental Law on Selected Topics in East Africa (2-10 February 1998, Sunset Hotel, Kisumu, Kenya) involving national consultants, national project coordinators, the Task Manager of the Project, facilitators from the World Bank and FAO, other officials from UNEP and the three governments under the UNEP/UNDP/DUTCH Joint Project on Environmental Law and Institutions in Africa.
- (b) A comparative review of the draft Bill and the Uganda Wildlife Statute of 1996.
- (c) The recommendations of the National Consensus Building Workshop held at Naivasha in April, 1998.

The Sub-Workshop on Development and Harmonization of Wildlife Laws, and the Naivasha Workshop made the following recommendations (for inclusion in the provisions of national wildlife statutes, in particular, the proposed Bill):

I. Management Issues

- (a) Legal definitions for critical wildlife terms in national statutes relating to wildlife and other aspects of biodiversity should be harmonized with the definitions obtaining in the other countries. In this regard, the Bill should draw some insights from the Uganda Wildlife Statute of 1996.
- (b) The focus of national wildlife laws, and in particular the Bill, should shift away from the traditional narrow orientation towards wildlife to a broader perspective of biodiversity, ecosystems and habitats. The new orientation would foster integrated wildlife management at the national level. As such, the national wildlife statutes should define wildlife in terms of biodiversity.
- (c) The Bill should provide for the establishment, protection and management of migratory corridors.

through the use of mechanisms such as conservation easements, joint management agreements with affected land owners and communities and where necessary, through compulsory land acquisition. The statutory provisions providing for these issues should have a Sub-regional bearing in terms of their, potential application. In other words, the provisions should be drafted in such terms that allow competent national institutions to agree on and demarcate common trans-boundary migratory corridors for effective management of migratory species within the Eastern African sub-region.

- (d) The Bill should provide for environmental impact assessment for activities, that impact on biodiversity including such activities with trans-boundary implications. Environmental impact assessment should specifically be required for any proposed degazettement or down-grading of a protected area.
- (e) The Bill should facilitate the joint establishment, planning and management of trans-boundary protected areas, ecosystems, coastal marine protected areas, etc.

II. Enforcement Issues

- (a) The definitions of wildlife- related crimes and the sanctions for such crimes should be harmonized in national legislation (within the three countries) to ensure a level-playing field and avoid the situation where crimes are “cheaper” to commit in one country than in another. The Bill should address this issue.
- (b) The penalties prescribed in the Bill for wildlife-related crimes should reflect prevailing economic realities and be adequate compensation for the environmental costs of the offence.
- (c) The Bill should provide for:
 - joint - cross-border investigations of wildlife related offences;
 - mutual co-operation in judicial proceedings, including extradition, service of process, recognition and enforcement of judgments, reciprocal rights of standing, etc.;
 - handling and return of confiscated specimens; and,
 - measures to combat illegal trade and trafficking of specimens of species.

III. Partnerships with Communities

- (a) The Bill should provide for public participation in the planning for, and management of wildlife resources. In addition, the Bill should facilitate effective involvement of communities through benefit and responsibility sharing arrangements that include:

- well-defined user rights;
- provisions on conflict resolution and dispute avoidance;
- provisions clearly indicating that the partnership deal is enforceable between the parties and valid against third parties;
- incentives for private land owners to devote land to biodiversity conservation and management.

- (b) The Bill and other national wildlife-related laws should:

- where communities and ecosystems straddle national boundaries, permit the establishment of joint collaborative management or similar agreements with the relevant communities, to avoid inconsistent rights and responsibilities existing on either side of the border.
- provide for effective methods of providing prompt, fair and adequate compensation for wildlife-related losses. Such methods need to be non-bureaucratic and transparent to avoid fraudulent practices.
- accord recognition and protection of traditional/ historical rights of communities that co-exist with wildlife within a specific ecosystem. In cases where such rights have to be extinguished in the interest of conservation, prompt, fair and adequate compensation should be granted. Where feasible and appropriate, compensation in such cases may take the form of providing equivalent rights elsewhere.

IV. Treaty Practice

The Bill and other wildlife-related national laws should contain provisions: (I)enabling the implementation of international treaties and agreements on wildlife. The three East African Countries may consider harmonizing their

treaty practices, including the identification and prioritization of international treaties and agreements of interest to the sub-region; (ii) establishing national treaty registries. Such registries would maintain the texts and information concerning the status of relevant treaties; make such texts and information accessible by the public; and allow for sharing and exchange of information among countries.

V. Institutional Issues

The Bill should establish cost-effective institutional frameworks that minimize inter-sectoral conflict, duplication and over-lapping mandates. To facilitate integrated management, the combination or merger of institutions having wildlife-related mandates should be considered under the Bill. Where institutional merger is not feasible, the Bill should spell out in detail the type of coordination required between relevant government agencies.

The national wildlife-based institutions should be permitted by the Bill to: (I) promote and strengthen wildlife research, both within Kenya and at the Sub-regional level; (ii) facilitate effective information exchange between the East African countries on biodiversity issues, including legal innovations and draft laws; and, (iii) facilitate the harmonization of curricula at wildlife-training centres within the Sub-region.

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TANZANIA COUNTRY REPORT

EXECUTIVE SUMMARY

The East African Sub-Regional Project is a component of the UNEP/UNDP/Government of the Netherlands Joint Project on Environmental Law and Institutions in Africa. Its purpose is to support the national initiatives towards the adoption of laws which prescribe the appropriate normative demands, institutional arrangements and the procedural requirements for the enforcement of environmental laws. Under the Project, assistance was provided to Kenya, Uganda and the United Republic of Tanzania, in the development and harmonization of wildlife laws and regulations; with a view to incorporating the requirements of global and regional wildlife conservation agreements into their national wildlife laws and regulations.

This is a country report in respect of the Mainland part of the United Republic of Tanzania only. Tanzania Zanzibar has a separate system for the management and conservation of wildlife, both in terms of policy, legislation and institutional set-up.

This Report also incorporates some of the recommendations of the Workshop on the Development and Harmonization of Environmental Law on Selected Topics in East Africa, held in Kisumu, Kenya, in early February, 1998, as well as those of the National Workshop held in late March, 1998, at Dar es Salaam.

This Report comprises three parts. The first part contains an introduction and background to wildlife conservation in Tanzania; followed by a discussion of the most relevant policies to wildlife conservation. This is followed by a review and evaluation of existing national wildlife laws and regulations, and institutional arrangement for the protection of wildlife in Tanzania. Finally, recommendations for the subject areas requiring harmonization for an effective sub-regional enforcement of wildlife legislation.

The second part consists of an inventory of international and regional wildlife conventions and protocols which are of priority interest and of sub-regional character to East African countries; followed by a brief discussion of the treaty practice in Tanzania; an examination of the extent to which existing national wildlife legislation of sub-regional character incorporates the normative demands of the conventions and protocols; and, finally, the identification of legislative and institutional requirements for the implementation of those instruments.

The third part examines the deficiencies in existing wildlife laws; and, contains proposals and recommendations for the amendment of existing wildlife laws and regulations, to incorporate the normative content of selected international wildlife conventions and protocols.

This report contains three annexes: the Wildlife Conservation Act, 1974; a draft Bill for the Biodiversity (Conservation and Management) Act; and draft on the Biodiversity (Control of Trade in Wild Flora and Fauna) Regulations.

CHAPTER ONE

REVIEW OF EXISTING NATIONAL WILDLIFE LAWS AND REGULATIONS AND INSTITUTIONAL ARRANGEMENT FOR THE PROTECTION OF WILDLIFE IN TANZANIA

1.0 INTRODUCTION

Wild flora and fauna constitute a natural heritage of cultural, social, scientific, aesthetic and economic worth, which must be preserved for the benefit of present and future generations. These wild species are essential in maintaining biological balances. They, however, are being seriously depleted, some facing extinction. The main reasons for the decline in these species are the alteration or destruction of their habitats, and over-exploitation. The need for the preservation of wildlife resources has already been incorporated into the World Conservation Strategy (WCS) by the International Union for the Conservation of Nature and Natural Resources (IUCN) and the World Wildlife Fund (WWF). A key message in the WCS was the need to establish and maintain protected areas within which species, communities and ecological processes can be preserved under conditions of minimal human influence. Thus, legislative and administrative measures both at the national, regional and global level have been taken up by nations, for the protection of specified species of wild animals and plants, and the habitats of threatened or endangered species of wild animals.

Tanzania has been endowed with a great heritage of wildlife. The Government has set aside Protected Areas devoted to wildlife conservation. The regime of land devoted to wildlife conservation and management in Tanzania constitute a total network of Protected Areas covering 28% of the country's

total land area, of which about 4% comprises 12 National Parks, 1% is accounted for by the Ngorongoro Conservation Area, 15%, Game Reserves, and 8%, Game Controlled Areas. As a result of this, 19% of Tanzania's surface area is devoted to wildlife in Protected Areas where no human settlement is allowed - National Parks and Game Reserves, and 9% of its surface area to Protected Areas where wildlife co-exists with humans (Policy for Wildlife Conservation, 1998). The total land area of Tanzania is put at 904, 594 sq.km, and out of which 46,216 sq.km is covered by water bodies. It means that an area of about 200,000 sq.km¹ of the land surface is under national parks and reserves. The national parks alone constitute about 47,000 sq.km (Tanzania National Agricultural Policy, 1982).

Several of Tanzania's Protected Areas are internationally renowned. Serengeti, Kilimanjaro, Ngorongoro and Selous have been designated World Heritage Sites. Serengeti-Ngorongoro and Lake Manyara are biosphere reserves. Among all the national parks in Tanzania, Serengeti is the largest covering of an area of 14,500 square kilometers. The largest wildlife conservation area in the country is the Selous Game Reserve, which covers an area of about 50,000 sq.km, according to a recent GSI survey which was conducted by the Wildlife Department.

The conservation policies of the forestry sector have also greatly increased the coverage of Protected Areas within Tanzania. A total of about 570 Forest Reserves cover around

15% of Tanzania's surface area, of which 3% overlap with Protected Areas devoted to wildlife conservation (Policy for Wildlife Conservation, 1998).

Tanzania has had a long history of wildlife conservation and an array of wildlife legislation, but there has never been any comprehensive wildlife policy.²⁹ The protection and utilization of wildlife has therefore, been done through guidelines, regulations and sectoral laws, implemented by the Department of Wildlife. The steadily growing population of both wildlife and human beings, the advancement of science and technology, and development projects being undertaken in the country, sometimes within wildlife protected areas, have forced resource conservation institutions to revisit their activities and develop skills which will make them able to achieve their conservation goals in order to ensure that wildlife conservation remains a legal, feasible, productive and sustainable activity.

The laws pertaining to wildlife conservation are now under review by the Department of Wildlife in the Ministry of Natural Resources and Tourism and a draft Bill for a Wildlife Utilization and Conservation Act has already been prepared. The consultant to this Project, however could not get hold of the document because it is still confidential. Before embarking on a discussion of the legal framework and institutions for wildlife conservation, below is a brief outline of some of the policies relevant to wildlife conservation.

1.1 The National Policies for National Parks (NPNP)

A series of National Policies for National Parks in Tanzania (NPNP) was approved by TANAPA in 1994. The NPNP (contained in one document) covers a wide range of issues.

First, the NPNP introduces the concept of park management planning to Tanzania: all parks are to have a General Management Plan (GMP) based on scientific information, and a systems plan is to be prepared, which will identify nationally significant areas and study potential for inclusion in the national parks system.

Secondly, the NPNP introduces Environmental Impact Assessment (EIA). EIAs are to be performed on all GMPs,

and are required for all major actions, developments and activities within and adjacent to national park boundaries.

Thirdly, the NPNP introduces the idea that communities benefiting from national parks located to their communities. Particularly, the NPNP reiterates the aim of TANAPA to institutionalize its Community Conservation Service (CCS).

Fourthly, the NPNP sets forth some of the permissible uses and prohibited uses of national parks. Also the NPNP embraces public participation particularly in planning and public reviews.

Fifthly, the NPNP requires park facilities to be environmentally sound in design, and to promote environmentally sound tourism and concessions as the other side of the conservation equation, that is, preservation and use. Specifically, the NPNP reiterates that major developments should now be located outside park boundaries.

Lastly, the NPNP provides that a ranger field force unit should be established as the chief law enforcement force in the national parks. This unit will ensure preservation of the park environment and prevention of illegal activities within national parks.

1.2 The National Land Policy

The National Land Policy³⁰ which was approved by Cabinet in 1995 and subsequently amended, addresses matters of land-use and land tenure in the country.³¹ The Policy calls for the creation of mechanisms for protecting sensitive areas such as national parks and seasonal migration routes for wildlife, and that these areas or parts of them should not be allocated to individuals.³² In addition, the Policy recognizes the need to coordinate land-use activities so that licenses or permits for exploitation of natural resources are issued in tandem with environmental considerations.

The National Land Policy also addresses the question of overlapping land uses in game controlled areas where there are different activities such as agriculture, settlements, ranching, among others.

²⁹ A Wildlife Conservation Policy in the sense comprises a set of broad decisions made by a Government or an institution whose principal components are a set of wildlife conservation goals and the strategies for achieving them. The decisions may be vast and complex, the goals are fairly stable and the strategies vary and are dynamic.

³⁰ (See) National Land Policy, 1995, Ministry of Lands, Housing and Urban Development (MLHUD), Dar es Salaam, Tanzania, March 1, 1995.

³¹ A Draft Bill for a Land Law Act prepared by an international consultant to implement the provisions of the land policy is in the hands of the Government. Several public meetings to discuss the Bill have been organized. The Draft, however, has met with severe criticism from various concerned citizens, non-government organizations and institutions, particularly pertaining to continuing the colonial legacy of declaring all land as public and vesting it in the President, and lack of concern for the property rights of women. It is yet to be tabled before Parliament.

³² Id. para. 7.1.1(iii).

To ensure proper utilization of land outside the parks, the policy sets game controlled areas to be buffer zones between national parks or game reserves and settlements/ agriculture, and provides further that titles to farms and ranches blocking migration routes shall be revoked and made part of protected public lands.⁵³

1.3 The Policy for Wildlife Conservation

1.3.1 Background to the Policy

The first ever Policy for Wildlife Conservation for the country was approved by Cabinet in early March, 1998. This Policy will therefore, be the compass for legislation in wildlife conservation in the country. Efforts geared at reforming existing wildlife laws and formulating are required as of necessity to reflect the Policy. One of the strategies advocated for by the Policy, is the review of the policy and subsequent legislation to keep up with changes and demands on wildlife conservation.

The contents of the first draft policy which was developed by the Department of Wildlife in 1995, were discussed and revised during a wildlife sector workshop which was organized by the Wildlife Department in February, 1996. A revised draft was then developed in April, 1996, from the first draft, by a team of experts in wildlife conservation from government institutions country-wide. The last version of the policy which was finally approved by Cabinet in March, 1998, was developed from the April version, and it incorporates changes that were suggested by a ministerial team. A policy document, however, is not a static one, it is amenable to revisions from time to time in the future, to suit the changing circumstances which may influence the subject matter of the policy in question. The Policy for Wildlife Conservation is no exception. The 1998 Policy for Wildlife Conservation is therefore, an overall National Policy that governs the conservation and management of wildlife throughout Tanzania. Below is a brief overview of the Policy.

1.3.2 Policy Mission Statement

The Policy for Wildlife Conservation contains a Mission Statement, which recognizes three important aspects. First, that the importance of wildlife is not only as a source of wonder and inspiration but an integral part of our natural resources and of our future livelihood and well being. Secondly, the acceptance of trusteeship in wildlife for the benefit of future generations; and, thirdly, the need

for specialist knowledge, trained man-power, money, and international co-operation in the conservation of wildlife.⁵⁴

1.3.3 Policy Objectives

The Policy outlines the following as the objectives of wildlife protection:

- to continue the establishment of Protected Areas on the basis of systems planning;
- to stress maintenance and development of a Protected Area network in order to enhance biological diversity;
- to promote the conservation of wildlife and its habitat outside core areas (NPs, GRs and NCA) by establishing WMAs;
- to transfer the management of WMA to local communities, thus, taking care of corridors, migration routes and buffer zones, and ensure that the local communities obtain substantial tangible benefits from wildlife conservation; and,
- to prevent illegal use of wildlife throughout the country by taking the appropriate surveillance, policing and law enforcement.

1.3.4 Policy Strategies

The following are some of the strategies outlined in the Policy:

- Administer wildlife by conserving wildlife species and habitats through wildlife authorities and developing responsibility to land holders who are custodians of wildlife in their land for them to have the right to use and benefit from their custodianship.
- Involve the rural communities who are custodians of the wildlife resource outside PAs in order to promote conservation of wildlife outside PAs.
- Institute measures that will compel foreign investors in the wildlife industry to enter into partnership with Tanzanians.
- Encourage legal and sustainable trade in wildlife and its products from GRs, GCAs and outside PAs, thus,

⁵³ Id., para. 7.5.1.

⁵⁴ The Mission Statement is a quotation of the words of Mwalimu Nyerere, contained in the 1961 Arusha Manifesto.

animals which migrate through Uganda. In the Serengeti Wildlife Research Institute Act⁴⁵ the term wildlife is defined to mean “undomesticated animals, game and game birds specified in the First, Second and Third Schedules to the Wildlife Conservation Act, and their habitat and ways of life, and includes bees, fish, birds, insects and other animals which, though not specified, are related or connected to, or affect, the lives or the habitat of the specified animals, game or game birds.”⁴⁶ This definition is specifically broad for wildlife research purposes.

It seems therefore, that under the existing wildlife legislation the term “wildlife” is limited only to wild faunal resources and their products. There is a need to define the term “wildlife” more broadly because no sector has been responsible in the past for the management of terrestrial invertebrates and because of the ecological interdependence of animals, plants and their habitats, and the need to conserve and manage ecosystems as a whole. Only by placing emphasis on ecosystems will it be possible to conserve many of the small animal species and less common plants that make up the whole of Tanzania’s unique and important biological diversity. Furthermore, the new definition allows the wildlife sector to manage those native species that are kept in captivity, as well as those exotic species that are deliberately or accidentally introduced in to Tanzania, whether to be held in captivity, or which become deliberately or accidentally established in the wild.

In the 1995 Draft of the Policy for Wildlife Conservation which was titled “Policy for Wildlife Conservation and Utilization” the term wildlife was defined to mean

“those species of wild and indigenous animals and plants, and their constituent habitats and ecosystems, to be found in Tanzania, as well as those exotic species that have been introduced to Tanzania, and that are temporarily maintained in captivity or have been established in the wild.”

Since the main object of the proposed wildlife legislation will be the conservation of biodiversity, it will have to include wildlife populations inside designated areas as well as exploitable wildlife populations outside such areas, including the protection of those animal species, whether migratory or non-migratory, that are threatened with

extinction and their habitat vulnerable to disturbance or loss. The definition of the term wildlife will have to embrace all of these aspects.

Conservation Areas or Protected Areas

In accordance with the Wildlife Conservation Act of 1974, the conservation, wise use and development of faunal resources and their habitat is achieved through the establishment of “semi” - protected areas or “conservation areas.” These are protected natural resource areas whether they be a game reserve, a national park, the Ngorongoro Conservation Area⁴⁷ or a forest reserve.⁴⁸ This somewhat functional definition of protected areas encompasses only certain categories of Protected Areas (PAs) and leaves out others.

The 1998 Policy for Wildlife Conservation makes only a cursory mention of the term wildlife management areas (WMAs) by stating that these will be established in order to facilitate CBC, but does not attempt to define the concept. In common wildlife conservation parlance the term wildlife conservation area (WCA) comprises: (a) wildlife management areas (WMAs) such as a sanctuary; and, (b) wildlife protected areas (WPAs) such as national parks (NPs), game reserves (GRs) game controlled areas (GCAs) and the Ngorongoro Conservation Area (NCA).

The Wildlife Conservation Act provides for only three types of Protected Areas (PAs): Game Reserves (GRs), Game Controlled Areas (GCAs), and Partial Game Reserves (PGRs), without offering a clear definition of these terms. Therefore, the 1968 African Convention on the Conservation of Nature and Natural Resources (the African Convention) could be resorted to. In the Convention, a game reserve is defined as an area set aside for the conservation, management and propagation of wild animal life and the protection and management of its habitat. Hunting and capturing of animals is prohibited except as directed by the reserve authorities. Human activities, including settlement, are controlled or prohibited.⁴⁹

In Tanzania, the declaration of game reserves is done by the President.⁵⁰ A game controlled area on the other hand, is declared by the Minister responsible for fauna matters⁵¹, and a partial Game reserve by the Director of Wildlife.⁵² Although the Act provides for the declaration of partial game

⁴⁵ Id. Section 3.

⁴⁷ The Ngorongoro Conservation Area is a specific conservation area managed by the Ngorongoro Conservation Area Authority, established by the Ngorongoro Conservation Area Ordinance of 1959, Cap.413.

⁴⁸ Id. S.2(1) The 1968 African Convention on the Conservation of Nature and Natural Resources defines a “conservation area” as any protected natural resource area, be it a strict natural reserve, a national park or a special reserve [Art.III(4)].

⁴⁹ Id. Art. III(4)(c).

reserves, these have never been declared anywhere in the country since the law was enacted in 1974. The 1998 Policy for Wildlife Conservation intimates that with the creation of CBC, GCAs status and functions will be reviewed in order to effect CBC, and that through the provision of WMA, PGRs will be maintained in order to enhance its intent by creating a category of Protected Species.

Going by what the Policy provides in respect of PGRs, it seems clear that PGRs will now act as "strict nature reserves." According to the 1968 African Convention on the Conservation of Nature and Natural Resources, a "strict nature reserve" is an area under State control whose boundaries may not be altered except by competent legislative authority. In such reserve, any form of consumptive use such as hunting or fishing, logging, farming, mining, or grazing is strictly forbidden. Settlement is also forbidden and flying over at low altitude and scientific investigations (including removal of animals and plants) may only be undertaken by permission of the competent authority.

The other type of Protected Areas in Tanzania are national parks, which are created and administered under the National Parks Ordinance.⁵³ A definition of the term "national park" is not, however, provided under the Ordinance. According to the 1968 African Convention on the Conservation of Nature and Natural Resources, a national park is one of the four ways of conserving flora and fauna. The other three being a strict nature reserve; a game reserve; and a special reserve or sanctuary. Under Article III(4)(c) of the 1968 African Convention, a national park is defined functionally as an area set aside for the conservation, management and propagation of wild animal life and the protection and management of its habitat. Hunting and capturing animals is prohibited except as directed by the reserve authorities. Human activities, including settlement, are controlled or prohibited.

Conservation methods

In Tanzania, upon declaring Protected Areas, certain statutory restrictions apply. Messrs Laura and Vincent in

their consultancy report,⁵⁴ have ably summarized the provisions of the Wildlife Conservation Act of 1974, and have delineated six types of restrictions, namely:

- (1) restrictions on territory - the establishment of game reserves and game controlled areas;⁵⁵
- (2) designation of animals to different categories receiving different levels of protection or subject to different types of use - Schedules to the Act and provisions for national game and dangerous animals;
- (3) regulation of timing of hunting - establishing close seasons during which hunting is prohibited;⁵⁶
- (4) restricting types of weapons and methods to be used in hunting;⁵⁷
- (5) requiring different types of licenses, some with conditions, for any hunting/capturing or wounding, etc., of animals;⁵⁸ and,
- (6) restricting taking of trophies from animals, except by permit or special permission.⁵⁹

The details of the above mentioned restrictions are covered in the regulations and orders for wildlife conservation. They reflect the different conservation methods used in the Wildlife Conservation Act, and to a large extent they incorporate the normative content of some of the international wildlife conventions such as the CITES and the 1968 African Convention on the Conservation of Nature and Natural Resources.

Designating wildlife-related crimes as "economic offences"

More often than not, in many countries of the world, criminal law has been used to assist in the course of wildlife conservation and Tanzania is no exception. Wildlife-related crimes in Tanzania are scheduled as "economic offences" under the Economic Offences and Organized Crime Control Act.⁶⁰ The Act purports to "create" and punish such offenses by way of schedules. No definition of the term "economic

⁵⁰ The Wildlife Conservation Act, 1974; S.5(1).

⁵¹ Id. S.6.

⁵² Id. S.13.

⁵³ Cap.412, 1959.

⁵⁴ Report on Policy and Legislation Pertaining to National Parks Management, 1996, on p.37.

⁵⁵ Wildlife Conservation Act, 1974, S.9(1).

⁵⁶ Id. S.17.

⁵⁷ Id. S.54(1)(a)(i)-(vii).

⁵⁸ Id. SS.32-35.

⁵⁹ Id. SS. 61-65.

⁶⁰ Act No. 13 of 1984 as amended by Acts No.13/1988, 10/1989, 4/1991 and 3/1992.

offences” is offered in the Act. A closer examination of the provisions of the Act, however, will reveal that the so-called “economic offences” are offences which already exist under the Penal Code, wildlife laws and other laws.

The “new crimes” styled “economic offenses” which are listed in the First Schedule of the Economic and Organized Crime Control Act, include: unlawful dealings in trophies or in Government trophies; being found in unlawful possession of weapons in certain circumstances, contrary to sections 10, 11, 14, 35, Part VI, sections 67 and 71 of the Wildlife Conservation Act, 1974, or contrary to section 16 of the National Parks Ordinance.

The investigation of all economic offences that are reported to the police are conducted by police officers with the assistance of public officials designated by the Director of Public Prosecutions after consultation with the Director of Criminal Investigations, and published in the Government Gazette.⁶¹ The decision to prosecute for “economic offences” lies with the Director Public Prosecutions (DPP), whose consent is necessary before trials in respect of such offences commence.⁶² Prosecuting officers include all law officers; all State Attorneys of every rank; all police officers of or above the rank of Assistant Superintendent of Police; any legally qualified person employed in the public service or any person or category of persons appointed by the DPP.⁶³

Cases concerning “economic offenses” are heard and determined by a specially constituted High Court called an “Economic Crimes Court”, which constitutes a Judge of the High Court and two lay members. The conviction for an “economic offense” carries with it a term of imprisonment not exceeding fifteen years.⁶⁴ In considering the propriety of the sentence to be imposed, the Court is to comply with the principle that if a proved offence is “endangering to the national economy”, it deserves the maximum penalty.⁶⁵

It is worth noting that the classification of wildlife-related crimes as “economic offenses” has enabled such offenses to be dealt with by a special branch of the High Court and their penalties to be enhanced substantially. Whereas under the wildlife laws, the scheduled wildlife-related offenses

carry only a term of imprisonment that ranges from two to seven years, with an option for fines, under the Economic Crimes and Organized Crime Control Act, such offenses attract a prison term only and there is no option for fine. Whether this approach is a better means of deterring would be offenders, is subject to debate.

Mutual Assistance in Criminal Matters and Proceeds of Crime

In its efforts to fight “organized” crime, the Government of Tanzania has recently promulgated two very crucial laws - the Mutual Assistance in Criminal Matters Act⁶⁶ and the Proceeds of Crime Act⁶⁷, respectively. The former (Act) provides for mutual assistance in criminal matters between Tanzania and Commonwealth countries and other foreign countries; facilitates the provision and obtaining by Tanzania of such assistance. The latter Act deals with proceeds of crime. The two Acts to a large extent compliment each other.

Although the main object of the two Acts mentioned above is to deal specifically with “serious offenses”, (defined under the Act to mean any dealing which amounts to drug trafficking, any specified or prescribed offence)⁶⁸, the provisions of the Acts could as well be utilized to assist in dealing with illegal trade in wild flora and fauna. The Minister responsible for legal affairs is empowered under the Act to specify or prescribe any offense as falling within the ambit of the Act. The Minister could therefore, prescribe illicit traffic in wildlife products and illegal trade in wild flora and fauna as a “serious offense” covered by the Act.

For example, the most relevant provisions of the Act that which be utilized to deal with illegal trade in wild flora and fauna are those relating to obtaining of evidence, documents or other articles; the provision of documents and other records; the location and identification of witnesses or suspects; the execution of requests for search and seizure; the making of arrangements for persons to give evidence or assist in investigations; the forfeiture or confiscation of property in respect of offenses; the location of property that may be forfeited; and the service of document and requests for enforcement of orders in securing the proceeds of crime.

⁶¹ Act No.13/1984, S. 21(1).

⁶² Id. S.26(1).

⁶³ Id. S.27(2).

⁶⁴ Id. S.59(2). Under the Wildlife Conservation Act, 1974.

⁶⁵ Id. S.59(3)(a).

⁶⁶ Act No.24 of 1994.

⁶⁷ Act No.25 of 1991.

⁶⁸ Under Section 6 of the Proceeds of Crime Act.

1.4.2.2 The National Parks Ordinance

The National Parks Ordinance as amended,⁶⁹ remains the key legislation in force, governing national parks (NPs) in Tanzania. Under the Ordinance, the Governor (now the President) may, with the consent of the Legislative Council (now the National Assembly (Parliament)),⁷⁰ proclaim in the Government Gazette any area of land to be a national park.⁷¹ Such proclamation is capable of being amended, varied, or revoked solely by the legislative body, although the President also may do so with consent of the legislature.

Upon an area being declared a national park or its boundaries being altered, rights upon such lands become obsolete save for mining rights.⁷² The President has powers to grant a mining right within a national park,⁷³ notwithstanding that the Trustees have certain authority to impose conditions on granted mining rights, as long as the conditions do not derogate that right.⁷⁴ Mining rights, however, can be exercised only when proper notice has been given to the Trustees and the President, and within conditions which may be imposed.⁷⁵

The National Parks Ordinance was amended in 1962.⁷⁶ The amending legislation established the power of officers' of the Trustees to "compound" offences. This allowed officers authority to direct payment of fines upon the discovery of commission of an offence. The maximum fine for compounded offences is 200 Tsh. The offender may not be fined except upon admission of the offence and issuance of a receipt by the officer. Once an offence has been compounded, no further prosecution may take place in court.

In 1974 the National Parks Ordinance was again amended.⁷⁷ The amending legislation replaced section 16

and 17 of the National Parks Ordinance. The new section 16 provides that hunting or taking animals (including fish, eggs, and nests) without a permit is prohibited and is an offence pursuant to the Act.⁷⁸ The Schedules of listed animals in the Wildlife Conservation Act apply in respect to these offences. The amending Act establishes separate penalties according to the type (and under which Schedule it is listed) of animal killed or taken.

The 1974 Wildlife Conservation Act also amended the National Parks Ordinance with respect to prosecution of offences, by applying certain sections of the Wildlife Conservation Act to national parks. These are: Sections 70, (burden of proof) S.74, (powers of search and arrest) S.75, S.77, (authority to erect temporary barriers) S.79 (powers of the High Court to impose less than minimum penalties) and S.80 (concurrent jurisdiction of district courts).

The National Parks Regulations,⁷⁹ establish a general prohibition on use of or entry into a park without a valid permit or without complying with permit conditions, contravention of which is an offence punishable by fine or imprisonment or by both. The Regulations were amended in 1986⁸⁰ to increase fees for both residents and non-residents for the various permitted activities listed.

1.4.2.3 The Marine Parks and Reserves Act

The Marine Parks and Reserves Act⁸¹ creates a special category of national parks - they are not under the jurisdiction of TANAPA. Marine parks and reserves can be declared in any area within territorial waters or exclusive economic zone or any island or coastal area. The Act does not distinguish between what is a marine park or a marine reserve by way of defining them.⁸² The only distinction made

⁶⁹ Cap. 412, 1959. The National Parks Ordinance repealed and replaced the previous National Parks Ordinance, Cap.253 (s.23 of Cap.412). The Ordinance declared the Serengeti National Park as the first national park in the country (S.5(1)). Currently there are twelve such national parks in the country.

⁷⁰ Pursuant to Section 8(b) of the 1962 Republic of Tanganyika (Consequential Transitional and Temporary Provisions) Act, Cap. 500, references in pre-independence laws to the words "Governor" shall be read as "the President" and references to the "Legislative Council" shall be read as "the Parliament."

⁷¹ National Parks Ordinance, S.3.

⁷² Id. SS.6 & 7.

⁷³ Id. S.6(1).

⁷⁴ Id. S.15.

⁷⁵ Id. S.15.

⁷⁶ The National Parks Ordinance (Amendment) Act, 1962, Act No.37 of 1962.

⁷⁷ The National Parks Ordinance (Amendment) Act, 1974, Act No.27 of 1974.

⁷⁸ This section merely clarifies what types of takings that are illegal; the original sections were prohibiting takings without a permit in any case.

⁷⁹ GN 255 of 1970.

⁸⁰ The National Parks (Amendment) Regulations, GN 346 of 1986.

⁸¹ Act No.29 of 1994. The Act became operative on the 1st of May, 1995, vide GN 314 of 1995.

⁸² In the English language, the word "park" means *inter alia*, to enclose, for example, animals, etc., and the word "reserve" means *inter alia*, something kept back or held available (as for future use) or something set aside for a particular purpose (cf. *Webster's Third New International Dictionary*, Unabridged, Merriam-Webster Inc., Springfield, Massachusetts, U.S.A (1993)). The purposes for which marine parks and reserves serve are stipulated under Section 10 of the Marine Parks and Reserves Act, the main one being: to protect, conserve, and restore the species and genetic diversity of living and non-living marine resources and the ecosystem processes of marine and coastal areas.

under the Act, is the way the two conservation areas are created and the purposes which they serve.

Creation of marine parks and reserves

A marine park is created by the Minister by declaring it in the Gazette after consultation with local government authorities and upon resolution of Parliament.⁸³ Marine reserves may similarly be created, except that no Parliamentary resolution is required.⁸⁴ Otherwise under the Act, the qualifications for an area to be declared a marine park or reserve and the purpose they serve are similar.

According to the Act, in order for an area to be established as a marine park or reserve it must be of a particular natural scenic, scientific, historical or other importance or value; or the preservation or management of the area is necessary to properly protect, permit access to, or allow public viewing or enjoyment of the area.⁸⁵

Upgrading a marine park to a national park

The Minister responsible for national parks may also declare any marine park to be a national park,⁸⁶ provided that the objectives of marine parks and reserves would be met, and that certain other provisions of the Act would be applicable. Under section 9(3) of the Marine Parks and Reserves Act of 1994, the Minister responsible for National Parks may, after consultation with the relevant local government authorities upgrade a marine park into a national park.

The Act empowers the Minister to declare any marine park or any part of a marine park to be a national park in accordance with the provisions of section 3 of the National Parks Ordinance. Such declaration has to provide specific assurance that all of the purposes of a marine park will continue to apply to such area and that the creation and review of regulations for such area shall be made in accordance with the Marine Parks and Reserves Act, of 1994.⁸⁷ Although under the National Parks, it is the President who by legislative consent, has powers to declare an area to be a National Park; this power may be exercised on his behalf by the Minister.

Objectives of marine parks and reserves

According to the Act, marine parks and reserves are established to fulfil certain objectives, namely:

- (a) the protection, conservation and restoration of species and genetic diversity of living and non-living marine resources, and the ecosystem processes of marine and coastal areas;
- (b) the stimulation of the rational development of under-utilized natural resources;
- (c) the management of marine and coastal areas for the promotion of sustainability of existing resource use, and the recovery of overexploited resources or damaged areas;
- (d) the ensurance that villages and other local resident users in the vicinity of, or dependent on a marine park or marine reserve are involved in all phases of the planning, development and management of that marine park or marine reserve, share in the benefits of the operation of the protected area, and have priority in the resource use and economic opportunity afforded by the establishment of the marine park or reserve;
- (e) the promotion of community-oriented education and the dissemination of information concerning the conservation and sustainable use of the marine parks and reserves; and,
- (f) the facilitation of research and the monitoring of resource conditions and uses within the marine parks and reserves.⁸⁸

The Act establishes the Marine Parks and Reserves Unit of the Fisheries Division.⁸⁹ It also creates a Board of Trustees of the Marine Parks.⁹⁰

Revolving Fund for marine parks

A revolving fund has been established for funding all marine parks; each marine park has an account within the revolving

⁸³ Id. S. 8(1).

⁸⁴ Ibid. S.9(2).

⁸⁵ Id. S. 8(2)(b) &(c).

⁸⁶ Ibid. S.9(3).

⁸⁷ Section 9(3)(a)&(b).

⁸⁸ Id. at S.10

⁸⁹ Id. at Section 3(3).

⁹⁰ Id. at Section 4(1).

fund where all revenues generated from within the marine park shall be retained and expended.⁹¹ The Fund is established in part to benefit local adjacent communities. For example, the Unit Manager and the Warden may expend funds apportioned in the General Management Plan for a park or reserve and approved by the Minister, for the benefit of villages.⁹² In addition, the Board has a duty to distribute a portion of the net revenues of a marine park to local authorities within which the Marine is declared.⁹³

Adoption of General Management Plans (GMPs)

The Minister is required to adopt a General Management Plan (GMP) for every marine park and reserve. Activities, rights, licenses, titles, interests, franchises, leases, claims, privileges, exemptions or immunities may not be granted within a marine park or reserve if they are inconsistent with the GMP and regulations. The GMP is to include designated zones, including a description of activities permitted therein.⁹⁴ A time limit exists for the development of a GMP after a park is declared. The Board considers it and recommend to the Minister for its adoption.⁹⁵

Involvement of Village Councils

Under the Act, the government is required to involve village councils of affected villages in the preparing the GMP, enacting regulations, and zoning the marine park or reserve.⁹⁶ Specifically, the Advisory Committee or the Warden is required to notify affected villages of any of the above actions, establish a comment period, and accept, consider and respond to comments from the villages. Village Councils are also given mandatory advisory and participation duties.⁹⁷ Decisions which do not comply with these procedures will be invalidated by the Board.⁹⁸ Finally, local resident users are given the opportunity to sustainably utilize the marine parks and reserves, as well as to reside in the areas; the Minister may make regulations governing their activities.⁹⁹ They are also given preference in the

granting of licenses, concessions and other rights.

Restricted and permitted activities

The Minister responsible for fisheries and the Board of Trustees are given general and specific authority to restrict or permit certain activities within marine parks and reserves.¹⁰⁰ Specific prohibitions are also established in the Act, the violation of which is an offense subject to prosecution.¹⁰¹

Designated authorized officers may serve as public prosecutors;¹⁰² injunctive relief and natural resource damage provisions are also included as sanctions for violations, in addition to fines and imprisonment.¹⁰³

1.4.2.4 The Fisheries Act

The Fisheries Act was enacted for purposes of managing fisheries and fisheries resources. Section (3) of the Act creates the post of the Director of Fisheries - the Chief Administrator of the Act. The Director is appointed by the President. Fishing licenses may only be issued by other authorized officers.¹⁰⁴

Under the Act, the Minister responsible for fisheries has the mandate of regulating the fishing industry.¹⁰⁵ The Minister is also empowered to declare any area or waters to be a controlled area in relation to all fish, and fish products. Such declaration restricts the use of and entry into such area, except with the permission of the Director or any other officer so authorized. Like the National Parks Ordinance, upon the declaration of a controlled area, all rights in it become extinguished. In practice fisheries management within national parks is undertaken by TANAPA staff, rather than the Fisheries Department. Where fisheries areas are, however, adjacent to national parks, fisheries management may impact on national parks or wildlife within national parks.¹⁰⁶

⁹¹ Id. at Section 7(6).

⁹² Id. at Section 7(6).

⁹³ Id. at Section 7(7).

⁹⁴ Id. at Section 17.

⁹⁵ Id. at Section 14(1).

⁹⁶ Id. at Section 8(1).

⁹⁷ Id. at Section 8(5)(a) - (c).

⁹⁸ Id. at Section 8(8).

⁹⁹ Id. at Sections 18 and 19.

¹⁰⁰ Id. at Section 13(1) and sections 18 - 23.

¹⁰¹ Id. at Section 24.

¹⁰² Id. at Section 31.

¹⁰³ Id. at Section 32(4) and (5).

¹⁰⁴ Id. at Section 49(1) - (3).

¹⁰⁵ Id. at Section 5.

¹⁰⁶ Laura and Vincent, loc. cit. on p.41.

1.4.2.5 The Forest Ordinance

The Forest Ordinance¹⁰⁷ permits the Minister to declare any reserved land, a territorial or local authority forestry reserve.¹⁰⁸ Unreserved land means any land not already within a forest reserve, or under private ownership or held under a right of occupancy.¹⁰⁹ Territorial Forestry Reserves (TFR) are to be managed by the Minister responsible for forests.

Local Authority Forestry Reserves (LAFRs) are managed by District authorities.¹¹⁰ Districts have the authority to delegate management responsibility for a LARF to any individual.¹¹¹ Upon creation of forestry reserves, citizens are given the right to claim customary rights or interests in the land.¹¹² Entry into reserves or use of forest produce (and products) in reserves is only by license.¹¹³ Similarly the harvesting of specific “reserved” trees on public lands is prohibited except with a license.¹¹⁴ Furthermore, no commercial felling is permitted, even on the public lands, without a license. The Director of Forests has authority to completely restrict use of or access to a forest, even on public non-reserved lands.¹¹⁵

The fact that in many cases forest reserves border national parks and serve as *de facto* buffer zones, their management regime directly impact on national parks and wildlife and, thus, their relevancy.¹¹⁶ The taking of animals out of forest reserves is not prohibited under the Forest Ordinance. The provisions of the Wildlife Conservation Act govern takings in these reserved areas as in the rest of the country. Wildlife poachers, however, can as well be arrested and charged under the provisions of the Forests Ordinance that prohibit entry into a forest reserve without a permit. The 1998 Policy for Wildlife Conservation provides that FRs will continue to be managed through the Forestry Legislation; however, all components of the operational definition of wildlife other than forest produce, will remain under the control of the wildlife authorities even when they occur in FRs.

No provisions, however, exist for “village-managed” forest reserves, although reference to the Local Government (District Authorities) Act¹¹⁷ suggests that registered villages, have authority to enact by-laws for the management of forests within village boundaries, provided that those by-laws do not conflict with provisions of national law.¹¹⁸ Furthermore, no explicit mandate exists for cooperation between game or park officers and forest officers to prevent poaching or possession of animal and plant species.

Finally, no provisions exist in the Forest Ordinance to facilitate up-grading of forestry reserves to higher categories of protected areas, such as national parks.

1.4.2.6 The Mining Act

The Mining Act of 1979, though not directly concerned with wildlife conservation, does contain some provisions which indirectly may affect the environment in wildlife conservation areas.

The Mining Act was enacted to encourage efficient and maximum exploitation of minerals in the country. The Act delineate mining into small-scale and large-scale mining. Different categories of licenses are required depending on the relevant stage in the mining, namely, reconnaissance, prospecting and mining licenses respectively.

For the exercise of mining rights in national parks, special consent of the relevant minister or Management Authority is required.¹¹⁹ Consent in any of these cases may be given with “conditions.”¹²⁰ Licenses are subject to suspension or cancellation of a mineral right if they fail to comply with the Act, regulations or conditions of the license. The Commissioner for Mines has enforcement authority under the Act.

Under the National Parks Ordinance, the right to mine in national parks has been maintained. The Ordinance gives

¹⁰⁷ Cap. 389

¹⁰⁸ Id. at Section 5.

¹⁰⁹ Id. at Section 2.

¹¹⁰ Id. at Section 5 and 10.

¹¹¹ Id. at Section 11(1).

¹¹² Id. at Sections 6 - 8.

¹¹³ Id. at Section 15.

¹¹⁴ Id. at Section 17.

¹¹⁵ Id. at Section 30(1)(b).

¹¹⁶ Laura and Vincent, loc. cit.

¹¹⁷ Act No. 7 of 1982.

¹¹⁸ Id. at Sections 111 and 142.

¹¹⁹ Id. at Section 48.

¹²⁰ Id. at Section 46.

the President powers to grant a mining right within a national park.¹²¹ The Trustees of national parks are also given authority to impose conditions on granted mining rights, as long as the conditions do not derogate that right.¹²²

The 1998 Policy for Wildlife Conservation specifically prohibits mining in National Parks (NPs), the Ngorongoro Conservation Area (NCA) and Game Reserves (GRs), in order to effectively conserve the wildlife resources. There is an urgent need therefore, to amend the wildlife and mining laws in the country so as to accommodate this particular Policy statement.

The Mining Act is due for repeal and replacement if a Bill for a new Mining Act tabled in Parliament this April, is passed into law. The Bill retains the word "mining" in its title, which reflects its main purpose, the right of a mineral rights holder to reasonably extract mineral resources. The Bill also contains some provisions requiring licensees to undertake EIAs for their mining activities.

The Bill, however, falls short of what is envisaged in the Policy for Wildlife Conservation, because it does not prohibit any mining in National Parks (NPs), Game Reserves (GRs) or the Ngorongoro Conservation Area (NCA). Instead, under section 95(1)(c) of the Bill, the exercise of mining rights in a national park, forest reserve, game reserve, range development and management area or the Ngorongoro Conservation Area, requires the **written consent** of "the authority having control over" such areas. It is not clear however, which authority will have control over such rights. Under the old Mining Act, the enforcement authority is the Commissioner for Mines.

If the Bill is passed into law, wildlife conservation authorities will now be able to ensure that the exercise of mining rights within their areas of jurisdiction does not defeat conservation goals. Hitherto, the mining right had an overriding effect over conditions imposed by the wildlife conservation authorities. For example, under the National Parks Ordinance, the Trustees of national parks have authority to impose conditions provided such conditions do not derogate from the mining right. In the same logic, if the Bill is passed into law, the powers of the President under the National Parks Ordinance to grant a mining right within a national park will no longer be of moment.

In view of the fact that mining and wildlife conservation are two directly conflicting activities, the proposed Bill has,

to a certain extent, tried to resolve this conflict by putting certain checks on the discretionary powers of the executive in granting mining rights within certain wildlife conservation areas. The challenge will be on wildlife conservation authorities in the respective areas to reasonably exercise their statutory authority, to ensure that mining does not defeat the purpose and objective of wildlife conservation.

1.4.2.7 Land-use Laws

In principle, wildlife laws are not land-use laws. This is so because land-use laws regulate the occupation and use of land by human beings and not by wildlife. As a result of this approach, wildlife authorities when establishing wildlife conservation areas did not take into account the impacts those areas will have on land-use. Consequently, there were no land use or general management plans developed for wildlife areas; and as a result there has been no guard against wrongful, wasteful or premature use and development of land for conservation of wildlife. The result of all these has been a series of conflicts between people and wildlife, and in particular between pastoral communities and wildlife conservation authorities.

The 1998 Policy for Wildlife Conservation proposes prescribing ways of using wildlife as a form of land-use to promote rural development. To this end, the Policy envisages that the relevant management authorities will encourage rural communities to establish WMAs in important and critical wildlife habitats, for purposes of ensuring that wildlife can compete with other forms of land-use which may jeopardize wildlife populations and movements.

(a) The Land Ordinance

Land matters are governed under the Land Ordinance¹²³ of 1923. Under this Ordinance, all land in Tanzania is public land and is vested in the President as trustee on behalf of the people. The Ordinance creates a dual system of tenure which accords superior status to statutory or granted rights of occupancy over customary or deemed rights of occupancy. The Right of Occupancy as a title to the use and occupation of land, has to be granted to the landholder by the President, through the Commissioner for Lands. The holder occupies and uses that land for a definite term. The term of tenure for statutory Right of Occupancy runs between 33 and 99 years, subject to renewal. Development

¹²¹ National Parks Ordinance, Section 6(1).

¹²² Id. at Section 15.

¹²³ Cap 113 of 1923.

conditions are imposed on the holder of that land. The holder of that land has no right to sub-divide, transfer or mortgage the same without the consent of the Commissioner for Lands. The holder has to pay rent to Government. The President may revoke the right of occupancy of the land holder. The powers of the Executive with respect to land administration are therefore, enormous and are not subject to any limitations. There is absence of a clearly defined institutional hierarchy for land administration and this has resulted in multiple land allocations which in turn have led to complicated land disputes. As a result, government agencies responsible for land matters have been and are spending a lot of time dealing with disputes instead of performing proper land management and planning.

(b) The National Land Use Planning Commission Act

Land-use and planning is governed by the National Land-Use Planning Commission Act¹²⁴. Under section 2 of this Act, "land-use" is defined to mean the purpose for which a lot, plot, parcel, or tract of land, building, structure or premises or part thereof, is used or occupied or is intended to be used or occupied." According to this definition, designating a tract of land as a wildlife conservation area is supposed to be one form of land-use.

The National Land-Use Planning Commission Act establishes a Commission known as the National Land-Use Planning Commission¹²⁵; which is the principal advisory organ of the Government on all matters related to land use.¹²⁶ The Commission has, *inter alia*, the following functions:

- to formulate policy on land use planning and recommend its implementation to Government;
- to co-ordinate the activities of all bodies concerned with land-use planning matters; and,
- to examine existing laws, and where appropriate formulate proposals for legislation in the area of land-use planning issues and recommend their implementation by Government.¹²⁷

No compensation for wildlife damage

Although it is not explicitly stated in the law, it seems that wildlife Authorities are trustees for wildlife and wildlife protected areas in Tanzania on behalf of the citizens.¹²⁸ As such wild fauna and flora found on that land become trust property. This situation may create some problems particularly with regard to compensating people whose land might be acquired for conservation purposes or compensating people injured by wild animals.

Wildlife cause damage not only to humans but to property as well and there exist no system of compensation towards wildlife damage under existing wildlife laws. The 1998 Policy for Wildlife Conservation reiterates that the wildlife authority does not intend to introduce a compensation scheme for wildlife damage, instead the adoption of CBC will be encouraged to ensure sharing of tangible benefits. Given increasing incidence of wildlife damage in various parts of the country, however, there is a need to reconsider this particular policy issue. The Government should establish a compensation scheme for wildlife damage. The source of funds for the scheme may come from funds generated through wildlife use, other government sources of revenue as well as good-will from private individuals and companies and environmental conservation NGO/Agencies.

No compensation for land declared to be a wildlife conservation area

Under the Land Acquisition Act of 1967¹²⁹, if the Government desires to obtain land for development of projects, the President can acquire such land for public purposes or for re-development, and those affected get compensated. This, however, is not the case when a certain area is proclaimed as a wildlife conservation area. The assumption is that such area is an empty piece of land - a *terra nullius* - inhabited by nobody! The Land Ordinance which declares all in Tanganyika territory to be public land and accords a superior position to granted titles over the customary land tenure, is largely responsible for this state of affairs.

¹²⁴ Act No..... of 1984.

¹²⁵ Ibid. S.3(1).

¹²⁶ Ibid. S.4(1).

¹²⁷ Ibid. S.4(1)(a), (b), and (j).

¹²⁸ The phrase that all wildlife is publicly owned and vested in the President or the wildlife authorities as trustees on behalf of the citizens, does not appear in any of the wildlife laws. In the recent decision of the Court of Appeal of Tanzania, *Attorney General v. Lobay Akonaay & Joseph Lobay*, Civ. Appeal No.31 of 1994 (unreported), has some statements which, though not quite explicit on the concept of trusteeship for natural resources, indicates that the land which was the subject matter of the dispute in the case, was and is held in trust.

¹²⁹ Act No.47 of 1967.

Under the existing wildlife laws, the President has powers to proclaim certain areas as national parks, game reserves or forest reserves. As stated earlier, however, wildlife laws are not land-use laws. Merely by proclaiming a piece of land as a wildlife conservation area does not create a regime of land tenure known under the land laws in the country. Wild animals and wild plants cannot be granted tenure! Consequently, neither title to own such land nor the ownership of the permanent things attached to such land - habitat or the wildlife, passes to the various wildlife authorities entrusted with the responsibility for wildlife conservation and management.

The 1998 Policy for Wildlife Conservation provides expressly that, while taking into account human settlement and land-use, the gazettement of potential wildlife areas into PAs based on system planning and up-grading of existing PAs into higher status, will continue.

In Tanzania, public land is getting scarce. The 1998 Policy for Wildlife Conservation provides premises that provision will continue to be made for setting aside of PAs where wildlife and natural areas will be conserved. The land market has largely been liberalized. Community involvement in the planning and management of wildlife protected areas is only slowly beginning to evolve. The Executive has wide powers of proclaiming wildlife conservation areas. Such powers are not subject to any statutory check. In view of all these challenges, there is a need to balance between conservation and the promotion of the socio-economic development of the people of Tanzania.

1.5 Institutional Arrangement for Protection of Wildlife in Tanzania

1.5.1 The Department of Wildlife

The Department of Wildlife which is located within the Ministry of Natural Resources and Tourism, is given authority to manage wildlife in the country, pursuant to the 1974 Wildlife Conservation Act. In practice, this authority has been exercised outside of national park boundaries, also excluding the Ngorongoro Conservation Area.¹⁵⁰ The Department of Wildlife is headed by a Director who is

responsible for the proper administration of the Wildlife Conservation Act.

The Director of Wildlife, who is appointed by the President, is the Chief Administrator of the 1974 Wildlife Conservation Act. The Department of Wildlife is charged generally with to ensure better conservation of wildlife in the country. The Department maintains a close working relationship with the Department of Forestry, Fisheries, the Tanzania National Parks Authority (TANAPA), and other conservation authorities such as the Ngorongoro Conservation Area Authority.

The Director of the Department of Wildlife sits on the Board of Directors of TANAPA and the Board of the Ngorongoro Conservation Area Authority.¹⁵¹

The Wildlife Conservation (Amendment) Act¹⁵² introduced two new structures for the wildlife sector: the Wildlife Protection Unit¹⁵³ and the Tanzania Wildlife Protection Fund.¹⁵⁴ Each of the new structures is as outlined below.

1.5.1.1 The Tanzania Wildlife Protection Fund (TWPF)

The Wildlife Protection Fund was established by an amendment to the Wildlife Conservation Act.¹⁵⁵ The Fund receives its funding from Parliament; proceeds from confiscated wildlife and wildlife products; and any other sum payable to the Fund.¹⁵⁶ There are no duties or purposes for which the Fund is created as specified in the legislation. The Wildlife Sector Review analyzes the role of TWPF as that of providing support to various state agencies involved in wildlife conservation.¹⁵⁷ The Review, however, notes that TWPF is essentially a retention fund, which receives 25% of all game revenues, and 100% of all revenues from observer, conservation, permit and trophy handling fees.

1.5.1.2 The Wildlife Protection Unit

In accordance with section 4 of the Wildlife Conservation Act, the functions of the Wildlife Protection Unit is to protect wildlife against unlawful hunters, and the enforcement of the provisions relating to hunting, capturing, and photographing of wildlife, and the securing trophies.

¹⁵⁰ Laura H., and Vincent S.: Report on Policy and Legislation Pertaining to National Parks Management. FAO, Rome, September, 1996, on p.17.

¹⁵¹ Laura, H., *et al.* loc. cit

¹⁵² Act No. 21 of 1978, amending the Wildlife Conservation Act, 1974.

¹⁵³ Established by Section 3 of the amending Act, which added a new Section 4A to the principal Act.

¹⁵⁴ Established by Section 7 of the amending Act which added a new Section 69A to the principal Act.

¹⁵⁵ Act No.21 of 1978. Section 7 of this amending Act added a new Section 69A to the Wildlife Conservation Act which established the Fund.

¹⁵⁶ Section 7 of Act. No. 21 of 1978 amending Section 69 of the principal legislation.

¹⁵⁷ Wildlife Sector Review, Vol.1, p.87.

1.5.2 The Tanganyika National Parks Authority (TANAPA)

In Tanzania, the management authority for national parks is the Board of Trustees of the Tanzania National Parks Authority (TANAPA). The general powers of the Board are *inter alia*, to take steps that ensure the conservation and security of animals in the parks; and to reserve portions of national parks for habitat conservation and nurseries.¹³⁸ The trustees are also given authority to sell, or exchange any specimen of animal or vegetable life in a national park, and purchase or acquire any such specimens for introduction into a national park.¹³⁹ The Trustees are allowed to take certain actions outside national parks with the consent of the Minister.¹⁴⁰ They also have the authority to make regulations for better carrying into effect the Ordinance.¹⁴¹ The regulations, so made, however, do not apply outside of national parks.¹⁴²

The Board of Trustees of the Tanganyika National Parks Authority (TANAPA) was created by the National Parks Ordinance¹⁴³ as a corporate body overseen by a Board of Trustees.¹⁴⁴ TANAPA is often regarded as a parastatal, although its function is also one with obligations of a trust. Currently, under the existing national parks laws, the main function of TANAPA is that of conservation rather than as one with pure profit oriented motive - more typical of other parastatals.¹⁴⁵ The jurisdictional mandate of TANAPA is to control, manage, administer and maintain national parks.¹⁴⁶ This extends only to the management of terrestrial parks currently numbering twelve.¹⁴⁷ TANAPA is headed by a Director General who reports to the Director of Wildlife on operational matters, an arrangement not specified by law, but carried out in practice.

In contrast, the Chair of the Board of TANAPA reports to the Minister responsible for Wildlife, pursuant to the National Parks Ordinance. The Minister may give the Board of Trustees directions of a general or specific character as to their functions, to which the Trustees are bound.¹⁴⁸ Although the Board of Trustees is given the overall authority to make regulations, the Minister has final approval authority.¹⁴⁹ TANAPA is therefore, subject to the authority of the Minister for Tourism and Natural Resources, in that the latter is given authority to make implementing regulations for the National Parks Ordinance, which the former has to implement.¹⁵⁰ Recent proposals to amend the National Parks Ordinance, envisages that TANAPA will be a fully fledged body corporate with its own Board of Directors,¹⁵¹ and a Director-General who will be appointed by the President.¹⁵² Furthermore, there will also be a Board of Trustees whose main function will be to advise the Director-General.

1.5.3 The Ngorongoro Conservation Area Authority

The Ngorongoro Conservation Area Authority was created by the Ngorongoro Conservation Area Authority Ordinance, as amended.¹⁵³ The Ngorongoro Conservation Area is not a national park, as it permits multiple uses including grazing and inhabitation. The conservation area borders several national parks and migration routes and different management regimes sometimes creating conflict with local people.¹⁵⁴

The Authority therefore, manages only the area within the geographic boundaries of the conservation area. The management and functions of the Authority are vested in a Board of Directors¹⁵⁵ whose Secretary, is the Conservator,¹⁵⁶ and an appointee of the President.¹⁵⁷

¹³⁸ Id. S.10(1)(b) and (c).

¹³⁹ Id. S.10.

¹⁴⁰ Id. S.11.

¹⁴¹ Id. S.18(1).

¹⁴² Id. S.18(1)(ii).

¹⁴³ Cap. 412, 1959.

¹⁴⁴ Id. S.8(1).

¹⁴⁵ Government of Tanzania, Wildlife Sector Review, Vol.1, p.65.

¹⁴⁶ Id. S.10(1)

¹⁴⁷ Marine Parks and Reserves are established, managed and monitored under the Marine Parks and Reserves Act, 1994, Act No.29 of 1994. The Act creates a Marine Park and Marine Reserves Unit, located within the Division of Fisheries whose Director shall establish it. So far only one marine park has been created, the Mafia Island Marine Park.

¹⁴⁸ Id. S.9 as amended by Act No.14 of 1975, section 4.

¹⁴⁹ Id. S.14.

¹⁵⁰ Laura, H. *et. al.* op. cit. p.27

¹⁵¹ Annotated Discussion Draft of Proposed National Parks Act, FAO, March, 1997, S.4(1).

¹⁵² *Ibid.* S.5(1).

¹⁵³ Cap.413. The Ordinance was amended by the Ngorongoro Conservation Area Ordinance (Amendment) Act No.43 of 1963 and the Game Parks Laws (Miscellaneous Amendments) Act No.14 of 1975.

¹⁵⁴ Section 5B of Act No.14 of 1975.

¹⁵⁵ Act No. 14 of 1975 Section 4(1).

¹⁵⁶ Section 2(1)(b) of the Fourth Schedule to Act No.14 of 1975.

¹⁵⁷ Laura, H., *et.al.* loc. cit.

The functions of the Board include, *inter alia*:

- (a) the conservation and development of the natural resources of the Conservation Area;
- (b) the promotion of tourism within the Conservation Area and the provision and encouragement of the provision of facilities necessary or expedient, for the promotion of tourism;
- (c) the safe-guarding and promotion of the integration of Maasai citizens of the United Republic engaging in cattle ranching and the dairy industry, within the Conservation Area;
- (d) the promotion and regulation of the development of forestry within the Conservation Area;
- (e) the promotion, regulation and facilitation of transport to, from and within the Conservation Area; and,
- (f) the construction of such roads, bridges, aerodromes, buildings and fences, the provision of such water supplies and the carrying out of such other works considered necessary by the Board for the development or protection of the Conservation Area.¹⁵⁸

The Authority may by order published in the Gazette, prohibit, restrict or control residence or settlement in any part of the Conservation area other than land held under a granted right of occupancy or land subject to a mining lease.¹⁵⁹ Furthermore, the Authority may make orders in relation to any particular parcel of land, or generally for the purposes of the conservation of soil and prevention of soil erosion, and for the protection and preservation of the natural resources of the Conservation Area.¹⁶⁰

1.5.6 The Serengeti Wildlife Research Institute (SWRI)

The Serengeti Wildlife Research Institute (SWRI) was created under the Serengeti Wildlife Research Institute Act,¹⁶¹ to oversee all wildlife-related research in the country, both within and outside all national parks. The Institute has authority, *inter alia*:

- (a) to promote the development, improvement, and protection of the wildlife industry in the United

Republic;

- (b) to carry out, and promote the carrying out of enquiries, experiments and research in wildlife and in wildlife environment generally;
- (c) to continue, develop, and finalize all on-going or projected wildlife research in the United Republic;
- (d) to carry out research and investigation into various aspects of wildlife for the purpose of establishing, improving or developing modern methods or techniques of wildlife and environmental conservation and the management, collection and use of wildlife and wildlife products;
- (e) to carry out research and investigation into wildlife diseases and their causes, so as to develop ways of preventing or controlling the occurrence of particular wildlife diseases or any category of them;
- (f) to coordinate all wildlife research which is carried out within the United Republic;
- (g) to establish and operate a system of documentation, and dissemination of findings of inquiries, experiments and research carried out by or on behalf of the Institute, or other information on wildlife acquired by the Institute;
- (h) to undertake the collection, preparation, publication and distribution of statistics relating to wildlife, and promote and develop instruction and training in wildlife;
- (i) in cooperation with the Government or any persons, within or outside the United Republic, to promote or provide facilities for the instruction and training of local personnel for carrying out wildlife research, and for the management of the wildlife industry; and,
- (j) to advise the Government, public institutions and other persons or bodies of persons engaged in the wildlife industry in the United Republic on the practical application of the findings of inquiries, experiments and research carried out by or on behalf of the Institute.¹⁶²

¹⁵⁸ Section 5A of Act No. 14 of 1975.

¹⁵⁹ Section 12 of Act No. 14 of 1975 amending Section 8 of the Ordinance, Cap. 413.

¹⁶⁰ Section 13 of Act No. 14 of 1975 amending Section 9 of the Ordinance.

¹⁶¹ Act No. 4 of 1980.

¹⁶² Id. Section 5(1) (a) - (j).

The Act allows the establishment of additional centers in the country to carry out the functions of SWRI.¹⁶³ It is clear from the function of the SWRI that it is also mandated to consult and cooperate with any person or body of persons having functions related to those mentioned above. Wildlife research could therefore possibly be a “candidate” for East African cooperation.

The Second Schedule to the Act constitutes a Board of Directors of the Institute, with functions to appoint research programs committees and other committees.¹⁶⁴ Submission of research results to SWRI is mandatory; failure to do so is an offense under the Act, subject to penalties.¹⁶⁵

The Minister responsible for wildlife has authority to give directions of general or specific nature to the Board of Directors of the Institute,¹⁶⁶ and also to make rules regarding procedures for research carried out by SWRI or others.¹⁶⁷ The Minister is also given authority to make regulations in specific areas, including requirements regarding furnishing SWRI with research information, regulating involvement of SWRI in conservation and management of wildlife and utilization of wildlife, and regulation of specified institutions utilizing the technical services of SWRI in wildlife or environmental conservation and management.¹⁶⁸

The Director of Wildlife is given authority to require SWRI to take all measures as may be necessary or desirable for the purposes of facilitating the smooth and efficient operation of the business of SWRI and conduct of wildlife research.¹⁶⁹

1.5.7 The Tanzania Wildlife Corporation (TAWICO)

The Tanzania Wildlife Corporation (TAWICO) was established in 1974¹⁷⁰ as a public corporation pursuant to the Public Corporations Act.¹⁷¹ TAWICO has now been privatized. The basic function of TAWICO is to earn wildlife-related revenues for the government of Tanzania. The

Government Notice which established it, sets forth its functions, which include hunting and capturing animals, buying, selling, exporting or otherwise dealing in live animals and trophies. The activities of TAWICO impact upon national parks and wildlife because it hunts wildlife and holds hunting blocks in areas adjacent to national parks.

1.5.8 The College of African Wildlife

The College of African Wildlife was established in 1964 by the College of African Wildlife Management Act.¹⁷² The College provides facilities in Tanganyika for the training of students in the management of the wildlife of Africa.¹⁷³ The Act establishes a Governing Board styled the College of African Wildlife Management¹⁷⁴ which is a body corporate.¹⁷⁵ The functions of the Board relates more specifically with the governing, control and administration of the College.

1.5.9 The Marine Parks and Reserves Unit

The Marine Parks and Reserves Unit of the Fisheries Division, is established by the Marine Parks and Reserves Act. Its functions are, *inter alia*:

- (a) to establish and monitor the control, management and administration of marine parks and reserves;
- (b) to seek funds for the establishment and development of marine parks and reserves;
- (c) to expend funds in furtherance of establishment and development of such parks and reserves;
- (d) to implement and enforce the provisions of the Act and its subsidiary legislation; and,
- (e) to do all such other things which are necessary and within the Unit's powers.¹⁷⁶

¹⁶³ The First Schedule to the Act establishes five such centers, namely: (1) Gombe Wildlife Research Center; (2) Kingupira Wildlife Research Center; (3) Mahale Mountains Wildlife Research Center; (4) Njiro Wildlife Research Center; and, (5) Serengeti Wildlife Research Center.

¹⁶⁴ Id. in Section 9 of the Second Schedule to the Act.

¹⁶⁵ Id in Section 10.

¹⁶⁶ Id in Section 8.

¹⁶⁷ Id. in Section 9(5).

¹⁶⁸ Id in Section 13(1).

¹⁶⁹ Id. at section 12(2).

¹⁷⁰ Government Notice (GN) No. 231 of 1974.

¹⁷¹ Act No. 17 of 1969.

¹⁷² Act No.8 of 1964.

¹⁷³ Id. S.3.

¹⁷⁴ Id. S.4(1).

¹⁷⁵ Id. S.4(2)(a).

¹⁷⁶ The Marine Parks and Reserves Act, Section 3(3).

The Unit is also given authority to establish, operate or manage offices and services for the purposes of carrying out their duties and functions; to provide educational and informational services to local resident users; to establish, operate, manage or grant concessions or licenses to other persons to operate accommodations and restaurants; and, to operate transport services for conveyance of visitors to marine parks.¹⁷⁷

1.5.10 The Board of Trustees of Marine Parks

The Board of Trustees of Marine Parks is created by the Marine Parks and Reserves Act. The Board is to be appointed by the Minister.¹⁷⁸ The functions of the Board are, *inter alia*:

- (a) to formulate policies on marine parks;
- (b) to oversee the use of the Marine Parks fund;
- (c) to advise the Director of Fisheries on management of marine reserves; and,
- (d) to advise the Minister on approval, revision and amendment of the General Management Plan (GMP) of any marine parks.¹⁷⁹

There are Advisory Committees created for each marine park. Their functions are:

- (i) To advise the Board on the management and regulations of marine parks.
- (ii) Overseeing the operation of marine parks.
- (iii) Consulting with the Warden on technical, scientific and operational matters concerning the marine parks and proposing potential wardens to the Board.¹⁸⁰ The Act provides for the appointment of wardens to manage each marine park.¹⁸¹

1.5.11 Conclusion

There are some few general conclusions worth making in relation to the above discussion. First, wildlife conservation legislation currently in force in Tanzania is limited spatially

and by subject matter, and complement each other and inevitably overlap. For example, the Ngorongoro Conservation Area Ordinance and the Marine Parks and Reserves Act are limited spatially. The Wildlife Conservation Act, the Forest Ordinance and the Fisheries Act are limited by subject matter. The Forest Ordinance and the Wildlife Conservation Act overlap in certain areas. Thus the proliferation of sector specific legislations affecting wildlife management and conservation in the country.

Secondly, almost all wildlife legislation in the country address the problem of conservation in a rather fragmented fashion and are incomplete, and maintain a traditional narrow orientation towards wildlife. The national wildlife legislation do not apply equally to plant and animal species, do not contain a broader perspective on biodiversity, and make a distinction between the management and conservation of flora and fauna, and hardly protect habitats.

Thirdly, institutions having wildlife-related mandates in Tanzania, lack a legally mandated co-ordination and consequently, this has resulted into unnecessary management costs, inter-sectoral conflict, duplication of efforts and overlapping mandates.

The Wildlife Conservation Act is typical of the old fashion of concentrating considerable powers in the hands of the Executive, particularly the President and the Minister responsible for the conservation agency. This system is heavily dependent on the competence and value system of a few individuals. In some countries such as Uganda and Kenya, the management of wildlife is a function of corporate bodies - the Uganda Wildlife Authority (UWA) in the case of Uganda, and the Kenya Wildlife Services in the case of Kenya. For example, the general supervision of UWA falls under a Minister with a Board of Trustees appointed by the Minister as the governing body of the Authority. The Minister is therefore, obliged to consult the Board on certain types of decisions and to which the agency head is accountable.

The 1998 Policy for Wildlife Conservation retains the *status quo*, in that, it maintains sectoral laws and institutions in the management and conservation of wildlife. The Policy, however, introduces some new ideas in wildlife management in the country, particularly the devolution of the management and use of some species of wildlife to

¹⁷⁷ Id. in Section 3(4).

¹⁷⁸ Id. Section 4(1). The Minister has already appointed the following persons to be Members of the Board of Trustees: Ms. Rose Lugembe - Chairperson, Mrs Generose K. Kamuzora, Prof. Adellaide Vincent Semesi, Hon. Col. Ayub Kimbau (MP), Mr. Thomas W. Maembe, Mr. Tom Mmari, Mr. Rodney V. Salim, Mr. Lota Melamari and Mr. Charles D.T. Dobie. vide GN 257 of 1996.

¹⁷⁹ Id. Section 4(3).

¹⁸⁰ Id. Section 5.

¹⁸¹ Id. Section 6.

rural communities, through the adoption of Community-Based Conservation (CBC) which will be effected by establishing WMAs; the devolution of the management and use of wildlife to the private land holder; and giving villages proprietorship over the land and custodianship of wildlife on that land to villages.

1.6 Subject Areas Requiring Harmonization

1.6.1 Migratory Wild Animals

Migratory wild animals are animals and birds of those species, all or some of whose individual members may in any season cross any of the boundaries between two or more countries in a given geographic area.¹⁸²

A case in point is, for example, migratory wild animals which move between the boundaries of Tanzania and Kenya in search of food and water. Some migratory wild birds are particularly vulnerable because they traverse long distances. The conservation and efficient management of migratory species of wild animals therefore, requires the concerted action of all states within the national jurisdiction of which species pass through or spend part of their lives.

So far East African countries do not have any agreement on the conservation of migratory species of wild animals. In June 12th to 16th, 1995 sixty-four "Range States" attended a Negotiating Meeting to adopt the Agreement on the Conservation of African-Eurasian Waterbirds (AEWA), at the Hague, the Netherlands. The African-Eurasian Waterbirds Agreement (AEWA) is an agreement pursuant to Article IV, paragraph 3, of the Convention on the Conservation of Migratory Species of Wild Animals, 1979 (CMS - the Bonn Convention). Tanzania and Uganda have already signed the Final Act of the Negotiating Meeting to adopt the Agreement on the Conservation of African-Eurasian Waterbirds. Kenya has yet to sign the Final Act although it was among the "Range States"¹⁸³ that attended the Negotiating Meeting.

The Wildlife Conservation Act of 1974, is silent on the conservation of migratory wild animals. The Ugandan Wildlife Statute, 1996¹⁸⁴, does at least provide in the definition of the term "wildlife" as including wild animals which migrate through Uganda. Uganda therefore, accords

the same strict protection for migratory wild animals as for any other native wild animals. Tanzania and Kenya can emulate the example of Uganda by expanding the definition of the term "wildlife" in their national wildlife legislations to include migratory wild animals. Furthermore, the three East African states should co-ordinate measures to maintain migratory wild animal species in a favourable conservation status by applying within the limits of their national jurisdiction certain measures which would be stipulated in an agreement between these States on the conservation of migratory wild animals.

Each year during the rainy season and specifically in November, thousands of animals that reside on the northern part of Serengeti in Tanzania cross-over the border to the Masai-Mara national park in Kenya. As this happens, Kenya seems to be getting all the benefits that accrue from this migration and Tanzania merely "feed" the park with migratory wild animals. Obviously, because of the highly developed state of the tourist industry in Kenya compared to the Tanzanian, both in terms of infrastructure such as good hotels and roads, more tourists would naturally flock to Kenya and in particular to the Masai-Mara National Park.

Some arrangement could be agreed upon between Kenya and Tanzania on the conservation of the migratory wild animals, and how benefits that accrue from these otherwise purely natural phenomena, could be shared between the two neighbouring East African states.

1.6.2 Traffic in Specimens and Trophies

The problem of traffic in specimens and trophies has an international dimension. International co-operation among exporting, transit, and importing states is therefore, required in order to counter illegal trade in wild animals, plants and their derivatives. This kind of cooperation is emphasized both in the CITES, the 1968 African Convention and the Lusaka Agreement. The Wildlife Conservation Act of Tanzania partially addresses this problem by providing for the disqualification of a person from holding or being granted a license, permit or permission under the Act if the person has *inter alia*, "been convicted of an offence under any written law applicable in any other country and designed for the protection of wildlife in that country."¹⁸⁵

¹⁸² This definition has been coined from the definition of migratory birds in Article 1(5) of the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, 1940, thus: Birds of those species, all or some of whose individual members, may in any season cross any of the boundaries between the American countries.

¹⁸³ States through which migratory wild animals pass or nest are called "Range" states because the migratory wild animals have a range which lies entirely or partly within those states.

¹⁸⁴ Statute No. 14 of 1994.

¹⁸⁵ Id. S.56(a).

Under the Lusaka Agreement there is an established **Task Force for Co-operative Enforcement Operations Directed at Illegal Trade in Wild Fauna** (the "Task Force"). One of its functions is to investigate violations of national laws pertaining to illegal trade at the request of National Bureaus (Art.5(9)(b)), and to collect, process, and disseminate information on activities pertaining to illegal trade (Art.5(9)(c)). The Task Force possess international legal capacity and has supranational powers, and their officers have diplomatic privileges and immunities.

Lack of specific national legislation to implement the provisions of the Lusaka Agreement, however, makes it difficult for Contracting Parties to exchange data on "wildlife conservation crimes" and the names of notorious poachers and smugglers of wild fauna and flora. The problem of enforcement is exacerbated further by disparities in policy and laws among East Africa states. For example, while Tanzania allows tourist hunting Kenya has imposed a total ban on hunting, and this creates difficulties when dealing with trans-boundary wildlife resources.

Furthermore, there is lack of properly trained custom officers to deal with illegal trade and general laxity among custom officers to net smugglers, due to corruption. The need to harmonize laws and regulations affecting consumptive uses of wildlife and criminal penalties to be imposed in the event of breaches is therefore, a matter of utmost urgency among Contracting Parties to the Lusaka Agreement. There is, however, need to adopt specific benchmarks, and not a flat out ban which might work against the interest of collaborative management.

The 1998 Policy for Wildlife Conservation reiterates that, in order to combat illegal use of wildlife, the wildlife authorities will, among other things, co-operate fully with other law enforcement agencies and establish effective informer networks and intelligence data bases.

1.6.3 Endangered Species List

In order not to endanger further the survival of species threatened with extinction, trade in specimens of such species ought to be subjected to particularly strict national laws and regulations. In exceptional circumstances, however, such trade may be authorized, as it is the case under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), 1973.¹⁸⁶ The CITES regulates international trade in wildlife and plants

by establishing three levels of protection that depend on the extent of the threat faced by a species. CITES does not therefore prohibit trade in specimens, it only makes it difficult by imposing certain conditions which must be met before such trade is carried out. The CITES encourages parties to use their own domestic laws to penalize trade in endangered species. It also authorizes nations to impose stricter domestic requirements concerning such trade (Nagle, 1997).

The issue of classifying species which must fall in either of the three CITES Appendices is approached individually by each state under their existing national wildlife laws. Most of the national wildlife laws empower national authorities to vary, add, or replace the list. As it is, there is no agreement among member countries related to the CITES, to harmonize the List of Endangered species classified under Appendix III First Schedule. If this were the case, it would have greatly contributed towards fostering and getting the required co-operation in the control of trade in specimens of species listed in the appendix.

1.6.4 Compliance and Enforcement Institutions

One of the biggest problem with global and regional instruments on wildlife conservation is lack of provisions that explicitly promote compliance or penalize non-compliance or the existence of institutions to ensure the enforcement of the instruments. Implementation of such instruments is mainly the responsibility of the individual Contracting States and is influenced mainly by political will. It would be better if, for example, a regional administrative machinery was to be established at the regional level which is charged with monitoring compliance.

The existence of sub-regional conservation agreements envisages the creation of organs to monitor compliance with their provisions. For example, it could be done through the creation of Commissions or Task Force, say, on the black-market and contra-band (illegal trade), and the prosecution of all those who trade without permit in objects coming from protected species; in applying territorial law but restoring the objects seized to the state of origin. This is the approach adopted by the Lusaka Agreement - the creation of a Task Force on illegal trade in wild fauna and flora. Extradition law could also be extended to cover offences related with species. There could also be established a Commission for the conservation of resources shared by states.

¹⁸⁶ Concluded at Washington, 3 March 1973. Entered into force, 1 July 1975. 993 U.N.T.S. 243, 27 U.S.T. 1087, T.I.A.S. No.8249, 12 I.L.M. 1085 (1973).

At the sub-regional level, however, very few states are concerned with finding a solution to the concrete problem of limited geographic scope as regards wildlife.

1.6.5 Cooperation in Wildlife Research

With the collapse of the East African Community in the 1970s, joint research institutions which were a common feature, also ceased to exist. East African countries should consider having a joint research institution in the field of wildlife conservation and exchange of data on wildlife conservation.

1.7 Conclusion

There is a need for the three East African countries to revive

the spirit of co-operation in the field of wildlife research. Furthermore, these countries need to agree to demarcate common migration corridors for effective management of migratory species. National laws could be utilized to provide for the establishment, protection and management of migration corridors through management agreements and other mechanisms. Of immediate action is for national legislation in those countries which do not yet provide for the protection of migratory species, to be specifically extended to such species. East African countries also need to honour their obligations under international agreements such the Lusaka Agreement and CITES, by making provisions in their national laws which will facilitate joint cross-border investigations and measures to combat illegal trade and trafficking in wild fauna and flora.



**INVENTORY OF GLOBAL AND REGIONAL WILDLIFE CONVENTIONS
AND PROTOCOLS TO WHICH EAST AFRICAN COUNTRIES ARE
PARTIES: RATIFIED AND NON-RATIFIED, ACCEDED AND
NON-ACCEDED TO**

I	1	2	3	4	5	6	7	8	9	10	11	12	13
KE	NR	R	R	R	R	R	R	R	R	R			NR
UG	NR	R	R	R	R	R	NR	NR		R		S	S
TZ	NR	R	NR	R	R	R	R	R	R	R		S	S

Legend:

- I: Instrument
- KE: Kenya
- TZ: Tanzania
- UG: Uganda
- R: Ratified
- NR: Non-Ratified
- S: Signatory

Source: (Forster & Osterwoldt in Sand, 1992).

- | | |
|---|---|
| <ol style="list-style-type: none"> 1. 1950 International Convention for the Protection of Birds and Related Instruments. 2. The 1968 African Convention on the Conservation of Nature and Natural Resources. 3. The 1971 Ramsar Convention on Wetlands of International Importance Especially as Waterfowl Habitat, as amended. 4. The 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage. 5. The 1973 Washington Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), as amended. 6. The 1982 United Nations Convention on the Law of the Sea. 7. The 1983 International Tropical Timber Agreement. 8. The 1983 FAO International Undertaking on Plant Genetic Resources.¹⁸⁷ 9. The 1985 Nairobi Convention and Protocols for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region. 10. The 1992 Convention on Biological Diversity. 11. The 1995 New York Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December, 1982, Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks. 12. The 1995 African-Eurasian Waterbird Agreement (AEWA). 13. The 1979 Convention on the Conservation of Migratory Species of Wild Animals (Bonn Convention). | <p>country ought to ratify and/or accede to. These include the following:</p> <ol style="list-style-type: none"> (1) The Lusaka Agreement on Co-operative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora, Lusaka, 1994. (2) The African-Eurasian Waterbird Agreement, The Hague, 1995. (3) Memorandum of Understanding between the Bureau of the Convention on Wetlands of International Importance especially as Waterfowl Habitat (Ramsar Convention), and the Secretariat of the Convention on the Conservation of Migratory Species of Wild Animals, Gland, 1997. (4) The Agreement for the Implementation of the Provisions of the United Nations Conference on the Law of the Sea of 10 December, 1982, relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, New York 1995. (5) Protocol concerning Protected Areas and Wild Fauna and Flora in the Eastern African Region, Nairobi, 1985. (6) Protocol concerning Co-operation in Combating Marine Pollution in cases of Emergency in the Eastern African Region, Nairobi, 1985. (7) Convention for the Establishment of the Lake Victoria Fisheries Organization, Kisumu, 1994. |
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2.0 NATIONAL IMPLEMENTATION OF INTERNATIONAL AND REGIONAL CONVENTIONS AND PROTOCOLS ON WILDLIFE

2.1 Relationship between International Law and National Law

2.1.1 International treaties

It seems from the fore-going inventory that, Tanzania has been quite apt at signing and ratifying and/or acceding to global and regional wildlife conventions and protocols. Apart from these conventions, there are other relevant global and regional wildlife agreements and protocols, which are of priority interest to Tanzania and which the

In Tanzania, like in most common law countries, international treaties require a specific act of national adoption by the legislature. Thus, in order for the provisions of international conventions and/or protocols on wildlife to apply in Tanzania it would require specific

¹⁸⁷ The objective of the Under-taking is to ensure that plant genetic resources are preserved and are made available as widely as possible for the purposes of plant breeding, that is conservation of plant genetic resources of economic and/or social interest, particularly for agriculture. The Under-taking, however, relates more to domesticated plants and not to wild flora. Tanzania has already drafted a Bill for a Plant Protection Act.

adoption by the National Assembly. The obligations imposed by international legal instruments rest primarily on the Tanzanian states as a subject of international law; however, in some instances, for example, in the field of human rights and humanitarian law, individuals may be amenable to international obligations and international tribunals.

(a) Customary international law rules

Customary rules of international law constitute another source of international law. These are regarded as rules of national law and are not required to be established by formal proof. Whenever the provisions of international legal instruments embody rules of customary international law, their incorporation or application as part of municipal law in Tanzania, would thus, be a matter notice of (judicially) by the courts without formal proof. In the common law jurisdiction, the presumption is that the legislature when enacting legislation took into consideration rules of customary international law and cannot therefore, abrogate from them. In the United States of America the body of principles that comprises customary law is subsumed and incorporated by federal common law.¹⁸⁸

(b) Treaty Practice in Tanzania

In Tanzania, like in Kenya and Uganda, the decision to negotiate a treaty, the actual negotiation of a treaty, the decision to sign a treaty and the implementation of a treaty are all a prerogative of the executive. In Tanzania, however, like in Uganda, the ratification of a treaty is a process involving Parliament, unlike in Kenya where only the executive is involved. Article 63(3)(e) of the 1977 Constitution of the United Republic of Tanzania as amended (the Union Constitution), provides that the National Assembly discusses and ratifies all agreements concerning the United Republic which require ratification.

The Union Constitution does not specifically provide for the way in which legal effect can be given to such international agreements or conventions once ratified. Nor does it specifically enable Tanzania to adopt and give legal effect, through national law, to a convention or agreement to which it is not a signatory or a party to, even if giving legal effect would be in the interest of conservation. Uganda has drafted a Ratification of Treaties Act, 1997, which is still in the office of the Attorney General. This Bill if finally passed into law, will enable Uganda to give legal effect to a convention to which it has not signed or is not a party to, but is of interest to Uganda.

In Tanzania, apart from the general constitutional provision giving Parliament powers to discuss and ratify international agreements, there is non-specific national legislation which specifies how international conventions, treaties and related agreements are to be given the force of law in Tanzania.

The practice is that after the National Assembly (Parliament) has discussed a treaty which requires ratification, it gives its consent and the President then signs the instrument of ratification under his own hand and seal, which is then deposited with the Secretariat of such agreement. Once a treaty has been so ratified it is supposed to be incorporated by way of an enabling legislation in order to be considered part of municipal law. In the case of Tanzania, a Bill has to be drafted by the Parliamentary Draftsman in the Office of the Attorney General in the Ministry of Justice and Constitutional Affairs, on the instruction of the Ministry of Foreign Affairs and International Co-operation in consultation with any Government Ministry which might be affected by the subject matter of the agreement or convention. The draft Bill is then tabled in Parliament by the Ministry of Foreign Affairs and International Co-operation for first and second reading and discussion, before finally being passed as law. Assuming that all will go well in Parliament, the Bill after being passed by Parliament still requires the assent of the President to give it the force of law, and publication in the Government Gazette before it becomes part of the laws of the land.

Emanating from the above discussion, it means that the treaties to which Tanzania is a party do not therefore, become automatically part of municipal law and, hence, they cannot be applied by the local judicial authorities. Tanzania has promulgated enabling legislations in respect of certain treaties. The majority of treaties to which Tanzania is a party are, however, not yet incorporated by way of enabling legislation. This does not mean that Tanzania does not respect them and adhere to their provisions in practice.

Environmental law in Tanzania is very much undeveloped, if not altogether non-existent. Tanzania, like some other African countries, is still struggling with the enforcement of the existing environment-related and natural resource statutes, and is beginning to consider integrating environmental concerns into her development plans. What is particularly disturbing is that Tanzania has not made any effort to provide a statutory basis for the implementation of environmental law treaties to which it is party.

¹⁸⁸ (See) *In Re Estate of Ferdinand Marcos Human Rights Litigation*, 978 F.2d 493, 502 (9th Cir. 1992) and *Kadic v. Karadzic*, 70 F.3d 232, 246 (2d Cir., 1995). For a critique of this position, see Bradley, C.A. & Jack L. Goldsmith: Customary International Law as Federal Common Law: A Critique of the Modern Position. 110 *HARV. LAW REV.* 815 (1995).

The development of Tanzanian wildlife laws to a large extent does not mirror the development of international environmental law. Interest in the environment is still lagging behind in the country. It is only recently that a national policy on environmental management and protection was approved by Cabinet. There is neither an institution with overall monitoring, supervisory and enforcement powers in environmental protection, nor an umbrella environment law. The only environment management institution existing in the country, the National Environment Management Council (NEMC), has only an advisory role as far as environmental matters are concerned.

In Tanzania, there are a few environment related laws¹⁸⁹ some of which contain provisions that relate to only certain minor aspects of environmental protection. A large number of these laws, which were inherited from the British colonial administration are out-dated. The majority of them are concerned mainly with state ownership of natural resources, ensure state protection of natural resources, and prohibit private appropriation or their wilful damage. Their implementation is by numerous government ministries and agencies. Local government authorities on their part also enforce natural resource statutes within their jurisdictions.

Numerous non-governmental organizations, academic institutions and other research institutions, run uncoordinated environmental protection programs, and participate in the promotion of biodiversity in co-operation with the government. Currently, the Department of Environment in the Office of the Vice President, is in the process of reviewing all environment related legislation so as to incorporate the normative demands of international and regional environmental protection instruments. Other reviews are being done on sectoral basis, the Department of Wildlife on wildlife laws and the Board of Trustees of the Tanzania National Parks (TANAPA) on national parks laws.

2.3 Incorporation of Normative Demands and National Implementation of International and Regional Conventions and Protocols on wildlife conservation

In this section, an overview of the normative demands of global and regional wildlife conservation conventions and protocols is made in order to evaluate the extent to which they are incorporated into existing national wildlife legislation of sub-regional character.

(a) Ramsar Convention on Wetlands of International Importance Especially as Waterfowl Habitat, Ramsar, Iran, 1971

This was the first treaty based on the idea that the habitat of endangered species should be the focus of protection. The basic objective of the Convention is to provide the inter-governmental framework for international co-operation for the conservation and wise use of wetlands.

There are four basic commitments under the Ramsar Convention:

- (1) to designate at least one site onto the List of Wetlands of International Importance;
- (2) to organize planning to promote the wise use of wetlands;
- (3) to establish reserves for wetlands, whether or not included on the list; and,
- (4) to cooperate for the management of shared wetlands and shared wetland species.

Parties report to each Conference of the Contracting Parties (COP) according to an agreed format. Reports are also required when the ecological character of a listed site is changing or is likely to change so that international consultations might be held on the problem. A Monitoring Procedure was established in 1988 to assist countries in addressing management problems in Ramsar Sites, used selectively due to funding restrictions (Sand, 1992). The Convention contains no provision for dispute settlement. Disputes are resolved by discussion at the Conference of the Contracting Parties, followed by Conference resolutions. Ramsar Conferences are expert conferences. In addition, expert groups such as the Wise Use Working Group have been established to guide policy decisions by the Conference of the Contracting Parties. National authorities, especially from developing countries comprise the membership of Ramsar Committees. Participation by non-governmental observers is encouraged both in the meetings of the Contracting Parties and in expert committees. The Convention is based on cooperation, not coercion or perceived penalties.

Secretariat functions are performed by a Bureau, hosted by the World Conservation Union (IUCN) in Gland, Switzerland, responsible to a Standing Committee of the Contracting Parties.

¹⁸⁹ The statutes number about one hundred. cf. Laura, H.: *Environmentally related legislation in Tanzania*. Ministry of Natural Resources Tourism and Environment, Dar es Salaam, 1994.

National Implementation of the Ramsar Convention

There is no specific legislation in place which addresses the issue of wetlands conservation in Tanzania. It will be wise to broaden the scope of the Marine Parks and Reserves Act, 1994, so that the designation of at least one site onto the List of Wetlands of International Importance is affected; organize its planning and use and establish reserves for wetlands, whether or not included on the List.

Tanzania has not yet ratified the Ramsar Convention on Wetlands of International Importance Especially as Waterfowl Habitat. It is important to realize that the habitat of endangered species should be the focus of protection. The 1974 Wildlife Conservation Act, while according protection to those wild animals that are threatened with extinction, or which may become so, does not accord any special protection to the habitat necessary to their survival. The Act provides a list of protected species by listing them in Schedules according to the degree of protection by prohibiting hunting, killing or capturing unless authorization is granted by the competent authority - the Director of Game.

(b) The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), Washington, D.C., 1973.

In the wake of the burgeoning illegal trade in endangered wildlife species, the International Union for the Conservation of Nature (IUCN) in 1963 called upon all nations to enter into an international convention on regulation of export, transit, and import of rare and threatened wildlife species or their skins and trophies (Lyster, 1985).

In 1972, the United Nations Conference on the Human Environment recommended that a pleni-potentiary conference be held as soon as possible to adopt a convention to regulate the export, import and transit of certain species of wild animals and plants (Burns, *et al.* 1997). The CITES was signed in Washington, DC, on March 6, 1973, and entered into force in July of 1975. The main objective of CITES, though not stated explicitly, is to ensure, through international co-operation, (which is an essential tool), the protection of certain species of wild fauna and flora against over-exploitation through international trade (which threatens the conservation of the species concerned).

The two essential goals of CITES is first to reduce the harmful effects of commercial trade on threatened or endangered species of flora or fauna; and, secondly, to

establish a worldwide system for ensuring that trade in other species is conducted on a sustainable basis for the future (Burns, *et al.*, 1997). The Convention effectuates these goals by regulation of international trade in wild animals and plants through a permit system.

The Convention is therefore, not based on spatial concept of protection, but on a given activity relating to wildlife and particularly, international trade. CITES is essentially a trade agreement, not a land-use agreement. Endangered species and specimen of these species are placed in one of three appendices - the technique of lists: (1) all species threatened with extinction which are or may be affected by trade; (2) those which are not currently threatened with extinction but which may become so, and species upon which they are dependent; and, (3) those species which one state party identifies as being subject to regulation within its jurisdiction in order to prevent or restrict exploitation.

Appendix I of CITES is reserved for "all species *threatened with extinction* which are or may be affected by trade" (Art.II(1)). Trade in specimens of these species must be subject to particularly strict regulation in order not to endanger further their survival and must be authorized only in exceptional circumstances. The Appendix currently includes all rhinoceroses, sea turtles, great apes, large whales, most large cats, and 600 other endangered species (Ginette, 1994). An *export permit* for an Appendix I species is to be granted only after: (1) the Scientific Authority designated by the state of export has certified that exportation of the species or specimen will not be detrimental to the survival of the species (Art.IX(1)(b)); (2) the Management Authority designated by the exporting state is satisfied that the species or specimen has not been obtained in contravention of the laws for the protection of fauna and flora in effect within that state (Art.IX(1)(a)); (3) a Management Authority of the state of export is satisfied that living specimen have been prepared for shipment in such a manner as to minimize injury or cruel treatment of the species (Art.III(2)(c)); and, (4) the Management Authority of the exporting state is satisfied that an import permit has been granted by competent authorities in the state of designation (Art.III(2)).

Importation of Appendix I species is authorized only upon the prior grant of an import permit and either an export permit or a re-export certificate (Art.III(3)). An *import permit* may be granted when the following conditions are met:

(1) the Scientific Authority of the importing state has certified that the importation of the species will not be

detrimental to the survival of the species in question; (2) the Scientific Authority of the importing state is satisfied that the prospective recipient of living specimen is properly equipped to house and care for the specimen; and, (3) the Management Authority of the importing state is satisfied that the specimen is not to be used for “*primarily commercial purposes*” (Art.III(3)).

A flora or fauna species may be listed in Appendix II when the species, “although not necessarily now threatened with extinction, may become so unless trade in specimens of such species is subject to strict regulation in order to avoid utilization incompatible with their survival” (Art.II(2)(a)). The exportation or importation of any specimen of an Appendix II species requires the prior grant and presentation of an export permit. Three conditions must be met for the grant of an export permit for Appendix II species: (1) the Scientific Authority of the exporting state must have advised that the export will not be detrimental to the survival of the species; (2) the Management Authority of the exporting state is satisfied that the specimen was not obtained in contravention of the laws for the protection of flora and fauna in effect within that state ;and,(3) the Management Authority of the exporting state must be satisfied that living specimen are prepared and shipped in a manner that will minimize the risk of injury, potential health risks or cruel treatment of the specimen (Art.IV(2)).

Appendix III of CITES is reserved for species that individual parties protect through domestic regulation, ut also require international controls to ensure their proper protection (Art.II(3)). Trade in Appendix III species is permitted only in cases where the Management Authority of the exporting state has granted an export permit. The Management Authority can issue an export permit only if it is satisfied that the specimen was not obtained illegally and that a living specimen will be prepared and shipped in a manner that minimizes the risks of injury, potential health risks, or cruel treatment (art.V(2)).

CITES provides for a permanent Secretariat, located in Geneva, Switzerland. The functions of the Secretariat entail arranging meetings of the parties, including the biennial Conference of the Parties provided for under Article XI, undertaking scientific and technical studies to further the objectives of the convention, and communicating proposed amendments to the parties.

The CITES is one of the oldest and most popular international environmental treaties, yet after twenty-three years and the approval of over 125 nations, wildlife continues to become endangered at an unhindered rate and some threatened with extinction (Nagle, 1997).

International illegal trade in Africa’s wild fauna and flora is continuing despite existing national legislation and international legal instruments. Trade in endangered species persists despite CITES. What is the possible explanation for this paradox? Not all countries are parties to CITES, for example, countries like Korea, Taiwan, and Yemen that countenance active export and import markets for endangered species. Other countries are parties to CITES, but they have entered reservations excusing themselves from certain provisions of concern (Nagle, 1997). Several African countries and Hong Kong entered reservations to the placement of the African elephant on Appendix I (Sands,P.J., et all., 1990).

Moreover, the CITES,s directive to penalize trade in endangered species, has not been fully implemented by the parties to the treaty (Nagle, 1997).

The enforcement of CITES in most African countries is particularly more difficult given huge demand, especially by European and the Far East countries, for products derived from endangered species. Consequently, international illegal trade has caused intense poaching which has resulted in severe depletion of wildlife resources in some African countries. CITES, however, has achieved a greater degree of legal protection for endangered wildlife. According to Nagle, the continued disappearance of wildlife is a result of three causes: the limited reach of CITES, the failure to fully enforce CITES where it applies, and the ambivalent attitude toward protecting rare wildlife (Nagle, 1997).

Parties to the Convention are encouraged to use their own domestic laws to penalize trade in endangered species (Art.VIII(1)). Nations are specifically authorized to impose stricter domestic requirements concerning such trade (Art.XIV(1)). CITES also directs each party to designate appropriate management and scientific authorities responsible for implementing the treaty and issuing permits (Art.IX).

The legal regime created by CITES, however, fails to address habitat protection and also fails to fully enforce CITES where it applies. CITES does not have an enforcement mechanism. CITES focuses on the commercial trade in endangered species, which is a real threat to wildlife, but neglects the most common reason why species become extinct - habitat destruction. Nothing in CITES mandates that a party take any steps toward protecting the habitat necessary for the survival of protected species. Nagle observes that by targeting trade instead of other environmentally destructive activities, “CITES penalizes intentional harm to endangered species while leaving unintentional harm alone” (Nagle,

1997). In many African countries, rapid development and continued population growth exert pressure on previously undeveloped areas that offered habitat to a diversity of wildlife and plants. Tanzanian forests continue to disappear at an alarming rate, further reducing the habitat needed by wildlife to survive.

National Implementation of CITES

The Wildlife Conservation Act of 1974 meets some requirements for CITES by affording different levels of protection to species listed in four schedules to the Act. Furthermore, the Act provides under sections 63 and 64, respectively, for the need to have a valid export or import license before one can export or import a trophy. The Act does not, however, specifically designate the Management Authority and Scientific Authority responsible for implementing the CITES and for issuing the permits.

Under both the Act and the regulations, it is the Director who issues licenses to trophy dealers. Certain conditions, however, have to be met first before a trophy export certificate is issued.

The Wildlife Conservation (Dealings in Trophies) Regulations, 1974,¹⁹⁰ and the Wildlife Regulations (Dealings in Trophies) (Amendment) Regulations, 1989,¹⁹¹ deal with matters pertaining to issuance of Trophy Dealer's License. Regulation 6(5) thereof, provides that a trophy export certificate in respect of any animal or trophy made from any part of an animal specified in the Eighth Schedule to the Regulations and which is protected by the 1973 Convention of International Trade in Endangered Species of Wild Fauna and Flora (CITES), shall be valid only if issued and signed both by the Director and the Chief Research Officer of the Game Division.

The Seventh Schedule to the Regulations contains a sample of a Trophy Export Certificate, Game form No. 17. Note 3 to this form stipulates that "where the trophies are protected under the CITES, a letter of import authority from the Wildlife authority of country of importation, must be produced before a certificate can be issued. Such certificates shall be issued by the Director himself." The proviso does, however, not apply to manufactured articles. The Eighth Schedule to the Regulations contains a list of animals protected by the CITES.

The Wildlife Conservation (Capture of Animals) Regulations, 1974,¹⁹² deals with the issue of permits for capturing animals. The Fourth Schedule to the Regulations contains container standards for export of animals.

Although there is considerable utilization and control of wildlife at the local (national) level, the use of living natural resources originating from Tanzania outside the country is not adequately covered by existing legislation. Notwithstanding, the existence of wildlife laws wildlife continues to disappear.

A majority of developing countries are poor and a large number of them rely on the export of wildlife resources to earn foreign currency. The market for species listed under the CITES is readily available. The European Union constitutes one of the three largest markets in the world for species listed under the CITES. Overall, the EU is responsible for approximately one third of trade in wildlife annually (Burns, *et al.*, 1997).

Although CITES shows that strong enforcement of wildlife legislation is necessary, stringent legislation accomplishes little if it is not (or cannot) be enforced. The three East African countries need to establish institutional structures capable of enforcing environmental and resource conservation norms. For example, if all states could be willing to enact extra-territorial laws which prohibit trade in and control the exhibition of endangered wildlife, by heavily penalizing the individuals engaged in the illegal wildlife trade, this would greatly block the importation of endangered species and hence, protect wildlife throughout the world.

According to de Klemm, there are three alternatives of incorporating the CITES under national law. It can be through the insertion of a provision into the national wildlife law prohibiting the import, export and, preferably also, the possession of and domestic trade in all wild species, or in species listed by regulations, except under a permit. All other matters may then be left to regulations. The Wildlife Conservation Act of Tanzania, has specific provisions on export, import and possession of trophies. What is required now is to provide detailed regulations implementing specific CITES provisions on these aspects. Alternatively, a country may enact a CITES ratification Act, or a separate Act dealing exclusively with international trade in wild species.

¹⁹⁰ G.N. No.268 of 8/11/74.

¹⁹¹ G.N. No.190 of 22/6/89.

¹⁹² G.N. No.278 of 8/11/74.

(c) The Bonn Convention on the Conservation of Migratory Species of Wild Animals, June, 1979.

This Convention constitutes a recognition that the conservation and efficient management of migratory species of wild animals requires concerted action of all states; and be applied within the respective national jurisdictions of which species spend part of their lives. It also uses the system of listed migratory species. The Convention, and its subsidiary "Agreements", between Range States through which listed species migrate, aim at conserving species, by Parties restricting harvests, conserving habitat and controlling other adverse factors and impacts.

"Agreements" to benefit species listed in Appendix II are generally regional, sometimes on North-South gradient, such as the 1995 African-Eurasian Waterbird Agreement (AEWA-Agreement), but taken together should have a global effect. The AEWA-Agreement was a recognition that, numerous migratory species range over both developed and developing countries and therefore, the agreement takes into account the special circumstances of developing countries.

National Implementation of the Bonn Convention

Of the three East African countries, it is only Uganda which has provided for the protection of migratory wild animals in its wildlife law.

(d) The International Convention for the Protection of Birds, 1950.

This Convention replaced an earlier one, the Paris Convention on the Protection of Birds Useful to Agriculture, of March 1902. The Paris Convention had a narrowly utilitarian view and condemned certain species. The 1950 Convention is more protective and prohibits mass destruction or killing or capture of birds, and states cannot offer rewards for the killing or capture of birds.

(e) The United Nations Law of the Sea Convention, Montego Bay, 1982

The basic objective of the Convention is to establish "a legal order for the seas and oceans which will facilitate

international communication, and will promote peaceful uses of seas and oceans, the equitable and efficient utilization of their resources, the conservation of their living resources, and the study, protection and preservation of the marine environment" (Preamble to the Convention, para. 4).

The Convention contains comprehensive provisions relating to conservation of marine living resources. The general rule is that the coastal state has authority to ensure the conservation of biological resources in the zones over which it exercise jurisdiction, that is territorial sea, Exclusive Economic Zone (EEZ) and the continental shelf.

Another firmly established rule of international law is that a ship on the high seas is subject to the exclusive jurisdiction of its flag state. It means that non-flag states cannot take enforcement action on the high seas when a fishing vessel is suspected of undermining regionally agreed measures for the conservation and management of straddling or highly migratory fish stocks. Consequently, distant fishing nations started to catch rapidly declining fish stocks of fish in some areas of the high seas, and in most cases in the vicinity of the exclusive economic zone (EEZ) of coastal states. If a coastal state agreed upon conservation measures with other states, it could have no legal basis for enforcing those measures, unless the distant fishing nation had also agreed to such measures.

The General Assembly of the United Nations convened a Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks in 1993 to deliberate on this issue. The Conference completed its work with the adoption, on August 4, 1995, of the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10th December, 1982, Relating to the Conservation and management of Straddling Fish Stocks and Highly Migratory Fish Stocks.¹⁹⁵

The Agreement establishes a framework procedure allowing non-flag states to board and inspect fishing vessels of another state on the high seas. Articles 21 and 22 of the Agreement relate to enforcement of international measures by non-flag states. The Agreement obliges parties to establish regional procedures in accordance with global standards it has set up. If a regional organization has not established such procedures within two years of the adoption of the Agreement, it must apply the basic

¹⁹⁵ U.N. Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks, U.N. Doc.A/CONF.164/37 (1995). The Agreement was opened for signature on December 4, 1995, when twenty-six states signed it. The Agreement needs at least 30 ratifications or accessions in order to be brought into force (art.40). As of Sep.30, 1996, 47 states have signed the Agreement, and three states (St. Lucia, Tonga, and the United States) have ratified it. cf. Moritaka Hayashi. "Enforcement by Non-Flag States on the High Seas Under the 1995 Agreement on Straddling and Highly Migratory Fish Stocks" 9 *THE GEORGETOWN INT'L ENVTL. LAW REVUEW* (1996) 1, p.2.

procedure set out in Article 22, pending establishment of its own procedures. The Agreement makes it possible also for fishing vessels to be subjected to inspection even by non-party states to the regional measures (Hayashi, 1996). Such inspection is to be conducted "for the purpose of ensuring compliance with" such regional measures.

It means therefore that the fishing vessels of party states will be indirectly bound by the regional measures to which they have not agreed.

The Agreement also constitutes the global legal basis for permitting the inspecting state to bring a suspected vessel to a port for further investigation in case there are reasonable grounds for believing that it has committed a "serious violation," as defined in the Agreement (Hayashi, 1996). Clearly, the Agreement establishes a new set of rules unprecedented in international law. Whether these important developments achieved in the field of high seas fisheries can be a precedent for other fields, is debatable.

National Implementation of LOSC

The Territorial and Exclusive Economic Zones Act of 1989 of Tanzania, promulgates the framework rules contained in the provisions of the 1982 Los Convention. As such there is no single comprehensive legislation in the country which addresses all matters pertaining to the marine area particularly the rational exploitation and sound conservation of the marine environment and resources. The Fisheries Act of 1970 and the Marine Parks and Reserves Act of 1994, are both sectoral and address only certain aspects of the marine environment and in particular fisheries.

The 1970 Fisheries Act and the 1994 Marine Parks and Reserves Act protect aquatic environments through the creation of marine parks and reserves. The 1989 Territorial Sea and Exclusive Economic Zone Act implements the framework rules of the provisions of the 1982 Law of the Sea Convention (LOSC) concerning the territorial sea and the exclusive economic zone. This Convention contains comprehensive provisions relating to conservation of marine living resources. The general rule is that the coastal state has authority to ensure the conservation of biological resources in the zones over which it exercise jurisdiction, that is the territorial sea, EEZ and the continental shelf. This is supplemented with the 1995 Agreement for the

Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December, 1982, Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks. There is, however, little in the way of conservation of marine resources in the Territorial Sea and Exclusive Economic Zone Act. What the Act has done is simply to incorporate the framework rules which are contained in the 1982 Los Convention (LOSC) without providing details for their implementation and enforcement. The Act is administered by the Ministry of Foreign Affairs and International Co-operation, which has got nothing to do with marine resource conservation.

So far there is no regional fisheries organization for marine fisheries among the East African countries, and particularly Kenya and Tanzania which share a coastline. Such organization would also be beneficial to Uganda, which as a land-locked country, enjoys freedom of fishing on the high seas¹⁹⁴ as well as a right to participate, on an equitable basis, in the exploitation of an appropriate part of the surplus of the living resources of the exclusive economic zone of coastal states of the same sub-region or region¹⁹⁵. The conservation and management of fresh water fisheries resources, however, is covered under the Convention for the Establishment of Lake Victoria Fisheries Organization which was signed at Kisumu in 1994. The LOSC envisages that international organizations will be established with a view to ensuring conservation, and promoting the optimum utilization of highly migratory species. The purpose of these organizations is to promote the direct cooperation between states whose nationals fish in the region for highly migratory species.¹⁹⁶ Similarly, all States whose nationals exploit the living resources in the areas of the high seas have a duty to cooperate with other states in taking necessary measures to ensure their respective nationals enhance the conservation of the living resources of the high seas.¹⁹⁷

(f) The Convention on Biological Diversity, 1992.

The objectives of the Convention are: the conservation of biological diversity and the sustainable use of its components; the fair and equitable sharing of the benefit arising out of the utilization of genetic resources - including appropriate access to genetic resources transfer of relevant technology, and taking into account all rights over these resources and technologies, and appropriate funding

¹⁹⁴ Art.87(1)(e) of the LOSC.

¹⁹⁵ Id. Art.69(1).

¹⁹⁶ Id. Art.64.

¹⁹⁷ Id. Art.117 and Art.118 and 119.

(Art.1). The Convention embodies the most recent developments in conservation of species, but is not a comprehensive single legal instrument which frames all international norms of conservation.

National Implementation of the Convention on Biological Diversity

Although Tanzania has already ratified the Biological Diversity Convention, it is yet to enact an implementing legislation which will address matters of *ex situ* as well as *in situ* plant genetic resource conservation. If such a law were enacted it would greatly contribute to the process of reviewing and up-dating the wildlife laws and natural resources so as to cover the various forms of wildlife ownership, utilization, intellectual property rights and sustainable utilization of the resources.

(g) The 1972 Convention Concerning Protection of the World Cultural and Natural Heritage

The Convention is a global instrument through which States voluntarily commit themselves to protect cultural monuments and natural sites within their territory that are recognized to be of such outstanding universal value, thus, safeguarding them concerns humanity as a whole.

National Implementation of the Heritage Convention

Tanzania has already identified, protected and conserved several cultural and natural treasures, sites and monuments some of which are for tourists attraction and some serve as nature conservation sites such as the Serengeti, Ngorongoro, Selous, Kilimanjaro and Lake Manyara.

(h) The 1985 Nairobi Convention and Protocols for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region and Protocol on Protected Areas and Wild Fauna and Flora in the region and Protocol on Cooperation in Combating Marine Pollution in cases of Emergency.

The basic objective of the Nairobi Convention, as a UNEP Regional Seas Convention, is the protection, management

and development of the marine environment of the Eastern African Region. Tanzania has already ratified the Convention.

National Implementation of the Nairobi Convention

The Marine Parks and Reserves Act of 1994 of Tanzania fulfills the aim of the first protocol by establishing specially protected areas in the marine and coastal environment of Tanzania. Other relevant laws are the Fisheries Act of 1970; the Fisheries (Controlled Areas) Order¹⁹⁸, the Fisheries (Marine Reserves) Regulations¹⁹⁹, and the Fisheries (Explosives, Poisons and Water Pollution) Regulations.²⁰⁰

(i) Protocol Concerning Co-operation in Combating Marine Pollution in Cases of Emergency in the Eastern African Region

The Protocol was concluded with the aim of fostering regional cooperation in the protection of the marine and coastal environment from the threat of pollution, resulting from the presence of oil or harmful substances in the marine environment as a result of marine emergencies.

National Implementation of the Protocol

In Tanzania, there is only one Act which directly prohibits coastal water pollution - the Merchant Shipping Act of 1967.²⁰¹ Its prohibitions are quite limited and relate only to discharging oily mixtures and black smoke from ships within a certain distance of the shoreline or harbours.

(j) The African Convention on the Conservation of Nature and Natural Resources, Algiers, Sept. 1968

The 1968 Africa Convention is one of the major modern conservation treaties. Its origin lies in the Convention for the Preservation of Wild Animals, Birds and Fish in Africa which was signed in London, May 19, 1902 and adopted by those European powers having colonies in Africa. In 1933 the Convention Relative to the Preservation of Fauna and Flora in their Natural State, was issued in London bringing in several African States such as Egypt, Sudan and South Africa. (Kiss *et al.*, 1992)

The principal objective of the 1968 African Convention is to promote the development of necessary measures to

¹⁹⁸ GN 156/1973.

¹⁹⁹ GN 109/1982.

²⁰⁰ GN 109/1982.

²⁰¹ Act No.43 of 1967.

ensure the conservation, utilization and development of soil, water, flora and faunal resources of the continent. The Convention contains provisions relating to the control of hunting; the establishment and management of protected areas and species; the control over traffic in specimens and trophies; observation education among others; and reconciliation of customary rights. What is particularly notable about the African Convention is that, it is devoted to the protection of species. It underlies the importance of conserving flora, something which in many conventions often appears included as an after thought to the protection of animals.

The African Convention entered into force in May 7th 1969. Kenya, Uganda and Tanzania are all parties to it. Kenya and Uganda have already ratified the Convention but Tanzania has not done so yet. Tanzania, however, has ratified the CITES which addresses conservation through trade controls. It would be wise for Tanzania to ratify the African Convention as well. This will enhance the scope of conservation by dealing with the conservation of both the species and their habitat. Tanzania has already ratified the 1992 Biodiversity Convention.

The African Convention does not establish any specific organ to monitor compliance with its provisions. The main reason for lack of an established administrative structure to police the enforcement of the Convention, lies in a general post-independence antipathy towards external interference in the internal affairs of the Contracting States, for fear of violating national sovereignty. The OAU is supplied with the texts of laws, decrees, regulations and instructions in force in the territories of states parties to the Convention, as well as reports on the results achieved, and complete documentation when requested.

Lack of institutional administrative enforcement structure under the Convention, however, has not prevented notable progress in the wildlife conservation laws of some African countries (Lyster:124-5). Tanzania has enacted the Wildlife Conservation Act of 1974²⁰² while Kenya and Uganda have passed the Wildlife (Conservation and Management) Act²⁰³, and the Uganda Wildlife Statute, 1996²⁰⁴, respectively. Other African countries such as Botswana passed the Wildlife

Conservation and National Parks Act²⁰⁵, Liberia promulgated the new Wildlife and National Parks Act), Malawi enacted the National Parks and Wildlife Act²⁰⁶, Ghana made the Wild Animal Preservation Act²⁰⁷ and Sierra Leone the Wildlife Conservation Act²⁰⁸.

The 1979 Bern Convention on the Conservation of European Wildlife and Natural Habitats has the most complete institutional structure of all regional conservation conventions. The 1985 ASEAN Convention on the Conservation of Nature and Natural Resources incorporates the most recent developments in environmental awareness. Both of these Conventions could be used to provide guidance on drafting the legislative and institutional requirements for the implementation of and compliance with international and regional conventions and protocols on wildlife conservation, to which East African countries are parties.

National Implementation of the African Convention

The Ugandan Wildlife Statute, Statute No.14 of 1996 incorporates some of the most modern international norms and principles of sustainable wildlife conservation. The Ugandan Statute and the Wildlife (Conservation and Management) Act of Kenya, consolidate national parks management and wildlife conservation. In Tanzania, the two functions are still being governed under two separate legislations, the 1974 Wildlife Conservation Act and the National Parks Ordinance, respectively.

The 1974 Wildlife Conservation Act and the National Parks Ordinance incorporate some of the normative demands enshrined in the 1968 African Convention on the Conservation of Nature and Natural Resources; and the 1973 Washington Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Both the Wildlife Conservation Act and the National Parks Ordinance use the conservation methods provided for in the African Convention, by establishing game reserves and national parks as conservation areas for wildlife. The Forest Ordinance was meant to protect wild plants and animals outside protected zones through the creation of forest reserves.

²⁰² Act No. 12 of 1974.

²⁰³ Cap. 376 (Act No.1 of 1976), as amended by Act No.16 of 1989. Kenya has already drafted a "Comprehensive Law" relating to the protection, conservation and management of "Biodiversity" in Kenya, the Wildlife (Conservation and Management) Bill, 1997, to repeal and replace the Wildlife (Conservation and Management) Act, Cap.376

²⁰⁴ Statute No.14 of 1996.

²⁰⁵ Act No.28 of 1992.

²⁰⁶ Act No.11 of 1992.

²⁰⁷ Cap. 43 of 1961.

²⁰⁸ Act No. 26 of 1972.

The Wildlife Conservation Act adopts the African Convention technique of lists by inserting in four schedules, different categories of animals subjected to various levels of protection. The First Schedule consists of animals which are totally protected and for which hunting, killing, capture or collection of specimens requires a permit from the Director of Game (the highest competent national wildlife management authority). A permit can be granted only if required in the national interest or for scientific purposes. The Second Schedule contains a list of animals which are totally protected but which may be hunted, killed, captured or collected under special authorization granted by the Director of Game. The powers of the Director of Game, however, as far as the granting of permission for hunting, killing or capturing animals is concerned, do not extend to national parks or the Ngorongoro Conservation Area.²⁰⁹

In the field of control of traffic in specimens and trophies, the 1974 Wildlife Conservation Act requires trophy dealers to obtain a license which entitles the holder to carry on the business of buying and selling trophies but not to hunt, kill, capture or photograph animals.²¹⁰ A trophy export certificate is required in order to export trophies.²¹¹ Similarly the importation of trophies is by a written authority by the Director of Game.²¹² The Wildlife Conservation Act implements the obligation imposed on states (parties) to the African Convention, to regulate all trade in and transport of specimens and trophies, including authorization for the taking of any species which is protected.

The protection and rational management of faunal resources both within and outside the reserves, and the management of aquatic environments, is not adequately covered by legislation. The Wildlife Conservation Act protect vegetation in game reserves by penalising those who wilfully or negligently cause fires or cut trees in a game reserve.²¹³ The conservation of flora *per se* does not feature in the Act. The African Convention is devoted to the protection of all species.

It underlies the importance of conserving flora, "something which often appears included as an after thought to the protection of animals."²¹⁴ The Forest Ordinance attempts to protect flora through the creation of forest reserves. The 1992 Convention on Biological Diversity embodies the most recent developments in conservation of species but it is

not a comprehensive single legal instrument which frames all international norms of conservation.²¹⁵

(k) The Short Protocol on the Conservation of Common Natural Resources, Khartoum, January, 1982

This Protocol was entered into by Uganda, the Sudan and Zaire (now Democratic Republic of Congo). It contains only four substantive articles, one of which envisages the creation of a Commission on the black-market and contraband and the prosecution of all those who trade without permit in objects coming from protected species; and it entails applying territorial law but restoring the objects seized to the state of origin (Art.4).

(l) The Lusaka Agreement on Cooperative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora, September, 1994

Wild fauna and flora is essential to the overall maintenance of Africa's biological diversity, and to sustainable development of Africa. In spite of the existing national legislation and international and regional legal instruments, such as the 1968 African Convention on the Conservation of Nature and Natural Resources, the 1973 Convention on International Trade in Endangered Species of Wild Fauna, and the 1992 Convention on Biological Diversity, there has been severe depletion of certain wildlife populations in African States. The main cause of this is illegal trade which triggers off poaching. Poaching can only be curtailed if such illegal trade is eliminated.

At the invitation of the Government of Zambia, Kenya, Uganda and United Republic of Tanzania were among the states which participated in a Ministerial Meeting for the Adoption of the Agreed Text of the Lusaka Agreement on Cooperative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora was held at the Pamodzi Hotel, Lusaka, from 8-9 September, 1994. The Lusaka Agreement on Co-operative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora, was adopted in Lusaka, Zambia on 8 September 1994, and entered into force on 10 December 1996. As at the end of December 1996, Lesotho, Uganda, the United Republic of

²⁰⁹ Section 20(1) & (2) of the Wildlife Conservation Act, 1974.

²¹⁰ Section 61(3) of the Act.

²¹¹ Id. S.63(1).

²¹² Id. S.64.

²¹³ Section 9(1).

²¹⁴ Kiss, A. *et al.* International Environmental Law.

²¹⁵ Id. loc.cit.

Tanzania, and Zambia, had ratified or acceded to the Agreement. Kenya and Democratic Republic of Congo have also become parties to the Agreement. In addition, the Agreement has been signed by Ethiopia, South Africa and Swaziland. Membership to the Agreement is open to all African States.

The main objective of the Lusaka Agreement as stated in Article 2, is "to reduce and ultimately eliminate illegal trade in wild fauna and flora." The Agreement is expected to reinforce the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Under the Agreement, the task of eliminating illegal trade in wild fauna and flora is entrusted upon a permanent Task Force known as the Task Force for Cooperative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora - the "Task Force" (Article 5(1)). The Task Force is composed of a Director, Field Officers and an Intelligence Officer and other staff. The Field Officer are seconded to the Task Force by each Party and retain their national law enforcement authority during their time of service with the Task Force. The Task Force therefore, constitute a body of wildlife law enforcement officers. It possesses international legal personality and has in the territory of each Party a legal capacity required for the performance of its functions under the Agreement. The Task Force has to this extent been granted a supranational law enforcement authority by the Agreement. The officers of the Task Force retain their national law enforcement authority and are empowered to conduct cross-border investigations and where necessary may use under-cover operations.

Under Article 5(9) of the Lusaka Agreement, the functions of the Task Force are:

- (a) to facilitate co-operative activities among the National Bureau in carrying out investigations pertaining to illegal trade;
- (b) to investigate violations of national laws pertaining to illegal trade, at the request of the National Bureau or with the consent of the Parties concerned, and to present to them evidence gathered during such investigations;
- (c) to collect, process and disseminate information on activities that pertain to illegal trade, including establishing and maintaining databases;
- (d) to provide, upon request of the Parties concerned, available information related to the return to the country of original export, or country of re-export, of confiscated wild fauna and flora; and,

- (e) to perform such other functions as may be determined by the Governing Council.

The above functions are a clear indication that the Contracting States to the Lusaka Agreement were convinced that adequate co-operation in law enforcement among members of the international community was crucial in eliminating illegal trade in wild fauna and flora. The Lusaka Agreement, however, does not adopt the system of Appendices which is contained in the CITES by which trade is defined as illegal or legal. The Lusaka Agreement leaves the issue of legality of trade exclusively to national laws.

The Lusaka Agreement avoids the most common pit-fall that befalls many regional and global treaties - lack of an enforcement mechanism - by obligating each Party individually to take measures to investigate and prosecute cases of illegal trade. Article 6 of the Lusaka Agreement requires each Party to designate or establish a governmental entity as its National Bureau. Contracting States which already have in place wildlife enforcement bodies, may designate them as their national bureaus for the purpose of fulfilling the Lusaka Agreement. For those states which do not as yet have such bodies they are obliged to establish them.

The functions of the National Bureau is to provide and receive from the Task Force information on illegal trade and coordinate with the Task Force on investigations that involve illegal trade. In order for a national bureau to perform its task effectively, the national legislation establishing it must grant it investigative competence and the ability to interact with external agencies.

The responsibility to eliminate illegal trade in wild fauna and flora in Africa has been put squarely on African States themselves by the Lusaka Agreement, a task entrusted unto the Task Force. In order therefore, for the Task Force to perform its functions unhindered by state sovereignty and national laws, such officers need to be granted some privileges and immunities. In recognition of this requirement, the Lusaka Agreement stipulates under Sub-Article (11) of Article 5 that in discharging its functions, the Director, other Field Officers and the Intelligence Officer of the Task Force shall enjoy, in connection with their official duties and strictly within the limits of their official capacities, the following privileges and immunities:

- (a) immunity from arrest, detention, search and seizure, and legal process of any kind in respect of words spoken or written and all acts performed by them; they shall continue to be so immune after the completion of their functions as officials of the Task Force;

- (b) inviolability of all official papers, documents and equipment;
- (c) exemption from all visa requirements and entry restrictions;
- (d) protection of free communication to and from the headquarters of the Task Force;
- (e) exemption from currency or exchange restrictions as is accorded representatives of foreign governments on temporary official missions; and,
- (f) such other privileges and immunities as may be determined by the Governing Council.

National Implementation of the Lusaka Agreement

This section considers the development and harmonization of our wildlife laws and regulations, with a view to incorporating the requirements of the Lusaka Agreement into the national wildlife laws and regulations.

(i) Establishment of a National Bureau

The Task Force which is created under Article 5 of the Lusaka Agreement, is composed of national law enforcement officers seconded by the State Parties. The State Parties are therefore required, to designate a National Bureau for the purposes of the Agreement. In this respect, the Wildlife Protection Unit which is established under Section 4A of the 1974 Wildlife Conservation Act of Tanzania, would be the appropriate national bureau for Tanzania. In accordance with the Wildlife Conservation Act, one of the functions of the Unit is the protection of wildlife against hunters and generally the enforcement of the wildlife laws. The Wildlife Protection Unit, however, is located within the Wildlife Department, a government department, and it is not therefore, a body corporate. The Uganda Wildlife Authority and the Kenya Wildlife Service are corporate bodies which can sue or be sued in their own names. The Wildlife Protection Unit of Tanzania does not have this legal capacity. The Wildlife Department within which the Unit is located, however, enjoys investigative and prosecutorial competence as well as the ability to interact with external agencies.

In accordance with Article 6(1) of the Lusaka Agreement, each Party is required to designate or establish a governmental entity as its National Bureau and inform the

Depositary,²¹⁶ within two months of the date of entry into force of the Agreement as earlier mentioned. The functions of the National Bureau is to provide and receive from the Task Force information on illegal trade and coordinate with the Task Force on investigations that involve illegal trade. Tanzania was supposed to have designated its national bureau for the purposes of the Lusaka Agreement, but has not yet done so. The Minister responsible for wildlife conservation should therefore, make an order designating the Wildlife Protection Unit as the National Bureau for the purposes of fulfilling the Lusaka Agreement.

There are also some new terms found in the Lusaka Agreement such as "Agreement area"; "country of original export"; "country of re-export"; "Field Officer"; and, "illegal trade." These terms need also to be included in the 1974 Wildlife Conservation Act. As regards the return to the country of original export or country of re-export any specimen of species of wild fauna and flora confiscated in the course of illegal trade and granting, the Minister can use his regulatory powers under the Act to make regulations prescribing for the same.

(ii) Privileges and Immunities to the officers of the Task Force

The grant of privileges and immunities to the Task Force could be covered either under a Headquarters Agreement which is to be negotiated under Article 9 of the Lusaka Agreement, or administrative orders issued under the relevant national laws.

According to Article 9 of the Lusaka Agreement, the Headquarters Agreement is to be concluded between the Government in whose territory the Seat of the Task Force shall be located (the host state) and the Director acting on behalf of the Task Force. In accordance with Article 7(3) of the Agreement, the Executive Director of UNEP convened the first Meeting of the Conference of the Parties to the Agreement, named the "Governing Council for Co-operative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Trade" in Nairobi, in March, 1997. This first Meeting launched the Task Force, adopted the operational rules of the Task Force and decided on the location of the seat of the Task Force. The seat of the Task Force is in Nairobi, Kenya. In the case of Tanzania, the privileges and immunities to which the members of the Task Force would be entitled, could be stipulated in an administrative order issued under the Diplomatic Immunities and Privileges (Extension and Miscellaneous

²¹⁶ In accordance with Article 15(1) of the Agreement, the Secretary-General of the United Nations shall assume the functions of Depositary of the Agreement.

Provisions) Ordinance (Amendment) Act, 1971²¹⁷, and the Diplomatic and Consular Immunities and Privileges Act, 1986.²¹⁸ The Third Schedule to the latter Act, contains a list of some specified organizations which are entitled to the diplomatic and consular immunities and privileges stipulated in Part I of the Fourth Schedule to the Act. Under Section 13(2) of the Act, for the time being the responsible for external affairs, may, by order published in the Gazette, add to the Third Schedule, the name of any organization of which the government of the United Republic and the government or governments of one or more foreign sovereign powers are members; and may delete the name of any organization of which the government of the United Republic ceases to be a member. The Minister could therefore, use his statutory powers to designate the Task Force for Co-operative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora as one of the organizations entitled to the immunities and privileges stipulated in Part I of the Fourth Schedule to the Act. Section 13(1) of the Act stipulates that such organizations so specified acquire the legal capacity of a body corporate.

In addition to privileges and immunities, the Lusaka Agreement also provides for other matters which relate to the efficient performance of the Task Force within the territory of each Party. These matters could also be provided for in the Headquarters Agreement or in the administrative order to be issued by the Minister responsible for external affairs. Such matters include the following:

- (i) the recognition of the international legal capacity of the Task Force and confirmation of its legal capacity to discharge its functions (Art.5(8)) within the host territory;
- (ii) the dispute resolution mechanisms (Art.10); and,
- (iii) the functions of the Task Force (Art.5(9)).

2.4 Conclusion

Tanzania seems to have made some efforts in incorporating into her national wildlife laws some of the normative demands of global and regional wildlife-related treaties. The country, however, has not yet adopted any legislation which specifically implements the provisions of CITES on trade in endangered species of wild flora and fauna. Neither is there any law in the country to implement the Lusaka Agreement. Furthermore, the country does not have a specific legislation on the protection of endangered species. Although, the Wildlife Conservation Act of 1974 covers some aspects of CITES on trade in all species and not only those endangered, it is still inadequate in some aspects. There is a need for a specific national legislation containing provisions that facilitate measures to combat illegal trade and trafficking; joint cross-border investigations; mutual co-operation in judicial proceedings; and handling and return of confiscated specimens. This will reflect the obligation the country has undertaken under global and regional agreements such as the CITES and the Lusaka Agreement.

²¹⁷ Act No.18 of 1971.

²¹⁸ Act No.5 of 1986.

CHAPTER THREE

3.0 PROPOSALS AND RECOMMENDATIONS FOR AMENDMENT OF EXISTING WILDLIFE LAWS AND REGULATIONS

3.1 Introduction

This part examines deficiencies and weaknesses inherent in the Wildlife Conservation Act of 1974, and contains some recommendations for reform of the law. Due to the existence of numerous deficiencies in the existing Act, however, its repeal would be more appropriate. Some proposals and recommendations towards this goal are made, and a draft text of the proposed Bill for a biodiversity conservation and management legislation is annexed to this Report. The draft Bill is to a large extent in line with the 1998 Policy for Wildlife Conservation. Some proposals for the consolidation of the management of wildlife and wildlife conservation, and the creation of a single institution with overall mandate in wildlife conservation and wildlife management are made. Given the problems that are being experienced in the existing arrangement, the experience of our neighbours Kenya and Uganda with the proposed model, and the need to give the people more powers over the management of wildlife resources, the proposal for consolidation is more than opportune.

3.1 Deficiencies in existing national wildlife legislation

3.1.1 *Narrow definition of wildlife and lack of purposes of wildlife conservation legislation*

The definition of the term "wildlife" in existing legislation is too narrow since it does not encompass the broad scope of biodiversity. Furthermore, the existing Act does not stipulate the purposes of wildlife conservation legislation.

Recommendations:

- (1) Since the focus of the new legislation will eventually be on biodiversity, the term "biodiversity", should be incorporated in the law and be defined. The broad concept of biodiversity comprises all animal and plant forms and the processes upon which they depend on, of which they form a unit including genetic as well as species, habitat and ecosystem variability. This definition will take care of all species of wild plants or wild animals native to Tanzania, as well as wild animals which migrate to or through Tanzania.

Alternatively, the term "wildlife" could be defined as "those species of wild and indigenous animals and plants, and their constituent habitats and ecosystems, to be found in Tanzania, as well as those exotic species that have been introduced to Tanzania, and that are temporarily maintained in captivity or have been established in the wild, and includes migratory wild animals".

The participants at the National Workshop were more comfortable with this definition and the retention of the term wildlife instead of applying the term biodiversity. They, however, agreed that the definition should be broadened.

- (2) The following should be the purposes of biodiversity legislation:
 - (a) the conservation of biodiversity throughout Tanzania so that the abundance and diversity of their species are maintained at optimum levels commensurate with other forms of land-use, in order to support sustainable utilization of wildlife for the benefit of the people of Tanzania;

- (b) the sustainable management of biodiversity conservation areas;
- (c) the conservation of selected examples of wildlife communities in Tanzania;
- (d) the protection of rare, endangered and endemic species of wild plants and animals;
- (e) ecologically acceptable control of problem animals;
- (f) the enhancement of economic and social benefit from wildlife management by establishing wildlife use rights and promoting tourism;
- (g) the control of import, export and re-export of wildlife species and specimens;
- (h) the implementation of relevant international treaties, conventions, agreements or other arrangements to which Tanzania is a party; and,
- (j) public participation in biodiversity management.

3.1.2 Historic rights in conservation areas are not protected

The historic rights of individuals in conservation areas are not protected by law, that is: (i) access of communities neighbouring conservation areas to resources which are crucial to their survival, such as hunting and gathering; (ii) the protection of historical or cultural interests of persons resident in wildlife conservation areas; and, (iii) protection from acquisition, in public interest, of any rights of land protected under law, if they fulfil the needs of sustainable management of wildlife. The 1998 Policy for Wildlife Conservation is silent on historic rights in conservation areas.

Recommendations:

- (1) The law should enable the Wildlife Authority to study, identify and protect historical or cultural interests of any individual or class of persons resident in a wildlife conservation area not protected by any other law.
- (2) The Wildlife Authority should establish the guidelines for access of communities neighbouring conservation areas to resources which are crucial to their survival.

3.1.3 No conservation of migratory wild animals and wildlife outside protected areas

The conservation of migratory wild animals and birds and wildlife outside of protected areas is not covered by law. Recommendations:

- (1) The law should provide for the protection of species which migrate to or through Tanzania which are protected under any international or regional convention or treaty or protocol, to which Tanzania is a party, and has been ratified according to the Constitution of the United Republic of Tanzania of 1977 as amended from time to time.
- (2) The law shall protect wildlife corridors and migration routes.
- (3) The law should also provide for the devolution of the conservation and management of wildlife outside protected areas on CBC and provide for the establishment of WMAs.
- (4) The law should provide that villages shall have proprietary rights over the land and custodial rights of wildlife in WMAs under the CBC arrangement.

3.1.4 No provision for Wildlife Use Rights

Existing wildlife-use rights do not include farming and ranching or rights of communities and organization. Wild animal farming is feasible in Tanzania. This is suggested by the Government Notice which establishes the Tanzania Wildlife Corporation (TAWICO).²¹⁹ The notice provides that one of the functions of TAWICO is to establish and maintain animal parks, farms, zoos, aviaries, aquaria and any other such establishments.²²⁰ The 1997 Draft Policy for Wildlife Conservation intimates that land tenure laws and state ownership of wildlife have militated against the investment in, and development of, wildlife ranching and farming by the private sector.

Lack of clear provisions on some wildlife-use rights has denied the devolution of the management and use of wildlife to, (or custodial rights of) the private land holder. One of the implementation framework of the 1998 Policy for Wildlife Conservation, however, is to allow the devolution of the management and use of wildlife to the private land holder. Moreover, under existing laws villages or communities are not allowed to have both proprietary rights

²¹⁹GN No.231/1974.

²²⁰Id. Rule 4(1)(e).

over the land and custodial rights of wildlife on that land. Lastly, commercial arrangement in the management of conservation areas is not provided for by existing law.

Recommendations:

- (1) Ownership of every wild animal and wild plant existing in its wild habitat in Tanzania will continue to vest in the Government as trustee on behalf of, and for the benefit of, the people of Tanzania. The law, however, should state that where any wild plant or wild animal is lawfully taken by any person, the ownership of such plant or animal will vest in that person.
- (2) Protected species will continue to be taken lawfully under a permit or a license or wildlife use-right granted or issued under the law, and that the ownership of such animal or plant will vest in the licensee or right holder.
- (3) The right to use wildlife may be granted to a person, community or organization to make some extractive utilization of wildlife. The following types of transferable wildlife use rights may be granted:
 - (i) hunting;
 - (ii) farming;
 - (iii) ranching;
 - (iv) trading in wildlife and wildlife products;
 - (v) using wildlife for educational or scientific purposes including medical experiments and developments; and,
 - (vi) general extraction.

Wildlife use rights will be created by the Minister by consent of parliament and will have to be applied for upon fulfilling clearly stipulated conditions.
- (4) Every grant of a wildlife use right will be subjected to certain conditions and that the right to which the grant refers will have to be commenced within a specified period of time, and unless the grantee has applied for an extension, it will automatically lapse and cease to be of any effect.
- (5) Failure to comply with the terms or conditions of a grant of a wildlife-use right may lead to revocation of the wildlife-use right.

- (6) There will be an initial fee and an annual fee that the Wildlife Authority will be charging in respect of every wildlife-use right which it will grant - the fee charged may be based on a percentage of the income to be derived by the right-holder from the exercise of the wildlife-use right - will be deposited in the Wildlife Protection Fund and be utilized for conservation purposes. There will, however, be no charge of fee on the use of wildlife for research and educational purposes.

3.1.5 There exist various authorities for declaring protected areas

Existing wildlife conservation legislation vests the power to different types of wildlife authorities within the wildlife sector to establish specific types of protected areas. For example, the powers of declaring game reserves (GR), forest reserves and proclaiming a national park (NP) is vested in the President. The Minister responsible for matters relating to conservation is vested with powers to declare game controlled areas (GCA). The Director of Wildlife is vested with powers to declare partial game reserve (PGR), and the Minister responsible for marine parks and reserves has powers to declare marine parks and reserves (MPR).

Tanzania is a big country both in terms of land areas and wildlife heritage compared to the other two East African countries. With a total land area of 904,594 sq.km, the Wildlife Department has authority over about 23% of the country, that is, 15% of Game Reserves and 8% of Game Controlled Areas, which cover about 150,000 sq.km. TANAPA on its part manages about 4% of the country in 12 National Parks, which cover about 47,000 sq.km. The Ngorongoro Conservation Area which is about 1% of the total land area of the country is managed by the Ngorongoro Conservation Area Authority (NCAA). It is clear that the management of wildlife in such a big part of the country calls for an enormous amount of resources, both capital and human, in order to be able to be effective. Now with the existence of multifarious authorities and institutions, a duplication effort can not be avoided. It is only prudent if a single institution could be established and given, powers and the task of managing wildlife and conservation.

The multifarious nature of the existing institutions responsible for the management of wildlife resources in the country has, to say the least, been one of the main cause of mismanaging wildlife resources in the first place. It is not, for example, uncommon for one authority to grant hunting licenses to foreign companies in a protected area, while another grants mining permits within a game reserve. The existence of a single institution with overall

coordinating, monitoring and supervisory powers in the sustainable management of wildlife in the country would therefore, help to check the abuse of the discretionary powers of the executive in wildlife conservation.

The existence of various centers of decision-making in relation to a single resource, wildlife, and the non-existence of secured means of checks and balances within the wildlife management system, has also been a very fertile ground for corruption in the sector and a recipe for management conflicts. Lack of co-ordination and struggle for intra-sectoral hegemony is a common feature within the wildlife sector too.

Under the current set-up, the Wildlife Department within the Ministry of Natural Resources and Tourism claims ownership over wildlife in protected areas rather than national parks. The Department is therefore, legally entitled to collect all revenue from wildlife utilization in its area of jurisdiction. TANAPA on its part, claims jurisdiction over national parks, and takes all the monetary proceeds from those parks. There is no single fund towards which the funds could be contributed and shared equitably to enhance the conservation of wildlife resources in the country.

Although the 1998 Policy for Wildlife Conservation does not provide for the creation of a monolithic institution with overall coordinating, monitoring and supervisory powers in the sustainable management of wildlife in Tanzania, it is our considered view that this should be given a try. Partly it is agreeable that harmonization of existing wildlife laws may help to streamline existing powers of wildlife authorities for more efficiency and transparency. Consolidating the two functions, however, may contribute towards a more sustainable management of wildlife resources in Tanzania.

Recommendations:

- (1) As a transitory measure, there should be established a Biodiversity Conservation Board with membership from representatives of local communities residing in wildlife areas, representatives of the private sector involved in activities related to wildlife; representatives of the tourism industry; individuals representing a community, institution to serve on personal capacity; ex-officio members to be appointed from the Ministry or institution responsible for wildlife, tourism, economic development, forestry, local government and the National Environment Management Council.

The following should be the functions of the Board:

- (a) to ensure the sustainable management of wildlife conservation areas;
 - (b) to develop and recommend policies on wildlife management to Government;
 - (c) to co-ordinate the implementation of Government policies in the field of wildlife management;
 - (d) to identify and recommend areas for declaration as wildlife conservation areas and the revocation of such declaration;
 - (e) to review and approve wildlife conservation plans;
 - (f) to develop, implement and monitor collaborative arrangements for the management of wildlife; and,
 - (g) to make recommendations in connection with the functions of the Minister in making of bye-laws for wildlife management.
- (2) During the transition period, the relevant parastatals within the wildlife sector will continue to be the trustees of wildlife. This trusteeship will be exercised through the Department of Wildlife, the Board of Trustees of the Tanzania National Parks, and the Board of Trustees for Marine Parks and Reserves.
 - (3) It is only logical that the people who might be affected by a decision of the executive in declaring a wildlife conservation area should be involved in the process, and compensation should be paid whenever land belonging to indigenous communities is acquired for conservation purposes.
 - (4) The Minister responsible for natural resources should be the only authority with powers to establish different types of wildlife conservation areas. The procedure to be followed by the Minister in the performance of his statutory functions should be clearly stipulated in the law, that is, the procedure which the Minister has to follow in declaring or restoring or revoking the declaration of a wildlife conservation areas.

The Gazettement of the area should be done only after:

- (a) a recommendation by the Biodiversity Conservation Board; (b) consultation with the local government authority in whose area a proposed wildlife conservation area falls; and, (c) consent and approval by Parliament. Certain powers of the Minister, however, may be subject to delegation by law.

Alternatively:

- (5) As a long-term measure, efforts should be made by the relevant authorities to ensure that the function of wildlife management and wildlife conservation are merged into an institution laid down by Statute. The institution will be responsible for the management of national parks and wildlife conservation, be monolithic, with overall co-ordinating, monitoring and supervisory powers in the sustainable management of wildlife in Tanzania.
 - (i) The institution should be a body corporate with perpetual succession and a common seal and should be capable of suing or being sued in its own name.
 - (ii) The institution should be under the general supervision of the Minister responsible for wildlife resources.
 - (iii) Among the functions of the institution will be: (a) to ensure the sustainable management of wildlife conservation areas; (b) to develop and recommend policies on wildlife management to Government; (c) to co-ordinate the implementation of Government policies in the field of wildlife management; and, (d) to identify and recommend areas for declaration as wildlife conservation areas and the revocation of such declaration.
 - (iv) The Governing body of the institution should be a Board of Trustees which should be appointed by the Minister. The Board should be responsible for the discharge of the business and functions of the institution. Among other things, the Board will be the trustee for wildlife and wildlife protected areas in Tanzania; examine and recommend proposals for developing wildlife policy; recommend the declaration of wildlife conservation areas and the revocation of such declaration; and make bye-laws for the management of wildlife and wildlife conservation.
 - (v) The Executive Director of the institution will have to be a person knowledgeable in wildlife management and has to be appointed by the Minister on the recommendation of the Board. The Executive Director will be the chief executive officer of the institution and will be responsible to the Board for the day to day operations of the institution, and the administration of the statute consolidating the management of wildlife and wildlife conservation areas. The senior staff of the institution will be appointed by the Board.

The majority of the participants at the National Workshop went for the alternative proposal of having a monolithic institution in the country, that will deal with all issues relating to wildlife management and wildlife conservation.

3.1.6 Non-involvement of Village Communities in management of wildlife conservation areas

Except for the Marine Parks and Reserves Act of 1994, all the other existing wildlife legislations do not provide for the involvement of villages in the vicinity of wildlife protected areas in the management of wildlife conservation areas, or the sharing in the benefits of the operation of protected areas by those villages and local residents.

Recommendations:

- (1) The law should provide for the involvement of villages and other local resident users in the vicinity of, or dependent on, a protected area in all phases of the planning, development and management of a protected area. The involvement of village communities could be done through the extant local government structure under the local government laws. Most probably at the village level, village councils will be the most ideal institution for involvement. Participation could be exercised either directly or through designated committees or other representatives duly elected by the village council for that purpose.
- (2) It should stipulate in law that villages and other local resident users in the vicinity of, or dependent on, a protected area must share the benefits derived from the operation of the protected area, and have priority in the resource use and economic opportunity afforded by the establishment of or existing protected area.

3.1.7 Environmental Impact Assessment not legally mandated

Currently, it is not mandatory for developers to undertake EIAs if a desired project may have significant adverse effects on wildlife species or community. With the exception of for the Marine Parks and Reserves Act of 1994, all the other existing wildlife laws do not provide for the mandatory undertaking of EIA by developers desiring to establish projects which may have a significant effect on wildlife species or community. Tanzania does not yet have any specific law for EIA. This lacuna, however, cannot be taken as an excuse by wildlife authorities for not taking precautionary measures, by requiring EIAs for projects or

activities that may have significant effects on wildlife or communities. The 1998 Policy for Wildlife Conservation adopts, as one of its strategy, the institution of measures that will compel developers to carry out EIA and show mitigation measures to be undertaken for the proposed development in PAs, and the management of the conduct of the evaluation as appropriate.

Recommendations:

- (1) It should be provided in the law that, no undertaking or physical activity which may have a significant effect on any wildlife species or community shall be undertaken without first conducting an assessment of the environmental impact of such undertaking or activity pursuant to legal, policy or practical requirements or pursuant to the general management plan for a protected area or regulations made under the law.
- (2) Similarly, it should be stated in the law that, no authority shall allocate land and put to use any area within a buffer zone unless an assessment of the environmental impact of the proposed activity is conducted pursuant to legal requirements, policy, practice or pursuant to any applicable general management plan or regulations made under the law.
- (3) It should also be provided in the law that in future, before the Minister declares an area of land or water to be a wildlife conservation area, it must be ensured that an environmental impact study has been conducted. Such study must investigate and make a report on the social and ecological consequences of the declaration of the proposed wildlife conservation area.
- (4) The law shall provide that EIA for proposed development within a PA will be evaluated by the respective management authority.
- (5) Wildlife authorities should be obliged by law to carry out audits and monitoring of projects to be carried out in wildlife conservation areas.

3.1.8 Clean-up costs and value restoration not legally mandated

With the exception of the Marine Parks and Reserves Act of 1994, clean-up costs, payment for value and restoration of damaged resources are not a legal requirement in other wildlife conservation legislation.

Recommendations:

It should be provided in wildlife conservation laws that:

- (a) any person who contravenes any of the provisions of any wildlife legislation or regulations made under such laws, should in addition to fine and term/or term of imprisonment, be required to clean up all substances and articles discharged, or to remove all structures built or placed within a protected area or buffer zone at own cost.
- (b) where a person causes damage to any wild animal or wild plant, fish or aquatic flora, such a person should in addition to fine and term of imprisonment, be required to pay for the value of or to restore the resources so damaged.

3.1.9 Lack of General Management Plan

Apart from the Marine Parks and Reserves Act of 1994, all other existing wildlife laws do not provide for the legal requirement of adopting a general management plan for each protected area.

Recommendations:

- (1) It should be specifically provided in the law that general management plans (GMPs) must be adopted for each protected area from which Action Plans will be drawn for control, regulation, administration, development and management purposes.
- (2) The requirements for the adoption of the general management plan as well as its contents should be stated in regulations.
- (3) Once adopted, all local authorities, regional and national planning agencies have to abide by the general management plan.

3.1.10 Narrow Base of Funds for the Wildlife Protection Fund

The Wildlife Conservation Act establishes a Wildlife Protection Fund under Section 69A which was added to Section 7 of Act No.21 of 1978. The Act, however, does not stipulate that the payments from fees and charges receivable under the Act will form one of the sources of funds for the Fund.

Recommendations:

- (1) It should be stated in the law that payments from fees and charges receivable under the Act should be a source of funds for the Fund. This may somehow resolve the recurring problem of acute shortage of funds currently facing the Wildlife Authority.
- (2) Similarly, all the other wildlife laws should be amended to provide for the establishment of revolving funds by the relevant wildlife authorities for the respective protected areas under their management. The Marine Parks and Reserves Act provides for such funds and its sources.

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APPENDIX

LAWS OF TANZANIA

CHAPTER ...

THE BIODIVERSITY (CONSERVATION AND MANAGEMENT) ACT

[PRINCIPLE LEGISLATION]

Revised Edition

Printed and published by Order of the
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Biodiversity Conservation CAP. ... [R.E.] 1

[Principle]

CHAPTER ...

THE DRAFT BIODIVERSITY (CONSERVATION AND MANAGEMENT) ACT - TANZANIA

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CHAPTER ...
A BILL for
THE BIODIVERSITY (CONSERVATION AND MANAGEMENT) ACT

This is a Bill for an Act to provide for sustainable management of biodiversity; to harmonize the law relating to biodiversity management; to repeal and replace the Wildlife Conservation Act of 1974; and, to make provisions for the protection, conservation, sustainable development, regulation and control of fauna and fauna products and for related matters.
[..... 19..]

PART I

PRELIMINARY

Short Title and Commencement

1. This Act may be cited as the Biodiversity (Conservation and Management) Act, 19.., and shall come into force on such date as the Minister may, by order published in the Government Gazette appoint.

Interpretatio•

2. (1) In this Act, unless the context otherwise requires:

“the Act” means the Biodiversity (Conservation and Management) Act;

“aerodrome” means any area of land or water designed, equipped, set apart or commonly used for affording facilities for the landing and departure of aircraft;

“animal” means any kind of vertebrate animal and the young and egg thereof, other than domestic animals;

“authorized officer” means the Director, A Game Management Officer, a Game Warden, a Game Assistant, a Field Assistant or a Police Officer and includes:

- (a) an employee of the Forest Division of or above the rank of Field Assistant;
- (b) an employee of the National Parks of or above the rank of Park Guide;
- (c) an employee of the Fisheries Division of or above the rank of Field Assistant;
- (d) any public officer or other person appointed as such by a writing signed by the Director;

“authorized organization” shall have the meaning assigned thereto by Section ...(26);

“biological diversity” means the variability among living organisms from all sources including, *inter alia*, terrestrial, marine and other aquatic ecosystems, and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems;

“the Board” means the Board of Trustees of the Biodiversity Protection Fund established by Section 93;

“capture” includes any act immediately directed at the taking of any animal, nest or egg;

“Commissioner of Customs” includes a customs officer employed by the Customs Department;

“conservation area” means any protected natural resource area, whether it be a strict nature reserve, a national park or a special reserve and includes:

- (a) a game reserve established under Section. (5);
- (b) a national park established under the National Parks Act;
- (c) the Ngorongoro Conservation Area established by the Ngorongoro Conservation Area Act;
- (d) a forest reserve established under the Forestry Act;

“conservation” means the management of human use of organisms or ecosystems to ensure such use is sustainable; it also includes protection, maintenance, rehabilitation, restoration and enhancement;

“country of original export” means the country where the specimens originated and from whose territory they depart or have departed;

“country of re-export” means the country from whose territory specimens depart or have departed and that is not the country of origin of the specimens;

“dangerous animal” means any animal for the time being specified in the Fourth Schedule to this Act;

“designated organization” shall have the meaning assigned to that expression by Section (26);

“dwelling house” has the meaning assigned to that expression in the Penal Code, Cap 16;

“Director” means the Director of Biodiversity appointed under section 5;

“export” means to take or cause to be taken from within Mainland Tanzania to any place outside Mainland Tanzania;

“Field Officer” means a member of a Government organization, department or institution who is employed as a law enforcement officer with national law enforcement jurisdiction, and who is seconded to the Task Force;

“fish” means all forms of aquatic or amphibious life (including turtles, crabs, shell fish) and the spat, brood, fry, spawn, ova or young thereof;

“game” and “game animal” means any animal specified in any Schedule to this Act and includes the eggs and young of any such animal;

“game bird” means any bird specified in any Schedule to this Act and includes the eggs and young thereof;

“game controlled area” means any area declared to be a game controlled area by an order made under Section 12;

“game license” means any license issued under the provisions of Part IV of this Act for the hunting of an animal;

“game officer” means a game officer appointed under Section ..(4);

“game reserve” means any area declared to be a game reserve by an order made under Section 11, and denotes an area set aside for the conservation, management and propagation of wild animal life and the protection and management of its habitat, within which the hunting, killing or capture of fauna is prohibited except by or under the direction or control of the reserve authorities and where settlement and other human activities are controlled or prohibited;

“hide” means any form of man-made screen, fence, platform, pit or ambush intended to conceal a hunter;

“highway” shall have the meaning assigned to that expression in the Highways Act, Cap.167;

“horn” includes rhinoceros horn;

“hours of darkness” means the period commencing at 6.30 p.m. on any day and expiring at 5.30 a.m on the following day;

“hunting” includes any act directed or incidental to the killing of any animal;

“illegal trade” means any cross-border transaction, or any action in furtherance thereof, in violation of this Act;

“introduction from sea” means transportation into a State of specimens of any species which were taken in the marine environment not under the jurisdiction of any State;

“ivory” means elephant ivory;

“licensing officer” means any game officer or any other person whom the Minister may, by notice in the *Gazette*, appoint to be a licensing officer for the purposes of this Act;

“livestock” includes cattle, sheep, goats, pigs, horses, mules, donkeys and all other domesticated animals and their eggs and young;

“Management Authority” means the National Management Authority designated in accordance with Article IX of the Convention on International Trade in Endangered Species (CITES);

“manufactured trophy” means any article made either wholly or partly, of or from any durable part of an animal by subjecting such part to any chemical or mechanical process, tanning, sewing or other process whatsoever;

“meat” includes the fat, blood or flesh or any animal fresh, dried, pickled or otherwise preserved;

“mechanically propelled vehicle” means all vehicles, including watercraft and aircraft, which receive their motive power from internal combustion, steam, reaction or electrical propulsion;

“Minister” means the Minister for the time being responsible for matters relating to the conservation of fauna;

“National Bureau” means the Biodiversity Protection Unit established under Section 8 of this Act and designated as such by the Minister, with competence encompassing law enforcement for the purposes of the Lusaka Agreement on Cooperative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora ;

“national park” means an area set aside as a National Park under the Provisions of the National Parks Act, whose boundaries may not be altered or any portion alienated except by the authority of the National Assembly; being an area exclusively set aside for the propagation, protection, conservation and management of vegetation and wild animals as well as for the protection of sites, land-scape or geological formations of particular scientific or aesthetic value, for the benefit and enjoyment of the general public, and in which the killing, hunting and capture of animals and the destruction or collection of plants are prohibited except for scientific and management purposes and on the condition that such measures are taken under the direction or control of the competent authority. It may cover aquatic environment as provided in the Fisheries Act, 1970, and the Marine Parks and Reserves Act, 1994.

“natural resources” means renewable resources; that is, soil, water, flora and fauna;

“the Ordinance” means the Fauna Conservation Ordinance;

“owner” in relation to any land means the person holding or deemed by any written law to be holding right of occupancy over the land and includes a lessee, a mortgagee in possession and any person authorized by the owner, lessee or mortgagee to act on his behalf in his absence;

“partial game reserve” means any area declared to be a partial game reserve by an order under Section ..(13);

“plant” means any member of the plant kingdom, including seeds, roots and other parts thereof.

“private land” means any land held or deemed by any written law to be held under a right of occupancy;

“purchase” and “sell” include barter;

“re-export” means export of any specimen that has previously been imported;

“road” means any highway and any other road to which the public has access and includes bridges over which a road passes but does not include a road or part of a road within the curtilage of a dwelling house;

“sanctuary” denotes an area set aside to protect characteristic wildlife and especially bird communities, or to protect particularly threatened animal or plant species and especially those listed in the Annex to the African Convention on the Conservation of Nature and Natural Resources, 1968.

“Scientific Authority” means the national scientific authority designated in accordance with Article IX of the Convention on International Trade in Endangered Species (CITES);

“species” includes any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which inter-breeds when mature;

“specimen” means any animal or plant, whether alive or dead, as well as any readily recognizable part or derivative thereof, of any species of wild fauna and flora;

“Task Force” means the task Force established under Article 5 of the Lusaka Agreement on Cooperative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora and given the force of law under the Lusaka Agreement on Cooperative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora (Implementation) Act;

“trade” means export, re-export, import and introduction from the sea;

“trophy” means any animal, alive or dead, and any horn, ivory, tooth, tusk, bone, claw, hoof, skin, meat, hair, feather, egg or other portion of any animal and includes a manufactured trophy or processed object or otherwise dealt with;

“trophy dealer” means any person who engaged in the buying, selling, cutting, carving, polishing, cleaning, mounting, preserving or processing of trophies;

“the Unit” means the Biodiversity Protection Unit established under Section 8;

“vehicle” means a vehicle of any description whatsoever and howsoever drawn or propelled, and includes a vessel and an aircraft;

“vessel” means a ship, boat, dhow, submarine and every other kind of watercraft used in navigation, either on the sea or in inland waters and includes a seaplane and any amphibious craft;

“weapon” means any firearm, dart-gun, missile, explosive, poison, poisoned bait, spear, knife, axe, hoe, pick, bow and arrows, club, stakes, pitfall, net, gin, trap, snare or any combination of these, and any other device whatsoever capable of killing or capturing an animal;

“wildlife” means any member of the animal kingdom, including without limitation any mammal, fish, bird (including any migratory, non-migratory, or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusc, crustacean, arthropod or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof.

“wild fauna and flora” means any wild species of animals and plants subject to this Act;

“wound” means any incision or puncture which divides or pierces any exterior membrane of the body and includes maiming.

- (2) The Director may by notice in the *Gazette* or by a writing under his hand delegate to any public officer all or any of his functions under this Act, and where the Director has so delegated any of his functions then, in respect of such function, references in this Act to the Director shall include references to the public officer to whom such function has been delegated.
- (3) Where pursuant to Sub-Section (2) the Director has delegated any function by a writing under his hand, such writing shall be admissible as evidence before any court and shall be *prima facie* evidence of such delegation as well as of the fact that the person whose signature appears thereon held the office of the Director when the same was signed.
- (4) References in this Act to the Ordinance or this Act include references to all subsidiary legislation made under the Ordinance or this Act, as the case may be.

Purposes of the Act

3. (1) The purposes of this Act are to promote:
 - (a) the conservation of biodiversity throughout Tanzania so that its abundance is maintained at optimum levels commensurate with other forms of land use, in order to support sustainable utilization of biodiversity for the benefit of the people of Tanzania;
 - (b) the sustainable management of biodiversity conservation areas;
 - (c) the conservation of selected examples of biodiversity in Tanzania;
 - (d) the protection of rare, endangered and endemic species of wild plants and animals;
 - (e) ecologically acceptable control of problem animals;
 - (f) the enhancement of economic and social benefit from biodiversity management by establishing biodiversity use rights and the promotion of tourism;
 - (g) the control of import, export and re-export of biodiversity species and specimens;
 - (h) the implementation of relevant international treaties, conventions, agreements or other arrangement to which Tanzania is a party; and,
 - (i) public participation in biodiversity management.
- (2) For the better achievement of the purposes of this Act, every person responsible for the administration of this Act shall ensure that any measures taken or instituted under this Act are based on the results of scientific investigation, in so far as it is economical, including the monitoring of species status and habitat condition as well as taking into account the views of affected communities.

- (3) The provisions of this Act shall not be construed as authorizing the introduction of alien species of plants or animals into wild habitats within Tanzania.

Ownership of Biodiversity

4. (1) The ownership of every wild animal and wild plant existing in its wild habitat in Tanzania is vested in the Government on behalf of, and for the benefit of, the people of Tanzania.
- (2) Where any wild plant or wild animal is lawfully taken by any person, the ownership of such plant or animal shall, subject to the provisions of this Act, vested in that person.
- (3) If any protected species is lawfully taken under a permit or a license issued or wildlife use right granted or issued under this Act, the ownership of such animal or plant shall, subject to the provisions of this Act and to the terms and conditions of the license, vested in the licensee or right holder.
- (4) If before the commencement of this Act, any wild plant or animal vested in any person, such plant or animal shall, subject to the provisions of this Act, continue to be vested in that person.
- (5) Except in accordance with any license or wildlife use right, nothing in this section shall be deemed to transfer to any person the ownership of any protected animal found dead or dying, or a protected plant that has been cut down.
- (6) If any person unlawfully takes any protected animal or protected plant in contravention of this Act, the ownership of the animal or plant shall not be transferred to that person.
- (7) The Minister may, on the advice of the Advisory Committee established under Section 6 of this Act, by regulations, prescribe measures for the registration and management of the specimens used for cultural purposes by any community.

PART II

INSTITUTIONAL ARRANGEMENT

Director of Biodiversity

5. (1) There shall be a Director of Biodiversity who shall be appointed by the President.
- (2) The Director shall be responsible for the proper administration of the Department of Biodiversity and other officers of the Department.

Appointment and Functions of the Biodiversity Board

6. (1) There shall be a Biodiversity Conservation and Management Board for each biodiversity conservation area whose members shall be appointed by the Principal Secretary on approval of the Minister.
- (2) The appointment, tenure of office, quorum, proceedings and meetings of the Biodiversity Conservation and Management Board shall be as provided in the regulations to be made by the Minister.
- (3) The functions of the Biodiversity Conservation and Management Board shall be:
- (a) to advise the Minister on the policy, management and regulations of biodiversity conservation areas;
- (b) to oversee the operation of biodiversity conservation areas; and,

- (c) to consult with the Director of Biodiversity on technical, scientific and operational matters concerning biodiversity conservation areas.

Biodiversity Officers

- 7. The Minister may appoint such a number of Biodiversity Officers as, in his opinion, may be necessary for the efficient administration of this Act.

Minister to Establish Unit

- 8. (1) The Minister shall, after consultation with the President, establish within the Biodiversity Department a Unit to be known as the Biodiversity Protection Unit.
 - (2) The Unit shall consist of such number of persons as the Minister may determine.
 - (3) The Unit shall be the National Bureau for the purposes of the Lusaka Agreement on Co-operative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora.

Functions of Unit

- 9. The functions of the Unit shall be:
 - (a) the protection of wildlife against hunters and, generally, the enforcement of the provisions of this Act relating to the hunting, capturing and photographing of wildlife, and the securing of trophies;
 - (b) to provide and receive from the Task Force, information on illegal trade; and,
 - (c) to coordinate with the Task Force on investigations that involve illegal trade.

Administration of the Unit

- 10. (1) The administration of the Unit shall be vested in the Director and the Unit shall be organized in such branches and deployed according to such areas or places as the Director may, with the consent of the Minister, determine.

PART III

PROTECTED AREAS AND GENERAL RESTRICTIONS

Establishment of Game Reserve

- 11. (1) The Minister may, after consultation with the relevant local government authorities; and, by a resolution of Parliament, and also by notice published in the *Gazette*, declare any area of Mainland Tanzania to be a game reserve.
 - (2) The Minister may by order in the *Gazette* apply any condition applicable to a game reserve to any area of Mainland Tanzania and upon such order being made the condition specified therein shall apply to the area in relation to which the order is made as if such area were a game reserve, and any contravention of such condition in or in relation to such area shall be punishable accordingly.

Establishment of Game Controlled Areas

- 12. The Minister may, after consultation with the local government authorities within whose jurisdiction a protected area falls, and by a resolution of Parliament, and also by notice published in the government *Gazette*, declare any area of Mainland Tanzania to be a game controlled area.

Permitted Activities in Wildlife Protected Areas

13. (1) A wildlife protected area declared under Section 11 or 12 of this Act shall be an area of importance for biodiversity conservation and management and in which the following activities are permitted:
- (a) conservation of biological diversity;
 - (b) scenic viewing;
 - (c) recreation;
 - (d) scientific research; and,
 - (e) regulated extractive utilization of natural resources.
- (2) Before making a declaration under Sub-Sections (1) of Section 11 or Section 12, the Minister shall ensure that an environmental impact study pursuant to legal, policy or practical requirements or pursuant to the general management plan or regulations under this Act, and such other study as may be prescribed has been conducted.
- (3) A study made under Sub-Section (2) shall investigate and make a report on the social and ecological consequences of the declaration of the proposed wildlife conservation area.
- (4) The report under Sub-Section (3) shall be submitted to the Minister, together with the EIA recommendations on the proposed declaration, within ninety days of the study being undertaken, or such other longer period as the Minister may in writing specify.
- (5) The Minister shall not amend a legislative instrument made under [Sub-Section (1) of Section 11] unless his decision is based on the study made under [Sub-Section (2) of Section 13] and the report under Sub-Section (3) and unless he has the approval of Parliament signified by its resolution.
- (6) The Minister may, by legislative instrument made with the approval of Parliament, signified by its resolution, declare any other area, other than an area to which [Sub-Section (1) of Section 11] or Section 12 of this Act apply or the National Parks Ordinance or the Ngorongoro Conservation Area Authority Act apply, to be a conservation area.
- (7) The Minister may, by legislative instrument made with the approval of Parliament signified in its resolution declare any other area, other than a biodiversity conservation area to be a biodiversity management area.
- (8) A biodiversity management area under Sub-Section (6) shall be-
- (a) a wildlife sanctuary;
 - (b) a community wildlife area;
 - (c) any other area the Minister may declare as a biodiversity management area.
- (9) A wildlife sanctuary under paragraph (a) of Sub-Section (7) shall be an area which has been identified as being essential for the protection of a species of wild animal or wild plant in which activities which are not going to be destructive to the protected species or its habitat may be permitted.
- (10) A Community wildlife area declared under paragraph (b) of Sub-Section (7), shall be an area in which individuals who have property rights in land may carry out activities for the sustainable management and utilization of wildlife, if the activities do not adversely affect wildlife, and an areas in which the Government may prescribe

land-use measures.

Purposes of Wildlife Protected Areas

14. (1) The purposes of a wildlife protected area established under Sections 11 or 12 of this Act shall be:
- (a) to preserve selected examples of biotic communities of Tanzania and their physical environment;
 - (b) to protect areas of aesthetic beauty and of special interest;
 - (c) to preserve populations of rare, endemic and endangered species of wild plants and animals;
 - (d) to assist in water catchment conservation;
 - (e) to generate economic benefits from wildlife conservation for the people of Tanzania;
 - (f) without prejudice to the purposes listed in paragraphs (a) to (d), and within any limitations imposed by them, to provide facilities for studying the phenomena in the wildlife protected area for the advancement of science and understanding;
 - (g) without prejudice to the purposes listed in paragraphs (a) to (e), and within any limitations imposed by them, to provide facilities for public use and enjoyment of the resources in the wildlife protected area.
 - (h) to ensure that villages and other local resident users in the vicinity of, or dependent on, a protected area are involved in the management of that protected area, share in the benefits of the operation of the protected area, and have priority in the resource use and economic opportunity afforded by the protected area.
 - (i) to promote community oriented education and dissemination of information concerning conservation and sustainable use of the protected area.
 - (j) to facilitate research and to monitor resource conditions and uses within the protected area.

Purposes of Biodiversity Management Area

15. The purposes of biodiversity management area under Sub-Section (6) of Section 13 shall be:
- (a) to so manage and control the uses of land by the persons and communities living in the area that is possible for wildlife and such persons and communities to co-exist and for wildlife to be protected;
 - (b) to enable wildlife to have full protection in wildlife sanctuaries notwithstanding the continued use of the land in the area by people and communities ordinarily residing there;
 - (c) to facilitate the sustainable exploitation of wildlife resources by and for the benefit of the people and communities living in the area;
 - (d) to permit the sustainable exploitation of the natural resources of the area, by mining and such other methods in a manner which is compatible with the continued presence of wildlife in the area; and,
 - (e) to carry out such other purposes of a wildlife conservation area set out in Section 3 that are compatible with the continued residence of people and communities in the wildlife management area and the purposes under paragraphs (a) and (b) of this Section.

Temporary Management Measures

16. (1) Where it is intended that an area be declared a biodiversity conservation area under Sections 11 or 12 of this Act and any action undertaken in accordance with this Act by the Minister may, after seeking and taking account of the views of each Local Government system having jurisdiction in the area and on the recommendation of the EIA team, make administrative arrangements for the management of the area by imposing temporary management measures effective for a period not exceeding six months, pending declaration of the area as biodiversity conservation area, and shall cause notice of the institution of such arrangements to be published in the government *Gazette*.
- (2) An area to which temporary management measures apply under Sub-Section (1) of this section shall be managed by the Director of Biodiversity in accordance with the administrative arrangements made under Sub-Section (1).
- (3) A person who fails to comply with any directive or instruction by the Director of Biodiversity or of any officer duly authorized by the Director of Biodiversity in the management of an area under this Section shall be guilty of an offence.

General Management Plan Measures

17. (1) The Minister shall, as soon as practicable, after the establishment of a wildlife protected area, prepare or cause to be prepared, and adopt a comprehensive management plan for each wildlife protected area and by regulation, state the requirements for the adoption of the management plan.
- (2) A management plan shall include such information as may be prescribed.
- (3) Notwithstanding Sub-Section (2), a management plan shall contain:
 - (a) a full description of the nature and location of the biodiversity conservation area;
 - (b) a description of the biological, environmental, geological and cultural resources of the area, and use of the area by local residents;
 - (c) detailed statements of its proposed objectives;
 - (d) a detailed account of the means and methods by which those objectives will be harmonized and carried out, including proposed activities, development and boundaries;
 - (e) description of local resident users, and other elements which distinguish between classes and categories to which the description apply; and,
 - (f) description of buffer zones surrounding a biodiversity conservation area which may include marine areas.
- (4) Notwithstanding Sub-Section (3) above, the Director of Biodiversity shall publish in a daily newspaper and in any other appropriate forms of media, a notice of his intention to prepare a management plan and invite suggestions from all interested parties of what matters should be in the plan.
- (5) The Director of Biodiversity shall request the district council within which a wildlife protected area falls in whole or in part, to forward to him within a reasonable time, which time shall not be less than twenty-one days, any proposals for inclusion in the plan.
- (6) In the performance of his duties under this Section the Director of Biodiversity shall hold public meetings and attend meetings of the district council referred to in Sub-Section (5) to explain the proposals in the plan and to consider suggestions put forward by those attending the meeting.

- (7) The Director of Biodiversity shall take into account any proposals or suggestions received under Sub-Sections (4), (5) and (6) and prepare a draft management plan.
- (8) The Director of Biodiversity shall submit the draft management plan to the Minister for comments and approval.
- (9) The Director of Biodiversity shall publish the approved plan in the Government Gazette.
- (10) The approved plan under Sub-Section (9) shall be reviewed and republished after such review.

Notification on the Adoption and Restriction on Allocation in Buffer Zones

18. (1) Where the management plan is adopted, the Minister shall notify local government authorities, regional and national planning agencies of the adoption.
- (2) Subject to Sub-Section (1) no authority shall allocate land and put to new use any area within a buffer zone unless:
 - (a) an assessment of the environmental impact of the proposed activity is conducted pursuant to legal requirements, policy, practice or pursuant to any applicable management plan or regulations made under his Act; and,
 - (b) written notification of the proposed allocation of land or new use is submitted to the Director of Biodiversity not less than thirty days prior to preparation of the environmental impact assessment.
- (3) Where it is apparent that the proposed activity would have negative effect on wild animals and wild plants, the advice of the Biodiversity Conservation and Management Board shall be sought.

Involvement of Village Councils

19. (1) For each wildlife protected area, the Director of Biodiversity shall specify a list of villages in the vicinity of that protected area, which affect or are affected by the protected area.
- (2) In preparation of the management plan the Minister may, by regulations specify a minimum distance from the boundaries of a protected area within which all villages must be included.
- (3) Any other villages whose population regularly uses or affects the protected area shall be listed under this Section.
- (4) The village council of each listed village shall be notified of the specification under Sub-Section (1) and shall, upon notifying the Game Reserve/Controlled Area Manager, be required to convene a meeting to deliberate on such specification.
- (5) Each village council, either directly or through a designated committee or other representative, shall:
 - (a) participate fully in all aspects of the development or any amendment of the regulations, boundaries and general management plan for the protected area, whether by formal planning, regulation or amendment procedures, or by informal decisions or special order which shall have the effect of regulating or amending these issues;
 - (b) advise the Game/Reserve/Controlled Area Manager concerning matters relevant to management and conservation of the protected area;

- (c) serve as a liaison between the members of the village community and the Game Reserve/Controlled Area Manager, Biodiversity Conservation and Management Board and the Director of Biodiversity.
- (6) The Game Reserve/Controlled Area Manager shall notify each listed village of all impending deliberations or decisions relating to matters described in paragraph (a) of Sub-Section (5) of this Section by providing written notice to every district office within which a listed village is located, and to the village committee.
- (7) The notice under Sub-Section (6) shall solicit comments from the village inhabitants and shall specify the date of any meeting or the last date for receipt of comments and prior to the decision, the Biodiversity Conservation and Management Board shall consider and respond to all comments received.
- (8) Subject to the provision of Section (appeal) the Minister shall invalidate any decision concerning a matter described in paragraph (a) of Sub-Section (5) of this Section which does not comply with this Section.

Restriction on Entry into Game Reserves

20. (1) No person other than:

- (a) a person whose place of ordinary residence is within the game reserve; or,
 - (b) a person travelling through the reserve along a highway, shall enter a game reserve except by and in accordance with the written authority of the Director previously sought and obtained.
- (2) Any person who contravenes any provision of this Section or contravenes any condition attached to any authority granted under Sub-Section (1), commits an offence and on conviction shall be liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding six months or both.

Restriction on Carriage of Weapons

21. (1) No person shall be in possession of a firearm, bow and arrow, in a game reserve without the written permission of the Director previously sought and obtained.

- (2) Any person who contravenes any provision of this Section commits an offence and is liable on conviction, to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding twelve months or both.

Protection of Vegetation in Game Reserves

22. (1) No person shall wilfully or negligently cause any bush or grass fire, or fell, cut, burn, injure or remove any reserve standing tree, shrub, bush, sapling, seedling or any part thereof in a game reserve except in accordance with the written permission, previously sought and obtained, of the Director as well as that of the Director of Forestry, or his duly authorised representative, if any or part of the game reserve is included in a forest reserve.

Provided that any person whose place of residence is within the reserve may without such permission fell trees for the purpose only of building dwellings for himself and his dependents and domestic employees, so however that this proviso shall be without prejudice to any provision of any other written law restricting the felling of trees in any forest reserve or other area.

- (2) Any person who contravenes any provision of this Section or contravenes any condition attached to any authority granted under Sub-Section (1), commits an offence, and on conviction is liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding two years or both.

- (3) In addition to the penalty under Sub-Section (1), fine and term of imprisonment, where any person commits an offence under Sub-Section (1) of this Section, shall be required to pay for the value of or to restore the resources so damaged.
- (4) In Sub-Section (3) the value of a resource includes its biological, scientific and aesthetic value and the value to the continued integrity of the ecosystem of which it is a part.
- (5) Where the restoration of the value of a resource is not possible, appraisal by other methods may be used as evidence of the restoration of the resource.

Hunting in Reserve or Game Controlled Area

23. (1) No person shall, with written permission by the Director, previously sought and obtained, and in the manner specified in such writing, burn, capture, kill, wound or molest any animal (including fish) in any game reserve or a game controlled area.
- (2) Any person who contravenes any provision of this Section or contravenes any condition attached to any authority granted under Sub-Section (1) commits an offence and on conviction is liable:
- (a) in the case where the conviction relates to the hunting, capture or killing of an animal specified in Part I of the first Schedule to this Act, to imprisonment for a term of not less than three years but not more than seven years and the court may, in addition thereto, impose a fine not exceeding two hundred thousand shillings;
 - (b) in the case where the conviction relates to the hunting, capture or killing of an animal specified in Part II of the First Schedule to this Act, to imprisonment for a term of not less than two years but not more than five years, and the court may in addition thereto impose a fine not exceeding one hundred thousand shillings;
 - (c) in the case where the conviction relates to the hunting, capture or killing of an animal specified in Part III of the First Schedule to this Act, to imprisonment for a term of not less than one year but not more than three years and in addition thereto the court may impose a fine not exceeding fifty thousand shillings.
 - (d) in the case of any other offence to a fine of not less than five thousand shillings but not more than thirty thousand shillings or to imprisonment for a term of not less than three months but not exceeding two years.

Other Restrictions Applying to Game Reserves or Game Controlled Areas

24. (1) With the exception of written permission of the Director, previously sought and obtained, no person shall, within any game reserve or game controlled area:
- (a) dig, lay, or construct any pit-fall, net, trap, snare or other device whatsoever, capable of killing, capturing or wounding any animal;
 - (b) carry or have in his possession or under his control any weapon in respect of which he fails to satisfy the Director that it was intended to be used for a purpose other than the hunting, killing, wounding or capturing of an animal.
- (2) Any person who contravenes any of the provisions of this Section commits an offence and on conviction is liable to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding two years or both.

Restrictions on Grazing Livestock in Game Reserve

25. (1) No person shall, unless with written permission of the Director, previously sought and obtained, graze any livestock in any game reserve (controversial clause for pastoral communities).
- (2) Any person who contravenes any of the provisions of this Section commits an offence and on conviction is liable to imprisonment for a term not exceeding two years.
- (3) Any domesticated animal, agricultural implements or machinery, found within a game reserve, except if lawfully present, and any vegetation that has been introduced in the game reserve without express permission, shall be the property of the Wildlife Department and the court may, in addition to any other penalty, order the person convicted of an offence under this section to forfeit any such domesticated animal, agricultural implements or machinery or vegetation to Government, or lawfully be destroyed by an authorized officer.

Establishment of Partial Game Reserves

26. The Director may, by order in the Government *Gazette* declare any area of Mainland Tanzania to be a partial game reserve for any animal or class of animals (hereinafter referred to as "protected animals").

Protected Species

27. (1) The Director may, on recommendation of the Biodiversity Conservation and Management Board and with the approval of the Minister, by order in the Government *Gazette*, declare any species of wild plant or wild animal specified in the order to be classified as protected species.
- (2) Species which migrate to or through Tanzania which are protected under any international convention or treaty to which Tanzania is party and to which Section ... applies shall be protected species under this Act.
- (3) Any order made under Sub-Section (1) may apply to individual species throughout Tanzania, or to all or some species in a partial game reserve, or to varieties of a species including sex and age groups.
- (4) An order made under Sub-Section (1) shall state whether species of wild animal or plant shall be:
- (a) fully protected species which may not be subject to wildlife use rights; or,
- (b) partially protected species to be utilized only subject to a grant of a wildlife use right.

Restrictions Relating to Partial Game Reserves

28. (1) Any person who without the permission of the Director, previously sought and obtained, hunts, captures, kills, wounds reserves or molests any protected animal in a partial game reserve commits an offence and on conviction is liable:
- (a) in the case of a conviction for hunting, capturing or killing a protected animal, to imprisonment for a term of not less than three years but no exceeding seven years;
- (b) in any other case to a fine of not less than five thousand shillings but not exceeding fifty thousand shillings or to imprisonment of not less than three months but not exceeding two years.
- (2) For avoidance of doubt, wild plants and animals other than protected species shall not be subject to the restrictions on hunting or taking under the provisions of this Act but shall be subject to all other provisions of this Act and to regulations made under this Act.

Declaration of National Game

29. The Minister may, by order in the *Gazette*, declare any animal or class of animals to be a national game.

Restrictions Relating to National Game

30. (1) No person shall except by and relating to written permission of the Director previously sought and obtained hunt, kill, capture or wound ny animal which is a national game.
- (2) Any person who contravenes any of the provisions of this Section or contravenes any condition attached to any permission granted under Sub-Section (1) commits an offence and on conviction is liable:
- (a) in the case where the conviction relates to the hunting, capture or killing of a national game, to imprisonment for a term of not less than three years but not exceeding seven years and in addition thereto the court may impose a fine not exceeding two hundred thousand shillings;
 - (b) in any other case, to a fine of not less than five thousand shillings and not exceeding fifty thousand shillings or to imprisonment of not less than three months but not exceeding two years.

Declaration of Close Season

31. The Minister may, by order in the of *Gazette*, prohibit, restrict or regulate the hunting, killing or capture of any animal or class or animals in any area of Mainland Tanzania during such period as he may specify in such order (such period so specified is hereinafter referred to as "close season").

Restrictions Relating to Close Season

32. (1) Where an order under Section 31 has been made in respect of any area of Mainland

Tanzania, no person shall during season the close season hunt, kill, capture or wound within such area any animal to which such order applies except by and in accordance with the permission of the Director.

- (2) Any person who contravenes any of the provisions of this Section or contravenes any condition attached to any permission granted under subsection (1) commits an offence and on conviction is liable:
- (a) in the case where the conviction relates to the hunting, capture or killing of an animal specified in Part I of the First Schedule to this Act, to imprisonment for a term of not less than three years but not exceeding seven years and the court may in addition thereto impose a fine not exceeding two hundred thousand shillings;
 - (b) in the case where the conviction relates to the hunting, capture or killing of an animal specified in Part II of the First Schedule to this Act, to imprisonment for a term of not less than two years but not exceeding five years, the court may in addition thereto impose a fine not exceeding one hundred thousand shillings.
 - (c) in the case where the conviction relates to the hunting, capture or killing of an animal specified in Part III of the First Schedule to this Act, to imprisonment for a term of not less than one year but not exceeding three years and in addition thereto the court may impose a fine not exceeding fifty thousand shillings;
 - (d) in any other case, to a fine of not less than five thousand shillings but not exceeding thirty thousand shillings or to imprisonment of not less than three months but not exceeding two years.

MISCELLANEOUS PROVISIONS

President May Lift Restrictions

33. The President may, by order in the *Gazette*, modify any of the restrictions imposed by this Part in relation to game reserves, game controlled areas and partial game reserves, and where any such order is made, the provisions of this Part shall take effect subject to the provisions of the order (controversial clause).

Where any Area is a National Park, etc.

34. (1) Nothing in this Act shall be construed as empowering the Director to grant any permission for the hunting, killing, capture or wounding of any animal in any national park in contravention of the provisions of the National Parks Act.
- (2) Where any game reserve, game controlled area or partial game reserve, or any portion thereof, falls also within the conservation area established under the Ngorongoro Conservation Area Act the Director shall not grant any permission for the hunting, killing, capture or wounding of any animal within such area without the prior consent of the Conservator of the Ngorongoro Conservation Area.

PART IV

HUNTING, CAPTURING AND PHOTOGRAPHING OF ANIMALS

(a) *Hunting of Animals*

Interpretation

35. In this Part:

“specified animal” means an animal in the Second Schedule to this Act;

“scheduled animal” means an animal specified in the Third Schedule to this Act.

President may Restrict Persons

36. (1) The Minister may, by order in the *Gazette*, declare any category of persons as being a category of persons who shall not be granted any game license or permits in relation to any category of animals specified in the order.
- (2) Where an order under subsection (1) in the *Gazette*, declare any category of persons, no person belonging to that category shall be entitled to apply for or obtain a game license in respect of any animal to which the order applies and any such license granted to any such person shall be void and ineffective.

Wildlife Use Rights

37. (1) The following wildlife use rights are established under this Act:

- (a) hunting: Class A wildlife-use right;
- (b) farming: Class B wildlife-use right;

- (c) ranching: Class C wildlife-use right;
 - (d) trading in wildlife and wildlife products: Class D wildlife-use right;
 - (e) using wildlife for educational or scientific purposes including medical experiments and development: Class E wildlife use right;
 - (f) general extraction: Class F wildlife use right.
- (2) The Minister may, on the advice of the Biodiversity Conservation and Management Board, by legislative instrument vary, revoke or create additional wildlife-use rights.
- (3) A legislative instrument made under Sub-Section (2) shall not be published unless the consent of Parliament, signified by its resolution, has been obtained.

Prohibition of Utilization of Wildlife Without Wildlife Use Right

38. No person may engage in any activities under Section 41 or any other activities of similar nature which involve the utilization of wildlife and wildlife products without first obtaining a grant of a wildlife-use right.

Application for Grant of Wildlife-Use Right

- 39.** (1) Any person, community or agency may apply to the Director of Biodiversity for one or more wildlife-use rights.
- (2) An application for a wildlife-use right under Sub-Section (1) shall be made in the prescribed form and in the prescribed manner and shall be accompanied by the prescribed fee and shall contain such information as may be prescribed.
- (3) Unless otherwise provided for in this Act or by regulations made by the Minister, the Director of Wildlife shall charge an initial fee and thereafter, an annual fee in respect of every wildlife-use right which he grants, and the fee charged may be based on a percentage of the income to be derived by the right-holder from the exercise of the wildlife-use right.
- (4) Every grant of a wildlife-use right shall be made subject to prescribed conditions.

Variation of Wildlife-Use Right

40. Where the Director of Biodiversity is satisfied, after making such investigations as he thinks fit, or after such information and advice as appears to him to be well founded or as a result of a natural disaster or any other reason that appears to him to be relevant, that it is necessary to vary any grant of a wildlife-use right or the conditions, subject to which a wildlife-use right was granted, he may issue a notice of variation and serve a copy of that notice on every right-holder of a wildlife-use right which is being varied.

No Hunting Without License

41. Unless otherwise expressly provided in this Act, no person shall hunt any specified animal or scheduled animal except under and in accordance with the conditions of a valid game license issued to him under this Act:

Provided that the Minister may, by order, permit any person or category of persons to hunt any specified or scheduled animal without a game license.

Amendment of Second and Third Schedules

42. The Minister may, by order in the *Gazette*, amend, add to, vary or replace the Second and the Third Schedules to this Act.

General Provisions Relating to Game Licenses

43. (1) Game licenses may be issued by a licensing officer upon an application in writing in the prescribed form and upon payment by the applicant of the prescribed fee.
- (2) No game license shall be granted to an applicant who fails to satisfy the licensing officer:
- (a) that he has attained the apparent age of eighteen years;
 - (b) that he is in possession of a valid firearm license in respect of the firearm intended to be used in hunting;
 - (c) in the case of a license for the hunting of a specified animal, that he is a citizen of the United Republic or that he has been ordinarily resident in the United Republic for a period of not less than twelve months immediately preceding the date of the application;
 - (d) that he has a reasonable knowledge of the use of a firearm for the purpose of game hunting.
- (3) The licensing authority may require an applicant for a game license to appear before it and answer any question or produce any document relevant to any of the matters referred to in Sub-Section (2) and the firearm proposed to be used.

Authorized Associations and Designated Organizations

44. (1) The Minister may, by order in the *Gazette*, declare any body of persons, and whether corporate or unincorporated, or any designated *ujamaa* village to be an authorized organization for the purposes of this Act.
- (2) The Minister may, by order in the *Gazette*, declare any body corporate to be a designated organization for the purposes of this Act.

Issue of Game Licenses for Specified Animals

45. (1) A licensing officer may grant game a license for the hunting of a specified animal to any authorized association:
- Provided that the licensing officer shall not grant a game license for the authorized hunting of a specified animal to any authorized association unless he is satisfied that the meat of the animal hunted will be made available for consumption by all the members of the association.
- (2) A game license granted to an authorized association under Sub-Section (1) shall entitle any member of the authorized association who has attained the apparent age of eighteen years to hunt, in accordance with the conditions of the license, the animal specified therein.

Issue of Game Licenses on the Recommendation of the Organization

46. The Minister may, by regulations made under this Act:
- (a) provide that no license for the hunting of a scheduled animal shall be granted to any person, except a designated organization;

- (b) regulate the mode of hunting of scheduled animals;
- (c) prescribe the functions of the designated organization in relation to the hunting of animals hunted pursuant to any license issued on the recommendation of such organization;
- (d) authorize, subject to such terms and conditions as he may specify, the issue of a game license for the hunting of a specified animal to any person who does not, by virtue of the provisions of paragraph (c) of Sub-Section (2) of Section 45, qualify for such license where the application for such license is recommended by a designated organization;
- (e) provide that no one person shall be granted a license to hunt more than the specified number of species of animal in any specified area;
- (f) provide for the reception of Government trophies by a designated organization from persons referred to in Section ...[68 (1)] and the procedure to be complied with by that organization upon receipt of the Government trophies.

Provisions Relating to Validity of Game Licenses

- 47.(1) Subject to the provisions of Section 43 and any regulations made pursuant to Section 46, every game license shall specify the species and number of specified or scheduled animals which may lawfully be killed by the holder and shall be valid for such period as may be prescribed.

Unlawful Hunting of Specified or Scheduled Animal

48. Any person who:

- (a) not being the holder of a valid game license, hunts, kills or wounds any specified or scheduled animal; or,
- (b) being the holder of a valid game license, hunts, kills or wounds:
 - (i) a specified or a scheduled animal of a specie, category, type or description other than that specified in the license; or,
 - (ii) a number of specified or scheduled animals larger than that authorized by the license; or,
 - (iii) a specified or scheduled animal in an area other than the area specified in the license, commits an offence and on conviction is liable:
- (a) in the case where the conviction relates to the hunting or killing of an animal specified in Part I of the First Schedule to this Act, to imprisonment for a term of not less than three years but not exceeding seven years and the court may, in addition thereto, impose a fine not exceeding two hundred thousand shillings;
- (b) in the case where the conviction relates to the hunting or killing of an animal specified in Part II of the First Schedule to this Act, to imprisonment for a term of not less than one year but not exceeding five years, and the court, may in addition thereto, impose a fine not exceeding one hundred thousand shillings;
- (c) in the case where the conviction relates to the hunting or killing of an animal specified in Part III of the First Schedule to this Act, to imprisonment for a term of not less than six months but not exceeding three years and in addition thereto, the court may impose a fine not exceeding fifty thousand shillings;
- (d) in any case in which the conviction relates to wounding of an animal, a fine of not less than five thousand shillings but not exceeding fifty thousand shillings or to imprisonment of not less than three months but not exceeding two years.

(b) CAPTURE OF ANIMALS

No Animal to be Captured Without Permit

49. (1) Unless otherwise expressly stated in this Act, no person shall capture any animal, whether or not specified in any Schedule to this Act, except under and in accordance with the conditions of a valid permit issued to him under this Act.
- (2) The Director may grant a permit to capture any animal for:
- (a) providing a specimen for any zoological garden or similar institution;
 - (b) any educational, scientific or cultural purpose;
 - (c) any purpose which in the opinion of the Director is in the national interest.

Methods of Capture

50. The Director may grant a capture permit subject to such conditions as the method of capture, care, stabling, feeding, crating and export of animals, as he may consider fit, and shall either specify such conditions in the permit or otherwise communicate them to the person to whom the permit is issued.

General Provisions Relating to Capture Permits

51. (1) Every capture permit shall be in the prescribed form specifying the area relating to or areas within which the animal specified therein may be captured.
- (2) A capture permit shall be valid for such period as the Director may specify therein.
- (3) There shall be charged in respect of a capture permit, such fee or royalty as may be prescribed or, where no fee or royalty has been prescribed, such fee or royalty as the Minister may direct.

Unlawful Capture of Animal

52. Any person who:
- (a) not being the holder of a valid capture permit, captures any animal; or,
 - (b) being the holder of a valid capture permit, captures:
 - (i) an animal of a specie, category, type or description other than that specified in the permit; or,
 - (ii) a number of animals larger than that authorized by the permit; or,
 - (iii) an animal in an area other than the area specified in the permit, commits an offence and on conviction is liable:
 - (a) in the case where the conviction relates to the capture of an animal specified in Part I of the First Schedule to this Act, to imprisonment for a term of not less than two years but not exceeding seven years and the court may in addition thereto impose a fine not exceeding one hundred thousand shillings;
 - (b) in the case where the conviction relates to the capture of an animal specified in Part II of the First Schedule to this Act, to imprisonment for a term of not less than one year but not exceeding five years, and the court may in addition thereto, impose a fine not exceeding fifty thousand shillings;

- (c) in the case where the conviction relates to the capture of an animal specified in Part III of the First Schedule to this Act, to imprisonment for a term of not less than six months but not exceeding three years and in addition thereto, the court may impose a fine not exceeding twenty thousand shillings;
- (d) in any other case, to a fine of not less than three thousand shillings but not exceeding twenty thousand shillings or to imprisonment for a term of not less than three months but not exceeding two years.

(c) COMMERCIAL GAME PHOTOGRAPHY

53. (1) No person shall engage in photographing animals for commercial purposes except under and in accordance with the conditions of a commercial game photography permit:

Provided that this Section shall not apply, in relation to the photographing by the holder of a license or permit granted under this Act of any animal involved in any activity lawfully carried on pursuant to such license or permit.

- (2) Any person who contravenes any of the provisions of Sub-Section (1) commits an offence, and on conviction is liable to a loss not exceeding five thousand shillings.
- (3) For the purposes of this Section:
 - (a) "photograph" means any product of photography or any process akin to photography and includes cinematography;
 - (b) a person shall be deemed to engage in photographing animals for commercial purposes if:
 - (i) he intends to sell or exhibit for gain or reward the photograph or cinematograph film produced;
 - (ii) he engages in such photography on behalf of any other person for any monetary gain or reward;
 - (iii) he is a person who is ordinarily engaged in the business of a photographer or cinematograph producer.
- (4) Where in any proceedings for an offence under this Section the court is satisfied that the accused took any photograph of any animal the court shall, unless the accused satisfied the court to the contrary, presume that:
 - (a) the photograph was taken for the purposes of commercial photography;
 - (b) the *proviso* to Sub-Section (1) does not apply to be accused.

Provisions Relating to Commercial Game Photography Permit

54. The Director may grant a commercial game photography permit on such terms and conditions as he may specify upon payment of such fee as may be prescribed.

(d) MISCELLANEOUS PROVISIONS RELATING TO HUNTING

Hunting of Unscheduled Animals Without Permit

55. (1) No person shall without the written authority of the Director previously sought and obtained, hunt, kill or wound any animal regardless of the fact that such animal is not specified in the Second or Third Schedules to this Act.

- (2) Any person who contravenes the provisions of this Section commits an offence, and on conviction is liable to imprisonment for a term not exceeding three years.

Killing of Young of any Animal an Offence

56. No license, permit or authority granted under this Act shall, unless it is specifically stated therein, be construed as authorizing the holder thereof to hunt or kill the young of any animal or any female animal which is apparently pregnant or which is accompanied by its young, and any person who, holding a valid license, permit or authority to hunt an animal of any species, hunts the young of that species or the female of that species which is pregnant or is accompanied by its young shall, unless the hunting of such young or such female is expressly authorized by the license, permit or authority, be guilty of having hunted, killed or wounded the same without a license, permit or authority and be liable to be punished accordingly.

Hunting or Capture of any Animal on Private Land

57. (1) No person shall hunt or capture any animal on a private land unless:
- (a) he is the holder of a valid license, permit or written authority issued or granted under this Act to hunt, or as the case may be, to capture such animal; and,
 - (b) the owner of the private land has given his consent thereto.
- (2) Notwithstanding the provisions of Sub-Section (1) where the Director is of the opinion that it is in the public interest that any animal on any private land be hunted or captured he may by a writing under his hand authorize any person to hunt or capture such animal on such private land and after a copy of such authority has been served on the owner of the private land, it shall be lawful for the person authorized to hunt or capture the animal to proceed to do so without the consent of the owner;

Provided that the person so authorized shall not be entitled, without the consent of the owner, to enter any dwelling house or other building on such land.

- (3) Any person who:
- (a) not being a person authorized under Sub-Section (2) hunts or captures any animal on a private land without the consent of the owner;
 - (b) being a person so authorized contravenes the provisions of the provisions to Sub-Section (2);
 - (c) being the owner of any private land who has been served with a copy of any authority granted under subsection (2), obstructs the person authorized to hunt or capture any animal on such private land from entering on the private land or from hunting or capturing the animal, commits an offence and on conviction is liable to imprisonment for a term not exceeding three years.

President's License

58. (1) Notwithstanding the other provisions of this Act, it shall be lawful for the Director, with the consent of the Minister and upon such conditions as he may consider fit, with or without a fee to grant to any person a President's license in the prescribed form authorizing the holder thereof to hunt, capture or photograph the animals specified therein for the purpose of:
- (a) scientific research;
 - (b) display in a museum, zoo, or similar establishments;

- (c) educational activity;
 - (d) cultural activity;
 - (e) complimentary gift; or,
 - (f) supply of food in cases of emergency.
- (2) A president's license may authorize the hunting, capture or photography of any animal whether or not such animal is protected by any other provision of this Act or other written law.

Security for Compliance with this Act

59. (1) The Director may, as a compliance condition to the grant of any license, permit or other authority under this Act, direct that the applicant shall give a security for compliance with the provisions of this Act and any subsidiary legislation made hereunder, either by depositing with the Director such sum of money, not exceeding five thousand shillings or executing a bond, with or without sureties, for such amount not exceeding five thousand shillings, as the Director may decide.
- (2) Where a person who has given a security under this Section contravenes any of the provisions of this Act or any subsidiary legislation made hereunder during the period of nine months immediately succeeding the date on which such security is given, then, notwithstanding any penalty which may have been or may be imposed upon such person for such contravention:
- (a) where a sum of money was deposited with the Director, such sum of money or such part thereof as the Director may direct, shall be forfeited to the Government;
 - (b) where a security bond was executed, the bond shall be enforceable by the Director on behalf of the government either in relation to the whole amount specified therein or such part of such amount as the Director may decide.

Compliance

60. (1) Where it appears to the Director that a grant-holder is not complying with the terms of a grant of a wildlife-use right or any conditions subject to which the grant of a wildlife-use right has been made, the Director may take one of the following actions:
- (a) request the right-holder to attend a meeting with authorized game officers to discuss the matter of compliance and:
 - (i) where there is an admission of non-compliance, to agree upon a program and time-table to rectify the non-compliance;
 - (ii) where there is no admission of non-compliance but the Director is of the opinion that there has been non-compliance, the Director may inform the right-holder that unless specified actions are taken in a specified time, the Director will serve a compliance notice on the right-holder;
 - (iii) where the Director and the right-holder agree that there has been compliance, the matter shall end there;
or,
 - (b) issue a compliance notice and serve a copy on the right-holder and such other persons as are required to be served with a copy;

- (c) issue a stop notice and serve a copy on the right-holder and such other persons as are required to be served with a copy;
- (d) revoke the wildlife use right.

Revocation of Wildlife-Use Right

61. Where the Director of Wildlife is satisfied, after making such investigations as he thinks fit or after receiving such information and advice as appears to him to be well founded, or as a result of a natural disaster or of any other reason that appears to him to be relevant, including in particular the non-compliance by a right-holder with the terms of the grant or with the conditions subject to which a grant of a wildlife-use right was made, that it is expedient that a grant of a wildlife-use right be revoked, he may issue a notice of revocation and serve a copy of the notice on every right-holder whose wildlife-use right is being revoked.

License, etc. not Transferable

62. (1) No person shall without the prior consent in writing of the Director transfer or assign to any other person any license, permit or other authority granted to him under this Act and any such purported transfer or assignment without such consent shall be void.
- (2) Any person who without the prior consent in writing of the Director purports to transfer or assign to any other person or accepts a transfer or assignment to himself of any license, permit or authority granted under this Act commits an offence and on conviction is liable to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding three years or both.

Surrender of Wildlife-Use Right

63. (1) A right-holder may, by a written communication addressed to the Director, at any time surrender his wildlife-use right to the Director.
- (2) The surrender of a wildlife-use right shall not absolve the right-holder who has surrendered that right from any civil or criminal liabilities, or any liabilities, including liabilities arising from non-compliance with the terms of a grant or the conditions, subject to which a grant of a wildlife-use right was made or incurred under this Act, or any regulations made under this Act, which have arisen before the surrender of the right or which, as a result of any actions taken by the right-holder while he was exercising his powers under the wildlife-use right may arise in the future.
- (3) A right-holder who has surrendered his wildlife-use right shall not be entitled to any remission of fees paid in connection with that right, nor, where he has surrendered that right after it has been revoked, shall he be entitled to claim compensation in respect of losses directly attributable to the revocation.

Recording of Surrender of Game License

64. (1) Any person to whom any license, permit or written authority has been issued under this Act shall:
- (a) carry such license, permit or authority with him when exercising the rights thereby conferred;
 - (b) record thereon in Swahili or English in indelible writing, in the space provided thereon, all relevant details of all animals killed or captured by him in the exercise of the rights thereby conferred, and no animal so killed, nor any part thereof shall be removed from the place where it fell unless all such details have been first so recorded;

- (c) not exceed thirty days after the expiry of such license, permit, or authority, or where he proposes to depart from Mainland Tanzania or the area for which such license, permit or authority is valid before the date of such departure, surrender such license, permit or authority to the licensing officer who issued it and shall sign a declaration certifying the accuracy of the record of game killed or captured in the presence of such officer.
- (2) The licensing officer to whom any license, permit or other authority is surrendered shall counter-sign the declaration made thereon in the space provided for such counter-signature.
- (3) Any person who contravenes any of the provisions of Sub-Section (1) commits an offence, and on conviction is liable to a fine not exceeding twenty (fifty) thousand shillings or to imprisonment for a term not exceeding three years or both.

Transferability of Wildlife-Use Rights

65. (1) Wildlife-use rights shall be transferable as follows:

- (a) a Class A and E wildlife use right shall be transferable only with the permission of the Director;
 - (b) a Class B, Class C, Class D and Class F wildlife-use right shall be transferable as private property rights subject to the provisions of this Act;
 - (c) other Classes of wildlife-use rights created by regulations made by the Minister under this Act shall be transferable to the extent and in accordance with procedures prescribed in those regulations.
- (2) A transfer of a Class A and Class E wildlife-use rights shall be termed a permitted transfer.
 - (3) An application for a grant of a permitted transfer shall be in the prescribed form and manner and shall be accompanied by the prescribed fee and shall contain such information as may be prescribed.
 - (4) A transfer of a Class B, C, D and F wildlife-use right shall be termed a market transfer.
 - (5) A market transfer of a wildlife-use right shall be undertaken and shall only be valid and lawful if it is undertaken using the prescribed forms, in the prescribed manner and paying the prescribed fee to the Director.
 - (6) The provisions of Sub-Section (2) of Section 65 shall apply to the transferor of a transferred wildlife-use right in the same manner and to the same extent as they apply to a right-holder who has surrendered his wildlife use right.

Extension of Licenses by Director

66. The Director may, in his discretion, extend the period of validity of any license, permit or other authority granted under this Act, by a period not exceeding three months if in his opinion the holder thereof was prevented from exercising the rights thereby conferred by any reasonable cause.

Refund of Fee

67. Where in the opinion of the Director the holder of a license, permit or other authority granted under this Act has failed to exercise any of the rights conferred thereby and it is not desirable, expedient or practical to extend the period of validity of such license, permit or authority, the Director may, in his absolute discretion, refund the fee or any part thereof paid for such license, permit or authority.

Animal Killed by Accident or Error

68. (1) Any person who kills an animal specified in any of the Schedules to this Act by accident or in error shall as soon as it may be practicable thereafter-
- (a) remove from such animal any skin, ivory, horn, tooth or any other valuable trophy;
 - (b) report the fact and the circumstances of such killing to the nearest Game Officer;
 - (c) hand over to such Game Officer any trophy removed from such animal, which trophy shall be the property of the Government and shall be disposed of as the Director may direct; and,
 - (d) if so required by such Game Officer, show him the place or site where the animal was killed.
- (2) An animal shall be deemed not to have been killed by accident or in error if the person killing it is the holder of a license, permit or authority, entitling him to hunt an animal of that species.
- (3) Any person who fails to comply with any of the provisions of this Section commits an offence and on conviction is liable to a fine not exceeding twenty (fifty) thousand shillings or imprisonment for a term not exceeding three years or both.

Dangerous Animals

69. (1) The animals specified in the Fourth Schedule to this Act are hereby declared to be dangerous animals.
- (2) The Minister may, by order in the *Gazette*, amend, vary or replace the Fourth Schedule to this Act.

Hunting of Vermin

70. (1) The Director may engage the services of a professional hunter or professional trapper to hunt the animals or class of animals specified in the Fourth Schedule to this Act or deploy duly qualified Game Officers for that purpose.
- (2) Where the vermin animals are of value the Director shall, at all times, advise the local communities of the value of the animals and recommend the appropriate methods for taking such animals.

Wounding Animals

71. (1) Any person who wounds any animal shall use all reasonable means to kill it at the earliest opportunity.
- (2) If a dangerous animal which has been wounded enters a game controlled area, a game reserve, a forest reserve, a national park or the Ngorongoro Conservation Area, the person wounding it shall forthwith report such entry to the nearest Game Officer, Forest Officer, Park Warden, or Conservator, as the case may be and such officer shall take all necessary measures to assist such a person in killing the animal.
- (3) Any person who wounds any dangerous animal and fails to kill it shall forthwith make a report thereof to the nearest Game Officer.
- (4) Every report made under Sub-Section (4) shall specify the date, time and place of the wounding, the nature of the wound, the efforts made to kill the animal and such other information that may assist in locating the animal.

- (5) Where any animal is found dead and the Director is satisfied that it is an animal which was wounded and lost by a person holding a license, permit or authority for the hunting or capture of an animal of the same species, and that such person:
 - (a) after wounding the animal used every endeavor to kill it; and,
 - (b) on losing the wounded animal, made a report as required by this Section, the Director may, at his discretion, direct that any trophy of such animal be delivered to such person.
- (6) Any person who fails to comply with any of the provisions of Sub-Sections (1), (2), (3) or (4), commits an offence and on conviction is liable to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding three years or both.

Killing in Defence of Property

72. (1) Nothing in this Act shall make it an offence to kill any animal in defence of human life or property or for the life or owner or occupier of such property or any property person dependent on or employed by such allowed owner or occupier to drive out or kill by any means what-so-ever any animal found causing damage to such property;

Provided that:

- (a) this Section shall not apply to the killing of an animal in defence of life or property if:
 - (i) the behaviour of the animal necessitating such killing is the result of molestation or deliberate provocation by or with the knowledge of the person killing such animal; or
 - (ii) the person killing is such an animal or the person whose life or property is being defended was, when such defence became necessary, commits an act which constitutes an offence under this Act;
 - (b) nothing in this Section shall be deemed to authorize-
 - (i) the use of stakes in pit-falls or of any other method which is likely to result in undue cruelty to animals or to endanger human life;
 - (ii) the owner or occupier of any property adjoining any conservation area to hunt in such area without the previous consent in writing of the appropriate officer of such conservation area;
 - (iii) the killing of any national game without the written authority of the Director previously sought and obtained.
- (2) Any person killing an animal in defence of life or property shall forthwith:
- (a) remove from such animal any skin, ivory, horn, tooth or any other valuable trophy;
 - (b) report the fact and the circumstances of such killing to the nearest Game Officer;
 - (c) hand over to such Game Officer any trophy removed from such animal, which trophy shall be the property of the government; and,
 - (d) if so required by such Game Officer, show him the damage caused to such property or the place of such killing.

- (3) The meat of any animal lawfully killed in defence of human life or property under this Section may, with the written authority of the Biodiversity Officer to whom such killing is reported, be utilized by the person killing it and or by the owner or occupier of such property for consumption by himself and his dependents or by any other person specified in such Game Officer's written authority.

(... Except as otherwise provided by this Act or by the conditions of any license issued under this Part the killing of any protected animal under this Section shall not be deemed to transfer ownership of the carcass of the animal to any person.)

- (4) Any person who contravenes any of the provisions of this Section or fails to comply with any lawful direction given thereunder, commits an offence and on conviction is liable to a fine not exceeding twenty (fifty) thousand shillings or to imprisonment for a term not exceeding three years or to both.

Defence of Accidental Killing or Wounding

73. Where in any proceedings for an offence under this Act the court is satisfied that an animal was killed or wounded by the accused, the court shall presume that the animal was killed or wounded in the course of self defence intentionally hunted by the accused unless the accused proves to the satisfaction of the court that the killing or wounding was an accident beyond his control and that he had taken all reasonable precautions to avoid such accident or that the killing or wounding was in such circumstances as to be justifiable and lawful under Section 72.

Destruction of Animals

74. Notwithstanding anything to the contrary in this Act the Director may kill or authorize the killing of any animal in any place, not being a national park or the Ngorongoro Conservation Area.

Director May Regulate Use of Weapons

75. (1) The Director may, by order in the *Gazette*, prescribe the type or class of weapons which may or may not be used for the hunting of any particular species of animals.
- (2) Where an order under Sub-Section (1) has been made, any person who hunts any animal or class of animals by means of any weapon prohibited by such order for use in the hunting of animals of that species or any weapon other than of the type or class authorized by such order for use in the hunting of animals of that species commits an offence, and on conviction is liable to imprisonment for a term not exceeding three years.

Unlawful Hunting

76. (1) No person shall, except by methods of and in accordance with the written authority of the Director previously sought and obtained:
- (a) use for the purpose of hunting any animal:
- (i) any mechanically propelled vehicle;
 - (ii) any poison, bait, poisoned bait, poisoned weapon, stakes, pit-fall, net, gin, trap, shot-gun, missile, explosives, all ammunition, snare, hide, fence or enclosure;
 - (iii) a dog or any domesticated animal;
 - (iv) any fire-arm capable of firing more than one cartridge as a result of one pressure of the trigger or of reloading itself more than once without further action by the operator;

- (v) any device capable of reducing or designed to reduce the sound made by the discharge of any firearm;
- (vi) any artificial light or flare; or,
- (vii) any anaesthetic dart capable of immobilization;
- (b) for the purpose of hunting any animal cause any grass or bush fire;
- (c) hunt any animal:
 - (i) using any mechanically propelled vehicle or within two hundred meters of such vehicle, except when hunting birds in water;
 - (ii) other than a hippopotamus, otter, sitatunga, water-buck or bird) within five hundred meters of any permanent water, pool, water-hole or salt-lick;
 - (iii) within a kilometer of a national park, a zoological garden, the Ngorongoro Conservation Area or an aerodrome;
 - (iv) during the hours of darkness.
- (2) No person shall:
 - (a) for the purpose of hunting or while on a hunting trip, camp within a kilometer of any aerodrome;
 - (b) drug, cut or display any dead animal in the vicinity of any lodge, hotel, zoo or camp frequented by visitors;
 - (c) throw any animal carcass into any permanent water, pool, water-hole, salt-lick or any place commonly used by animals as a resting place;
 - (d) leave any animal carcass within two kilometers of any aerodrome or a kilometer of any public road, lodge, hotel or zoo;
 - (e) leave on any hunting site litter, refuse, unburnt trophy drying racks or a burning fire or leave such site in a state likely to constitute a danger to the public or animal health.
- (3) Notwithstanding the provisions of Sub-Section (1) the restrictions imposed by that Sub-Section, other than the restrictions imposed by sub-paragraph (ii) or paragraph (a) and by paragraph (b), shall not apply where an animal is hunted under and in accordance with the provisions of Section 50.
- (4) The Minister may by regulations made under this Act impose such further restrictions on the methods of hunting animals as he may deem fit.
- (5) Any person who contravenes any of the provisions of Sub-Section (1) or (2) commits an offence and on conviction is liable to imprisonment for a term not exceeding three years.

(e) PROVISIONS RELATING TO LICENSES, ETC.

Refusal, Cancellation and Suspension of License, etc.

77. (1) The Director, a Game Officer or a licensing officer may, if in his opinion it is in the public interest so to do-

- (a) refuse to issue to any person any certificate, license, permit, permission or other authority under this Act; or,
- (b) cancel or suspend any certificate, license, permit, permission or other authority under this Act:

Provided that in the case of any such cancellation or suspension by a Biodiversity Officer or a licensing officer he shall, as soon as may be practicable, report the same to the Director.

- (2) Any person aggrieved by any refusal, cancellation or suspension under this Section may appeal thereagainst to the Minister within such time and in such manner as may be prescribed, and the decision of the Minister on any such appeal shall be final and conclusive.

Disqualification from Grant, etc.

78. (1) Any person:

- (a) who has been convicted of an offence under this Act, or the National Parks Act, or the Ngorongoro Conservation Act, or any written law applicable in any other country and designed for the protection of wildlife in that country;
- (b) whose license, permit, permission or authority granted under this Act or the Ordinance has been cancelled or suspended, shall be disqualified from holding or being granted any license, permit, permission or other authority under this Act unless and until such disqualification is lifted by the Director by a certificate under his hand.

- (2) Any person who fails to inform the Director or any Game Officer or licensing officer at the time of his application or request for any license, permit, permission or other authority under this Act of the fact that he is, by virtue of Sub-Section (1), disqualified from holding or obtaining any license, permit, permission or other authority under this Act, commits an offence and on conviction is liable to imprisonment for a term not exceeding three years.

Licenses, etc., may be Subject to Conditions

79. (1) Any license, permit, permission or authority granted or issued under this Part may be granted subject to such terms and conditions as the person or officer granting the same may deem fit and all such terms and conditions shall be specified on the license, permit, permission or authority granted:

Provided that the Minister may, by regulations made under this Act, prescribe terms and conditions which shall be deemed to be annexed to any category of license, permit, permission or authority granted under this Part.

- (2) Any person who contravenes any term or condition annexed or deemed to be annexed to any license, permit, permission or authority commits an offence and on conviction is liable to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding three years or both such fine and such imprisonment:

Provided that the penalty provided for by this Sub-Section shall be without prejudice to any penalty specifically prescribed by any other provision of this Act for the contravention of any term or condition annexed or deemed to be annexed to any license, permit, permission or authority granted under this Part.

PART V

REGISTRATION OF CERTAIN TROPHIES

Interpretation

80. In this Part, “trophy” means ivory, rhinoceros horn, hippopotamus teeth, animal tusks, animal horns and skin of any game animal, and “manufactured trophy” means any article made from any of the fore-going trophies or from any tooth, tusk, horn, bone, claw, hoof, hair, leather, egg or other durable portion whatsoever of any animal.

Trophy to be Produced for Registration

81. (1) Any person who obtains possession of any trophy shall within thirty days thereof produce such trophy together with the license, permit or other authority under which it has been obtained and any weapon with which the animal from which the trophy was obtained was hunted to the licensing officer having jurisdiction over the area in which such animal was hunted, or to such other officer as such licensing officer or the Director may in writing direct, for the registration of the trophy and the issue of a trophy certificate in respect thereof.
- (2) Any person who obtains possession of any manufactured trophy shall within thirty days of obtaining possession of the manufactured trophy produce the manufactured trophy to a licensing officer for registration:

Provided that this Sub-Section shall not apply where such person already holds a certificate of registration in relation to the trophy.

- (3) Registration of a trophy or manufactured trophy shall be effected in such manner as may be prescribed and upon registration the owner shall be issued, with a certificate of registration in the prescribed form.
- (4) If the officer to whom a trophy or a manufactured trophy is produced is not satisfied that the trophy or, as the case may be, the manufactured trophy was obtained lawfully by the person producing the same for registration, he may retain the same pending further investigation:

Provided that if no proceedings are instituted in relation to the trophy or the manufactured trophy within six months of the date when it was first produced for registration, the trophy or, as the case may be, the manufactured trophy shall be duly registered and a certificate of registration issued.

Offences Relating to Non-Registration

82. (1) Any person who has in his possession any trophy or manufactured trophy and does not hold a certificate of registration in respect thereof, commits an offence and on conviction is liable to imprisonment for a term not exceeding three years:

Provided that in any proceedings for an offence under this Sub-Section the accused shall be entitled to be acquitted if he can satisfy the court:

- (a) that he has since the commencement of the proceedings lawfully obtained a certificate of registration in respect of the trophy or, as the case may be, the manufactured trophy;
- (b) that a period of thirty days had not expired between the date when he first acquired or obtained the trophy or the manufactured trophy and the date of the institution of the proceedings or the date when the trophy or the manufactured trophy was seized by an authorized officer in the course of an investigation resulting in the proceedings, whichever date first occurred.

- (2) Any person who in any manner whatsoever transfers to any other person any trophy or manufactured trophy (whether or not the property therein passes) in respect of which a certificate of registration does not exist at the date of the transfer and any person who accepts any such transfer of any trophy or manufactured trophy in respect of which a certificate of registration does not exist at the date of the transfer, commits an offence and on conviction is liable to imprisonment for a term not exceeding three years.
- (3) Any person who in any manner whatsoever transfers any trophy or manufactured trophy to any other person without handing over to the transferee the certificate of registration in respect thereof and any transferee who accepts the transfer to himself of any trophy or manufactured trophy without obtaining delivery of the certificate of registration in respect thereof, commits an offence and on conviction is liable to imprisonment for a term not exceeding three years.

PART VI

DEALINGS IN TROPHIES

No Dealing in Trophies Business Without Valid License

- 83.** (1) No person shall manufacture articles from trophies for sale or carry on the business of a trophy dealer except under and in accordance with the conditions of a valid trophy dealer's license.
- (2) The Director may, subject to any regulations made under this Act, grant to any person a trophy dealer's license in the prescribed form upon application made therefor in the prescribed form and subject to such conditions and on payment of such fees as may be prescribed.
 - (3) A trophy dealer's license shall entitle the holder to carry on the business of buying and selling trophies but shall not entitle him to hunt, kill, capture or photograph any animal.
 - (4) No trophy dealer shall under any circumstances accept, buy, sell or transfer any trophy before such trophy is registered under the provisions of Part V of this Act.

No Transfer of Trophy Without Permit

- 84.** (1) No person shall in any manner by way of a gift, sale, barter, exchange or otherwise or buy or accept any transfer of trophy except under and in accordance with a permit or a valid transfer permit granted under this Section.
- (2) The Director may, in his discretion, with or without a fee, grant to any person a transfer permit in respect of any trophy.
 - (3) A transfer permit shall be in the prescribed form.
 - (4) The provisions of this Section shall not apply to any trophy sold by a licensed trophy dealer or the Government or to any manufactured trophy in respect of which a valid certificate of registration issued under Part V exists.

Export of Trophy

- 85.** (1) No person shall export any trophy unless he holds a valid trophy export certificate issued in respect thereof.
- (2) The Director may, subject to any regulations made under this Act and on payment of any prescribed fee, issue to any person desiring and otherwise entitled to export any trophy, a trophy export certificate in the prescribed form.

- (3) This Section shall not apply to a manufactured trophy in respect of which a valid certificate of registration issued under Part V exists.

Import of Trophy

86. No person shall, except with the written authority of the Director previously sought and obtained, import any trophy:

Provided that this Section shall not apply to a manufactured trophy in respect of which the Commissioner for Customs is satisfied that it is the personal property of the importer and has been imported for personal use by the importer.

Unlawful Dealings in Transfers, Accepts, Exports or Imports, etc.

87. Any person who sells, buys, transfers, accepts or imports trophies in contravention of any of the provisions of this Part or who otherwise contravenes any of the provisions of this Part, commits an offence and on conviction is liable to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding seven years or both.

PART VII

GOVERNMENT TROPHIES

Government Trophies

88. (1) The following shall be government trophies and subject to the provisions of Sub-Section

(2) shall be the property of the Government, that is to say:

- (a) any animal which has been killed or captured without a license, permit, permission or authority granted under this Act, and any part of any such animal;
 - (b) any animal which is found dead, and any part of any such animal;
 - (c) any animal which has been killed in defence of life or property and any part of any such animal;
 - (e) any trophy in respect of which a breach of the provisions of this Act has been committed;
 - (f) any animal or trophy or class of animals or trophies which the Minister may, by order in the Gazette, declare to be Government trophy or trophies.
- (2) Any trophy found or obtained in a national park or the Ngorongoro Conservation Area or in respect of which an offence has been committed under the National Parks Act, or the Ngorongoro Conservation Area Act, shall be the property of the Trustees of the national parks or, as the case may be, the Conservator of the Ngorongoro Conservation Area.

Unlawful Possession of Government Trophy

89. (1) No person shall be in possession of, or buy, sell or otherwise deal in any Government trophy.
- (2) Any person who contravenes any of the provisions of this Section commits an offence and shall be liable on conviction:
- (a) where the trophy which is the subject matter of the charge or any part of such trophy is part of an animal specified in Part I of the First Schedule to this Act and the value of the trophy does not exceed five

thousand shillings, to imprisonment for a term of not less than ten years but not exceeding twenty years or to a fine of not less than an amount equal to ten times the value of the trophy but not exceeding twenty times the value of the trophy;

(b) where the trophy which is the subject matter of the charge or any part of such trophy is part of an animal specified in Part I of the First Schedule to this Act and the value of the trophy exceeds five thousand shillings, to imprisonment for a term of not less than twenty years but not exceeding thirty years and in addition to it the court may impose a fine of an amount not exceeding one hundred thousand shillings or ten times the value of the trophy, whichever is the larger amount;

(c) In any other case:

(i) where the value of the trophy which is the subject matter of the charge does not exceed five thousand shillings, to a fine of not less than an amount equal to five times the value of the trophy but not exceeding ten times the value of the trophy or to imprisonment for a term of not less than two years but not exceeding seven years.

(ii) where the value of the trophy which is the subject matter of the charge exceeds five thousand shillings but does not exceed twenty thousand shillings, to a fine of not less than an amount equal to five times the value of the trophy but not exceeding an amount equal to ten times the value of the trophy or to imprisonment for a term of not less than five years but not more than fifteen years;

(iii) where the value of the trophy which is the subject matter of the charge exceeds twenty thousand shillings, to imprisonment for a term of not less than ten years but not exceeding twenty years and the court may in addition to that impose a fine neither less than one hundred thousand shillings nor more than ten times the value of the trophy, whichever is the larger amount.

(3) There shall be awarded, in addition to the sentence of imprisonment imposed in respect of an offence under Sub-Section (2), corporal punishment in accordance with the Corporal Punishment Ordinance (controversial?).

(4) For the purposes of Sub-Section (2):

(a) in assessing the punishment to be awarded, the court shall, where the accused is charged in relation to two or more trophies, take into account the aggregate value of all the trophies in respect of which he is convicted, and in any such case the provisions of paragraph (a) or (b) of Sub-Section (2) shall apply in relation to all such trophies if any one of them is part of an animal specified in Part I of the First Schedule to this Act;

(b) the value of any trophy shall be taken to be the normal price of the trophy on a sale in the open market between a buyer and a seller independent of each other.

(5) In any proceedings for an offence under this Section a certificate signed by the Director and stating the value of any trophy involved in the proceedings shall be admissible in evidence and shall be *prima facie* evidence of the matters stated therein including the fact that the signature thereon is that of the person holding the office specified therein.

Duty to Report Possession of Government Trophy

90. (1) Any person who by any means obtains possession of any Government trophy or who sees any Government trophy in the possession of any other person shall forthwith report such possession to the nearest Game Officer or to a designated organization and shall, if required, deliver the trophy to the Game Officer or give particulars of the person in possession thereof.

- (2) Any person who fails to comply with any of the provisions of this Section commits an offence and shall be liable on conviction to imprisonment for a term not exceeding three years.
- (3) Subject to Sub-Section (4), the Director may, with the consent of the Minister, award a sum of money as a reward to any person giving information leading to the recovery of a Government trophy.
- (4) The sum of money awarded as a reward to any person or the aggregate of the sums awarded to more than one person in any one recovery of a Government trophy shall not exceed:
 - (a) one-fourth of the value of the Government trophy or trophies recovered; or,
 - (b) ten thousand shillings, whichever is the smaller sum of money.
- (5) The Minister may by directions, regulate the procedure to be complied with in the payment or the making of recommendations for the payment of the awards.

Disposal of Government Trophy

91. The Director of Biodiversity shall be responsible for the disposal of all Government trophies subject to any instructions that may be given by the Minister for the time being responsible for finance, after consultation with the Minister.

Establishment of Biodiversity Protection Fund

- 92.** (1) There is hereby established a fund which shall be known as the Biodiversity Protection Fund.
- (2) The Biodiversity Protection Fund shall consist of:
- (a) such sums as may be provided for the purpose by Parliament;
 - (b) twenty-five per cent of the proceeds of the sale of every animal, trophy, weapon, vehicle, vessel, aircraft, tent or other article which is forfeited pursuant to Section 78 and sold or disposed of in any other way for money;
 - (c) any sum or property which may in any manner become payable into the Fund;
 - (d) any sum granted to the Fund by the government or any person.
 - (e) payments from fees and charges receivable under this Act.
- (3) The Minister shall make rules regulating the functions, and use of the Fund, and shall, after consultation with the Minister for the time being responsible for finance, make rules regulating the operations of the Fund.
- (4) All rules made pursuant to Sub-Section (3) shall be published in the *Gazette*.

Establishment of Board of Trustees

- 93.** (1) There is hereby established a Board of Trustees of the Biodiversity Protection Fund.
- (2) The Board shall be a body corporate and shall:
- (a) have perpetual succession and an official seal;
 - (b) in its corporate name, be capable of suing and being sued;

- (c) be capable of taking, purchasing or, in any other way, acquiring, holding, charging and disposing of property, movable or immovable; and,
 - (d) have power to enter into contracts and doing any act or acts for the proper performance of its functions under this Act which may lawfully be done by a corporate body.
- (3) The Board shall consist of:
- (a) the Chairman, who shall be appointed by the President;
 - (b) the Director of Biodiversity;
 - (c) the Conservator of the Ngorongoro Conservation Area;
 - (d) the Director of the Tanzania National Parks;
 - (e) the General Manager of the Tanzania Wildlife Corporation; and,
 - (f) two other members appointed by the Minister.
- (4) The functions of the Board shall be:
- (a) to manage and administer the Fund in accordance with this Act;
 - (b) subject to this Act and to any directions given by the Minister, to do any act or thing for the promotion of the purposes and objects of the Fund.
- (5) The Minister shall, by an order published in the *Gazette*, provide for the regulation of the proceedings, the operations and affairs of, and other matters in relation to the Board.

PART VIII

MISCELLANEOUS PROVISIONS RELATING TO OFFENCES

(a) EVIDENTIARY PROVISIONS

Burden of Proof

94. (1) In any proceedings for the offence of unlawfully hunting, wounding, killing or capturing any animal contrary to any provision of this Act, the burden to prove that the animal was hunted, killed, wounded or captured pursuant to and in accordance with the terms of a license, permit or authority granted under this Act shall lie on the person charged.
- (2) Where in any proceedings for an offence under Section 67 it is proved to the satisfaction of the court:
- (a) that the Government trophy which is the subject matter of the charge was found in any building, premises or ship, or any part of any building, premises or ship occupied by the accused or his dependant, whether or not the accused was physically present when the trophy was found; or,
 - (b) that such Government trophy was found in any vehicle, baggage, package or parcel in possession of or owned by the accused or over which the accused had control at the time when the trophy was found, the court shall presume that such trophy was in the possession of the accused unless the accused satisfies the court to the contrary.

- (3) In any proceeding for an offence under Section ..(67) the burden to prove:
 - (a) that the possession of the Government trophy was lawful; or,
 - (b) that the sale, purchase or other transaction relating to the Government trophy was lawful; or,
 - (c) that the accused had assumed possession of the trophy in order to comply with the requirements of Section ...(67); or
 - (d) that the trophy is not a Government trophy, shall lie on the person charged.

Disposal of Trophies

95. (1) Subject to Sub-Section (2), at any stage of any proceedings under this Act, the court may, of its own motion or on a proceedings application made by the prosecution in that behalf order that any animal, trophy, weapon, vehicle, vessel or other article which has been tendered or put in evidence before it and which is subject to speedy decay, destruction or depreciation be placed at the disposal of the Director.
- (2) Where the article in respect of which an order under Sub-Section (1) is made is not an animal or trophy, the court may, if it is satisfied that it would be just to do so, attach to the order a condition that the Director shall not dispose of that article until after the expiration of six months from the date of the making of that order.
- (3) Notwithstanding the provisions of any written law to the contrary, on the expiration of six months from the making of an order under Sub-Section (1) to which the condition under Sub-Section (2) was attached, the order of the court shall be final and shall operate as a bar to any claim by or on behalf of any person claiming ownership of or any interest in the article by virtue of any title arising before the order was made.

Where Trophies Belong to Another Person

96. (1) Subject to the following provisions of this Section, in any proceedings for an offence under this Act which consists of the unlawful possession of, or unlawfully having in control or custody, any trophy or trophies, any person being prosecuted may, with the leave of the court, have any person to whom the trophy or trophies belong or to whose act or default he alleges that the contravention of the relevant provisions was due brought before the court in the proceedings, and if, after the contravention was due to the act or default of, that other person, that other person may be convicted of the offence, and, if the original accused person proves that he had used all due diligence to secure that the relevant provisions were complied with, he shall be acquitted of the offence.
- (2) Without prejudice to Sub-Section (1), in any such proceedings under this Act an accused person shall not allege that the trophy or trophies belong, or that the contravention of the relevant provisions was due, to some other person unless, before the end of two days from the commencement of the first hearing of the case, he gives to the prosecution notice of his intention to do so.
- (3) Every notice given under Sub-Section (2) shall be deemed to be void and of no effect unless:
 - (a) the name and address of that other person or, if the name or address is not known to the accused person at the time he gives the notice, any information in his possession which might be of material assistance in finding that other person;
 - (b) if the name of the address is not included in that notice, the court is satisfied that the accused person, before giving the notice, took and thereafter continued to take all reasonable steps to secure that the name or address would be ascertained;

- (c) if the name or address is not included in that notice, but the accused person subsequently discovers the name or address or receives other information which might be of material assistance in finding the other person, he forthwith gives notice of the name, address or other information, as the case may be; and,
 - (d) if the accused person is notified by or on behalf of the prosecution that other person has not been traced by the name or at the address given, he forthwith gives notice of any such information which is then in his possession, or, on subsequently receiving any such information forthwith gives notice of it.
- (4) For the purposes of this Section, the fact that an accused person has not been admitted to bail shall not be a defence for his failure to provide to the prosecution the correct name or address of that other person or any information which may be of material assistance in finding that other person.
- (5) Where an accused person seeks to avail himself of Sub-Section (1)-
- (a) if the person he complains against or to whom he alleges the trophy or trophies belong is not present at the time appointed for the hearing the court, shall proceed with the hearing of the case against the accused person in the absence of that other person;
 - (b) the prosecution, as well as the person to whom the accused person alleges the trophy or trophies belong or whom he charges with the offence, may cross examine him, if he gives evidence, and any witness called by him in support of the plea, and may rebut his evidence.
- (6) Any evidence tendered by the prosecution to rebut the allegations of the accused made pursuant to Sub-Section (1) may, subject to any directions by the court as to the time it is to be given, be given before or after evidence is given in support of the allegation.

(b) MISCELLANEOUS OFFENCES

Possession of Certain Weapons in Certain Circumstances to be an Offence

97. Any person who is found in possession of any ball, ammunition, poison, snare or trap in circumstances which raise a reasonable presumption that he has used or intends or is about to use the same for the purpose of the commission of an offence under this Act shall, unless he shows lawful cause for such possession, be guilty of an offence, and shall be liable on conviction to imprisonment for a term not exceeding three years.

Duty to Take Care of Licenses, Permit, etc.

98. (1) Any person having in his possession, control, custody or care:
- (a) any license, permit, certificate, license book, permit book, trophies certificate book or other official document granted or issued under or used for the purposes of this Act;
 - (b) official mark, stamp or ink used for or in connection with the administration of this Act;
 - (c) any official uniform or badge approved for use by any authorized officer;
 - (d) any trophy which is required by any provision of this Act to be delivered to any public officer or which is in his possession by virtue of his holding any public office, shall take all reasonable precautions to prevent the same from falling into the hands or custody of any person not authorized to be in possession thereof, and if such person fails to take such reasonable precautions he shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding three years.

- (2) In any proceedings against any person for an offence against Sub-Section (1):
 - (a) the burden to prove that reasonable precautions were taken to prevent any article or thing to which that Sub-Section applies from falling into the hands of an unauthorized person, shall be on the person charged;
 - (b) where any such article or thing is shown to have been lost or stolen the court shall, unless it is satisfied to the contrary, presume that it has fallen into the hands of an unauthorized person.

Offences Relating Forgery, Fraud, etc.

99. (1) Any person who:
- (a) fraudulently forges, alters or defaces any license, permit, written permission or authority granted or purporting to have been granted under this Act;
 - (b) fraudulently utters any such forged license, permit, permission or authority;
 - (c) obtains any license, permit, permission or authority by fraud, misrepresentation of a material fact or a false pretence, commits an offence and shall be liable on conviction to imprisonment for a term not exceeding five years.
- (2) Any license, permit, permission or authority which has been forged or obtained by fraud, misrepresentation of a material fact or a false pretence, shall be void *ab initio*.

(c) GENERAL PROVISIONS

Power of Search and Arrest

100. (1) If any authorized officer has reasonable grounds for believing that any person has committed or is about to commit an offence under this Act he may:
- (a) require any such person to produce for his inspection any animal, meat, trophy or weapon in his possession or any license, permit, or other document issued to him or required to be kept by him under the provisions of this Act or the Arms and Ammunition Act, or any subsidiary legislation made thereunder;
 - (b) enter and search any land, building, tent, vehicle, aircraft or vessel in the occupation or use of such person, and open and search any baggage or other thing in his possession:

Provided that no dwelling house shall be entered into without a warrant except in the presence of two independent witnesses;
 - (c) seize any animal, meat, trophy, weapon, license, permit or other authority, vehicle, vessel or aircraft in the possession or control of any person and, unless he is satisfied that such person will appear and answer any charge which may be preferred against him, arrest and detain him.
- (2) It shall be lawful for any authorized officer at all reasonable times to enter the licensed premises of any trophy dealer and to inspect the records which are required to be kept under the provisions of this Act.
- (3) It shall be lawful for any authorized officer to stop and detain any person who he sees carrying out, or suspects of having carried out, any act for which a license, permit, permission or authority is required under the provisions of this Act for the purpose of requiring such person to produce the same, or to allow any vehicle, vessel or aircraft of which he is the owner or over which he has control to be searched, and any person who fails to produce his license, permit, permission or authority when required to do so, or fails to stop when

ordered or signalled to do so, or fails to allow any vehicle, vessel or aircraft of which he is the owner or over which he has control to be searched shall be guilty of an offence and may be arrested without a warrant unless he furnishes in writing his name and address and otherwise satisfies the authorized officer that he will duly answer any summons or other proceedings which may be taken against him.

- (5) It shall be lawful for any authorized officer to order any person stopped or arrested by him to submit in writing his name and address and the details of any license, permit or other authority issued to him or any other article, thing or document in his possession.
- (6) In any proceedings for failing to stop a vehicle, vessel or aircraft when required or signalled to do so by an authorized officer, the owner of such vehicle, vessel or aircraft shall, unless the contrary is proved by him, be presumed to have been the person in charge of or having control over the vehicle, vessel or aircraft at the time when the offence was alleged to have been committed.
- (7) Any person convicted of an offence under this Section shall be liable to imprisonment for a term not exceeding three years.

Obstruction of Authorized Officer

101. Any person who:

- (a) wilfully obstructs any authorized officer in the exercise by him of any of the powers conferred upon him by this Act; or,
- (b) without reasonable excuse fails to give any information or produce anything or document which he is lawfully required to give or produce under any provision of this Act, shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding three years.

Assault of Authorized Officer

- 102.** (1) Notwithstanding the provisions of Sections 114A, 117 and 243 of the Penal Code, Cap. 16, any person who, in the course of wilfully obstructing an authorized officer in the exercise by him of any of the powers conferred by this Act, assaults the authorized officer shall, be guilty of an offence and, subject to Sub-Section (2), shall be liable on conviction to imprisonment for a term not exceeding fourteen years.
- (2) No term of imprisonment imposed under this Section shall be less than three years.

Protection of Officers

103. No act or thing done by any authorized officer shall, if the act or thing was done in good faith in the exercise or purported exercise of any power conferred by this Act for the purpose of carrying out of the provisions of this Act, subject such authorized officer to any action, liability, claim or demand whatsoever.

Erection of Barriers

- 104.** (1) For the more effective carrying out of the provisions of this Act, and notwithstanding the provisions of any other written law relating to the obstruction of roads or highways, any authorized officer may erect a temporary barrier across any highway, road, water-way, taxi-way or any other place, on land or water used as a passage for any vehicle, vessel or aircraft.
- (2) Every pedestrian or person in charge of a vehicle, vessel or aircraft on approaching such barrier shall, on being required to do so by an authorized officer, stop or bring such vehicle, vessel or aircraft to a standstill.

- (3) Every person so required to stop or any person on board of such vehicle, vessel, or aircraft shall allow the authorized officer to carry out such inspection as may be necessary to ensure that no offence under this Act has been committed.
- (4) Any person who fails to comply with any of the provisions of this Section, or who fails to comply with any lawful order given by an authorized officer, commits an offence and shall be liable on conviction to imprisonment for a term not exceeding three years.

Forfeiture

105. (1) Where any person is convicted of an offence under this Act, the court shall order forfeiture to the Government of:

- (a) any animal or trophy in respect of which the offence was committed;
 - (b) any weapon in the possession or under the control of the accused at the time when the offence was committed, whether or not there is any evidence to show that such weapon was actually employed by the accused in the commission of the offence;
 - (c) any article or thing used for the storage, processing, preparing, cooking or otherwise dealing with any animal, meat or trophy in relation to which the offence was committed;
 - (d) any vehicle, vessel, aircraft, tent, camping equipment or other article or thing whatsoever in respect of which the court is satisfied that it was used or employed in the commission of the offence or for the conveyance or storage of any animal, meat or trophy in relation to which the offence was committed or for the conveyance or comfort of the accused while engaged in the commission of the offence;
 - (e) in the case of a conviction for an offence in relation to a Government trophy, any vehicle, vessel or aircraft in which the government trophy was found.
- (2) The court shall order forfeiture in accordance with the provisions of Sub-Section (1), notwithstanding that the vehicle, vessel, aircraft, weapon, article, or thing to be forfeited was owned by a person other than the accused:

Provided that where on the application of the owner of a vehicle, vessel or aircraft the court is satisfied:

- (a) that the owner did not know and could not by reasonable diligence have known that the vehicle, vessel or aircraft was intended by the accused to be used or employed for any of the purposes which was rendered the same liable for forfeiture;
 - (b) that the vehicle, vessel or aircraft has not previously been used for or in connection with the commission of any offence under this Act or the Ordinance;
 - (c) that having regard to all the circumstances it is just and equitable that the vehicle, vessel or aircraft not be forfeited, the court may make no order for the forfeiture of the vehicle, vessel or aircraft.
- (3) Every animal, trophy, weapon, vehicle, vessel, aircraft or other article forfeited to the Government under Sub-Section (1) of this Section shall be placed at the disposal of the Director.
 - (4) Any trophy or other article, other than a Government trophy, placed at the disposal of the Director under this Section shall be deemed to be a Government trophy.

Provisions Governing Minimum Sentences

- 106.(1) Where in any trial for an offence for which a minimum sentence of imprisonment or fine is prescribed the court is satisfied that having regard to any special mitigating factor a sentence of imprisonment or fine of a term or amount, as the case may be, less than the minimum term or amount prescribed should be imposed, the court may:
- (a) if the trial is before the High Court, pass such sentence of imprisonment or fine as it deems fit;
 - (b) if the trial is before a court other than the High Court, the court may commit the accused for sentence by the High Court with a recommendation for leniency and stating the grounds therefor and the High Court shall thereupon proceed to pass such sentence as it may deem fit.
- (2) The provisions of Sub-Sections (2), (3), (4), (5) and (6) of Section 5A of the Criminal Procedure Act, shall apply where an accused is committed to the High Court for sentence.
- (3) In any case where a person has been convicted of an offence under this Act by a court other than the High Court and sentenced to a minimum sentence of imprisonment or fine prescribed therefor, it shall be lawful for the High Court in the exercise of its appellate or revisional jurisdiction to pass a sentence of a term of imprisonment or fine of an amount, as the case may be, less than the minimum term or amount prescribed if the High Court for any special mitigating factor deems it fit so to do.
- (4) Where in relation to any offence in respect of which a minimum sentence of imprisonment and, in the alternative, a sentence of a fine of a minimum amount are prescribed:
- (a) if the court passes a sentence of imprisonment of the prescribed minimum term or more, the court may, in addition thereto, impose a sentence of a fine not exceeding one-half of the maximum fine prescribed in relation to such offence;
 - (b) if the court passes a sentence of a fine of the prescribed minimum amount or more, the court may, in addition thereto, impose a sentence of imprisonment for a term not exceeding one-half of the maximum term of imprisonment prescribed in relation to such offence.

Jurisdiction of Courts for Offences

- 107.(1) Where a person is tried for an offence under this Act by a magistrate's court presided over by a resident magistrate, the court shall, notwithstanding the provisions of any other written law, have jurisdiction to impose the maximum fine prescribed in respect of such offence.
- (2) Notwithstanding the provisions of any written law a court established for any district or area of Mainland Tanzania may try, convict and punish or acquit a person charged with an offence committed in any other district or area of Mainland Tanzania.

Power to Prosecute

108. The Director, Field Officer and every officer of the Biodiversity Department of or above the rank of Biodiversity Assistant shall have the power to conduct prosecution for an offence under this Act or any subsidiary legislation made hereunder and shall for that purpose have all the powers of public prosecutor under the Criminal Procedure Act.

(d) **COMPOUNDING**

Director may Compound Certain Offenses

- 109.(1) This Section shall apply to any offence under this Act or under any regulations under this Act other than an offence in respect of which a minimum sentence of a fine or imprisonment is prescribed.
- (2) The Director may, where he is satisfied that any person has committed an offence to which the Section applies, compound such offence by requiring such person to make payment of a sum of money:

Provided that:

- (a) such sum of money shall not be less than two thousand shillings but not exceeding fifty thousand shillings;
- (b) the power conferred by this Section shall only be exercised where the person admits in writing that he has committed the offence and that he agrees to the offence being compounded under this Section;
- (c) the Director shall give to the person from whom he receives such amount of money, a receipt thereunder.
- (3) Where the Director compounds any offence under this section he may order the forfeiture of:
- (a) the animal, meat or trophy in relation to which the offence was committed;
- (b) any weapon, article or thing used in the commission of the offence or for the storage, processing, preparing or cooking of the animal, meat or trophy in relation to which the offence was committed.
- (4) Where an offence is compounded in accordance with the provisions of Sub-Section (2) and proceedings are brought against the offender for the same offence, it shall be a good defence for such offender if he proves to the satisfaction of the court that the offence with which he is charged has been compounded under Sub-Section (2).
- (5) Where any person is aggrieved by any order made under Sub-Section (2) or (3), he may, within thirty days of such order being made, appeal against such order to the High Court and the provisions of Part X of the Criminal Procedure Act, shall apply *mutatis mutandis* to every such appeal as if it were an appeal against sentence passed by a district court in the exercise of its original jurisdiction.
- (6) The Director shall, at such interval and in such form as the Director of Public Prosecutions may direct, submit to the Director of Public Prosecutions a return of all offences compounded under this Section.

Citizen's Suits

- 110.(1) Except as provided in paragraph (2) of this Sub-Section any person may commence a civil suit on his own behalf to enjoin any person, including the Government and any other government agency who is alleged to be in violation of any provision of this Act or regulation issued under the authority thereof.
- (2) No action may be commenced under Sub-Section (1) of this section:
- (a) prior to ninety days after written notice of the violation has been given to the Minister, and to any alleged violator of any such provision or regulation except that such action may be brought immediately after such notification in the case of an action under this Section respecting an emergency posing a significant risk to the well-being of any species of fish or wildlife or plants; or,

- (b) if the Minister has commenced action to impose a penalty pursuant to Section 108; or,
 - (c) if the Government has commenced and is diligently prosecuting a criminal action in a court of the United Republic of Tanzania to redress a violation of any such provision or regulation; or,
 - (d) if prior to ninety days after written notice has been given to the Minister setting forth the reasons why an emergency is thought to exist with respect to wildlife or fish or plants; or,
 - (e) if the Minister has commenced and is diligently prosecuting action under Sub-Section (2)(d) of this Section, to determine whether any such emergency exists.
- (3) Any suit under this Section may be brought within the jurisdiction of a district or magistrate court in which the violation occurs.
 - (4) In any such suit under this Sub-Section in which the United Republic of Tanzania is not a party, the Attorney General, at the request of the Minister may intervene on behalf of the United Republic as a matter of right.
 - (5) The court, in issuing any final order in any suit brought pursuant to Sub-Section (1) of this Section, may award costs of litigation (including reasonable legal and expert witness fees) to any party, whenever the court determines such award is appropriate in the circumstances.
 - (6) The injunctive relief provided by this Sub-Section shall not restrict any right which any person or class of persons may have under any statute or common law to seek enforcement of any standard or limitation or to seek any other relief including relief against the Government or Government agency.

PART IX

MISCELLANEOUS PROVISIONS

Rewards

- 111. (1)** Where in any proceedings under this Act conviction is obtained the court may, on the recommendation in writing by the Director, award a sum of money to the person or persons who gave information leading to the conviction:

Provided that:

- (a) the sum of money awarded as a reward to any person or the aggregate of such sums awarded to more than one person in any one case shall not exceed:
 - (i) one-fourth of the fine or the aggregate of the fines imposed in that case; or,
 - (ii) one-fourth of the value of the trophy or the trophies forfeited to the government consequent upon such conviction; or,
 - (iii) ten thousand shillings, whichever is the smallest sum of money;
- (b) the reward shall not be paid until after the expiry of the period within which the person convicted may appeal against his conviction;
- (c) notwithstanding the provisions of paragraph (b), the reward may be paid as soon as possible in each case in which an order under Section ... (70A) has been made by the court placing the articles concerned at the disposal of the Director.

- (2) The Minister may authorize the payment of rewards to persons giving information leading to arrests and convictions for offenses under this Act and may by directions regulate the amount and the payment of such rewards.

Registration of Past Offenders

112. (1) As soon as possible after the coming into operation of this Act, the Minister shall, after consultation with the Minister for the time being responsible for Home Affairs, by direction published in the Gazette, provide for an appropriate procedure for the registration of persons previously convicted of offences and sentenced in accordance with Sub-Section (2):

- (a) hunting, capturing, killing or wounding any animal in any game reserve or game controlled area, without the permission in writing of the Director;
- (b) hunting any specified animal or scheduled animal without a license or, as the case may be, a permit granted by the Minister;
- (c) unlawfully hunting any specified or scheduled animal; or
- (d) being in unlawful possession of, or unlawfully having under his control, custody or care, any animal or trophy, and is sentenced to imprisonment for a term of two or more years, the Director shall cause to be registered in respect of that person:
 - (i) his name;
 - (ii) his address, if any, or his place of domicile within the United Republic;
 - (iii) the nature of the offence he committed; and,
 - (iv) the fine, forfeiture or other penalty imposed on him.

(2) Every person leading the case for the prosecution of a person who is convicted of any of the offenses, and sentenced to the extent specified in Sub-Section (1) shall, as soon as practicable after such conviction, notify the Director or his representative of that conviction and of such particulars as the Minister may, after consultation with the Minister for the time being responsible for Home Affairs by order in the *Gazette*, prescribe.

(3) The Director shall cause to be kept and maintained a register in which there shall be recorded the name of every person convicted of any of the offenses, and sentenced to the extent, specified in Sub-Section (1), together with the particulars required to be registered under that Section in respect of each such person.

(4) Notwithstanding the provisions of any written law to the contrary, the Minister for the time being responsible for Home Affairs shall, after consultation with the Minister, cause every person convicted of any of the offenses, and sentenced to the extent, specified in Sub-Section (1) and who is not a citizen of the United Republic, to be declared an undesirable immigrant and to be deported forthwith.

Regulations and Other Subsidiary Legislation

113. (1) The Minister may make regulations for the better carrying out of the purposes of this Act and for the better conservation of wildlife, and without prejudice to the generality of the foregoing may make regulations:

- (a) prescribing the forms of applications for licenses, permits, certificates and other documents which may be granted or issued under this Act;

- (b) prescribing the forms and the fees for licenses, permits, certificates and other documents which may be granted or issued under this Act;
 - (c) prescribing for the return to the country of original export or country of re-export any specimen of species of wild fauna and flora confiscated in the course of illegal trade;
 - (d) prescribing or providing for anything which may be prescribed or provided for by regulations.
- (2) There may be annexed to the breach of any subsidiary legislation made under this Act a penalty not exceeding a fine of fifteen thousand shillings or a term of imprisonment not exceeding three years or both such fine and such imprisonment.

PART X

APPEALS

Appeals to Lie to the Biodiversity Appeals Tribunal

114. (1) Any person aggrieved by:

- (a) the refusal of the Director or any other person authorized in that behalf, to issue or grant to him any wildlife-use right which may be issued or granted under this Act or any subsidiary legislation
 - (b) by all or any conditions subject to which he has been granted a wildlife-use right may appeal to the Biodiversity Appeals Tribunal against that refusal or those conditions.
- (2) Any person aggrieved by any order made under this Act which adversely affects that person may appeal against such order to the Tribunal.
- (3) Where any regulations made under this Act empower or provide for the Minister or Director of Biodiversity or any authority to grant any license, permit or other permissions to undertake any activity, an appeal shall lie to the Tribunal against any decision to refuse, revoke, suspend or disadvantageously vary or against any conditions subject to which that license, permit or other permission to undertake any activity has been granted.
- (4) On appeal under Sub-Section (1) and (2), the Tribunal may affirm, vary or set aside the decisions, order or term or condition subject of an appeal and may give directions in respect of anything previously done or suffered pursuant to the varied decisions or order or term or condition.
- (5) Subject to any further appeal provided for by this Act, the decision of the Tribunal and any direction given by it shall be binding upon all parties concerned.

The Biodiversity Appeals Tribunal

115. (1) There is hereby established a Biodiversity Appeals Tribunal.

- (2) The Chief Justice shall appoint up to seven persons to constitute the Biodiversity Appeals Tribunal.
- (3) The persons appointed under Sub-Section (1) shall consist of:
 - (a) a person who is or has been qualified to be appointed to be a judge of the High Court who shall be a Chairperson of the Tribunal;

- (b) advocates of not less than ten years standing and of proven integrity, who shall be appointed as Deputy-Chairperson of the Tribunal;
 - (c) persons with knowledge of or experience in the management of biodiversity or the operation and management of activities connected with biodiversity, of which at least one person must be from the private sector.
- (4) A member of the Tribunal shall be appointed to serve for three years and shall be eligible to be re-appointed for one further term of three years.
 - (5) The members of the Tribunal shall be paid such fees as shall be determined by the Minister for and in connection with their work as members of the Tribunal.
 - (6) The Chief Justice shall appoint a public officer to act as the Registrar of the Tribunal and such officer shall, when appointed, administer the affairs and keep the records of the Tribunal.

Hearings of the Tribunal

- 116.** (1) For the purposes of hearing an appeal under this Part of the Act, the Tribunal shall comprise:
- (a) the Chairperson or a Deputy-Chairperson;
 - (b) two members drawn from those persons appointed under paragraph (c) of Sub-Section (2) of Section 88.
- (2) The parties to an appeal shall be:
- (a) the persons appealing against the decision of the Minister;
 - (b) the person representing the Minister;
 - (c) such persons as the Tribunal shall permit to appear and make representations or as are permitted by the Chief Justice.
- (3) Any person wishing to appeal against a decision of the Minister in respect of which an appeal may, under Section 84A be made, shall within sixty days of that decision being made, submit a notice of appeal in the prescribed form, containing the prescribed information to the Registrar.
 - (4) The Tribunal shall, in consultation with the Chief Justice determine its own procedures for the hearing and determining an appeal and shall at all times be guided by the highest and best principles of natural justice.
 - (5) The parties to an appeal may appear in person or may be represented by persons of their choice.
 - (6) The Chief Justice may, by regulations, make further provision for procedures in connection with appeals to the Tribunal.
 - (7) An appeal shall lie from a decision of the Tribunal to the High Court, which shall, in dealing with such appeal, hear the matter as if it were an appeal on a civil matter.

Repeal and Transitional Provisions

117. (1) The Wildlife Conservation Act, Act No.12 of 1974, is hereby repealed.

- (2) Where after the commencement of this Act any person is convicted of an offence under the repealed Act or the Ordinance he shall, notwithstanding the provisions of any other written law, be liable to be punished as if he were convicted of the corresponding offence under this Act.

Minister May Make Further Transitional Provisions

118. Subject to the provisions of Sub-Section (2) of Section 85, the Minister may at any time within twelve months after the commencement of this Act, by order in the *Gazette*, make such further transitional provisions consequent upon the repeal and replacement of the Act by this Act as he may deem necessary and in the event of any conflict between any provision of any such order and Section 14 or Section 115 of the Interpretation Act, the provision of the order shall prevail.

FIRST SCHEDULE
(Section 23 (2) and Section 31(2))

Sn.	Swahili Name	English Name	Scientific Name
1.	Chui	Leopard	Panthera (Felis) Pardus (Linnaeus)
2.	Faru	Rhinoceros	Diceros Bicornis (Linnaeus)
3.	Mbuzi-mawe (Nguru)	Klipspringer Mountain-Reedbuck	Oreotragus oreotragus (zimmermann)
4.	Nzohe	Sitatunga	Limnotragus spekeli (P.L. Sclater)
5.	Pundamilia	Zebra	Equus (Hippotigris) burchellii Matschie
6.	Sheshe	Puku	Kobus (Adenota) vardonii (Livingstone)
7.	Simba	Lion	Panthera (Felis) leo (Linnaeus)
8.	Simbamangu	Caracal	Felis (Lynx) caracal (Schereber)
9.	Swalatwiga	Gerenuk	Litocranius walleri (Brooke)
10.	Tandala mdogo	Lesser Kudu	Tragelaphus imberbis Blyth
11.	Tembo (ndovu)	Elephant	Loxodonta africana (Blumenbach)
12.	Tohe-milima	Mountain-Reedbuck	Redunca fulvorufula (Afzelius)
13.	Wamyama wa Rais	National Game	

Sn.	Swahili Name	English Name	Scientific Name
		PART II	
1.	Choroa	Oryx	Oryx beisa callotis (Thomas)
2.	Kiboko	Hippopotamus	Hippopotamus amphibius (Linnaeus)
3.	Korongo	Roan	Hippotragus equinus (Desmarest)
4.	Kuro-ndogoro	Waterbuck-common	Kobus ellipsiprymnus (Orgilby)
5.	Kuro-singsing	Waterbuck-common	Kobus defassa (Ruppell)
6.	Mamba	Crocodile-Nile	Crocodilus niloticus
7.	Mbuni	Ostrich	Struthio camelus linnaeus
8.	Mbwa-mwitu	Wild dog	Lycaon-pictus (Teminck)
9.	Nyamera	Topi	Damaliscus korrigum (ogilby)
10.	Nyati (mbogo)	Buffalo	Syncerus caffer caffer (sparrman)
11.	Palahala (mbarapi)	Sable	Hippotragus niger
12.	Pofu (Mbunju)	Eland	Taurotragus oryx (Pallas)
13.	Tandal mkubwa	Greater Kudu	Tragelophus strepsiceros (Pallas)
		PART III	
	Wanyama wengine wote	All other animals	-

SECOND SCHEDULE

(Section 35)

A. BIG GAME

Sn.	Swahili Name	English Name	Scientific Name
1.	Digidid (Suguya)	Dikdik	<i>Rynchotragus kirkii</i>
2.	Dondoro	Steinbuck	<i>Raphiceros campestris</i>
3.	Kongoni	Hartebeest	<i>Alcepaphus buselaphus</i>
4.	Mindi	Abbott's Duiker	<i>Cephalopus spadix</i>
5.	Ndimba	Blue Duiker	<i>Cephalopus monticola</i>
6.	Nigir (mbango)	Warhog	<i>Phacochoerus aethiopicus</i>
7.	Nguruwe mwitu	Wild pig	<i>Potamochoerus porcus</i>
8.	Nsya (Ngorombwe)	Common Duiker	<i>Sylvicapra grimmia</i>
9.	Nungunungu	Porcupine	<i>Hystrix galeata</i>
10.	Nyamera	Topi	<i>Damaliscus korrigum</i>
11.	Nyati (Mbogo)	Buffalo	<i>Syncerus caffer caffer</i>
12.	Nyumbu	Wildebeest	<i>Connochaetes taurinus</i>
13.	Paa (suni)	Pigmy antelope	<i>Nesotragus moschatus</i>
14.	Pimbi	Rock hyrax	<i>Heterohyrax/Procavia</i>
15.	Pofu (mbunju)	Eland	<i>Taurotragus oryx</i>
16.	Pongo (mbawala)	Bushbuck	<i>Tragelaphus scriptus</i>
17.	Swalagranti	Grant	<i>Gazella grantii</i>
18.	Swalapala	Impala	<i>Aepyceros melampus</i>
19.	Swalatomu	Tommy	<i>Gazella thomsonii</i>
20.	Sungura	Hare	<i>Lepus capensis</i>
21.	Taya (kihea)	Oribi	<i>Ourebia ourebi</i>
22.	Tohe-Ndope	Bohor-reedbuck	<i>Redunca redunca</i>
23.	Tohe-Kusi	Souther-reedbuck	<i>Reduna arundinum</i>

Sn.	Swahili Name	English Name	Scientific Name
B. - UPLAND GAME (BIRDS)			
I.	MABATA	DUCKS AND GEESE	ABATUDAE
1.	Kotwe	White-backed duck	Thalassornis
2.		Maccoa duck	Oxyura
3.		African pochard	Aythya
4.	Bata-miti	Tree ducks	Dendrocygna
5.	Salili	Wigeons and Teals	Anas
6.		Pigmy goose	Netapus
7.	Bata Bukini	Spurwing goose	Sarkidiornis
8.		Knob-billed goose	Alopochen
9.		Egyptian goose	Plectropterus
	II. KWALE NA KANGA	FRANCOLINS AND GUINEA FOWLS	PHASILANDAE
10.	Kwale	Francolins	Francollinus
11.	Keren'gende	Spurfowl	Pternistis
12.		Stone-partridge	Ptilopachus
13.	Tomboro	Quail	Cortumix
14.		Blue-quail	Excal-factoria
15.	Kanga	Helmeted Guinea-fowl	Numida
16.		Vulturine Guinea-fowl	Acryllium
17.	Kororo	Crested Guinea-fowl	Guttera
	III. TANDAWALA	LESSER BUSTARDS	
18.	Tandawala	White-bellied bus-stards	Eupodotis
19.		Black-bellied bus-stards	Lissortis
20.		Buff-crested bus-stards	Lophotis
21.	IV. SULULU	PAINTED-SPINE	ROSTRATULIDAE
	Sululu	Painted-snipe	Rostratula
22.	V. SULULU	SNIFE	SCOLAPACIDAE
	Sululu	Snipe	Capella
23.	VI. FIRIGOGO	SANDGROUSE	PTEROCLINDIDAE
24.	Firigogo	Chestnut billied-sand-grouse	Pterocles
		Yellow-throated-sand-grouse	Eremialector
25.	VII. NJIWA	PIGEONS	COLUMBIDAE
26.	Ninga	Speckled/olive pigeons	Columba
27.	Tetere	Doves	Streptopella
28.	Hua/Pugi	Wood-doves	Turtur
	Njiwa	Green pigeons	Treron

THIRD SCHEDULE

(Section 35)

A. - BIG GAME

Sn.	Swahili Name	English Name	Scientific Name
1.	Bweha-dhahabu	Golden Jackal	Canis aureus
2.	Bweha-masikio	Bat-eared Fox	Otocyon megalotis
3.	Bweha-miraba	Striped Jackal	Canis adustus
4.	Bweha-shaba	Silver-backed Jackal	Canis mesomelas
5.	Chatu	Python	Python seboe
6.	Choroa	Oryx	Oryx gazella callotis
7.	Chui	Leopard	Panthera (Fesis) pardus
8.	Digidigi (suguya)	Dikdik	Rynchotragus kirkii
9.	Dondoro	Steinbuck	Raphiceros campestris
10.	Dondoro-shapi	Sharpe's grybok	Nototragus sharpei
11.	Faru	Rhinoceros	Diceros bicornis
12.	Fisi - (kingugwa)	Spotted - Hyena	Diceros bicornis
13.	Fisimaji	Otter	Aonyxflutra
14.	Fungo	Civer - cat	Civettictis civetta
15.	Funo (mbatuka)	Red - duiker	Cephalophus natalensis
16.	Kalunguyeye	Hedgehog	Erinocerus prunerii
17.	Kamendegere	Jumping hare	Pedetea surdaster
18.	Kanu	Genet cat	Genetta genetta
19.	Kiboko	Hippopotamus	Hippopotamus amphibius
20.	Kicheche	Zorrila	Ictomyx striatus
21.	Kima	Blue monkey	Cercopithecus spp.
22.	Kima - sykes	Sykes blue monkey	Cercopithecus spp.
23.	Kimburu	Wild cat	Felis lybica
24.	Komba	Galago (Bush-babby)	Galago senegalensis
25.	Kongoni	Cokes Hartebeest	Alcelaphus buselaphus cokei
26.	Konzi	Lichtenstein's Harte-beest	Alcelaphus buselaphus lichtensteinii
27.	Korongo	Roan Antelope	Hippotragus aequinus
28.	Kuro - ndogoro	Common water buck	Kobus ellipsiprymus
29.	Kuro - singsing	Defassa waterbuck	Kobus defassa
30.	Mamba	Nile Crocodile	Crocodylus niloticus
31.	Mbega - mweupe	Colobus monkey (B. & W)	Colobus spp.
32.	Mbuni	Ostrich	Struthioformes camelopardalus
33.	Mbuzimawe (Nguru)	Klipspringer	Oreotragus oreotragus
34.	Mbwa-mwitu	Wild dog	Lycan pictus
35.	Mindi	Abbott's Duiker	Cephalophus spadix
36.	Mondo	Serval cat	Felis serval
37.	Ndimba	Blue Duiker	Cephalophus monticola

Sn.	Swahili Name	English Name	Scientific Name
38.	Ngiri (mbango)	Warthog	Phacochoerus aethiopicus
39.	Nguchiro	Mongoose	Viverridae
40.	Nguruwe	Bush-pig	Potamochoerus porcus
41.	Nguruwe-kuu	Giant Forest Hog	Hylochoerus meinertzhageni
42.	Nsya (Ngorombwe)	Common Duiker	Sylvicapra grimmia
43.	Nunguri	Porcupine	Hystrix galeata
44.	Nyamera	Topi	Damaliscus korrigum jimela
45.	Nyani-mwekundu	Olive-Baboon	Papio anubis
46.	Nyani-njano	Yellow Baboon	Papio cynocephalus
47.	Nyati (mbogo)	Buffalo	Syncerus caffer caffer
48.	Nyegere	Ratel (h.b.)	Mellivora capensis
49.	Nyumbu-kidevu cheupe	Wildebeest (w.b.)	Connochaetes taurinus albojabatus
50.	Nyumbu-kusi	Nyasa Wildebeest	Connochaetes taurinus taurinus
51.	Nzohe	Sitatunga	Tragelaphus spekei
52.	Paa (suni)	Pigmy antelope	Nesotragus moschatus
53.	Palahala (mbarapi)	Sable Antelope	Hippotragus niger
54.	Pelele (wibari)	Tree Hyrax	Dendrohyrax aboreus
55.	Pimbi (kwanga)	Rock Hyrax	Heterohyrax/procavia
56.	Pofu (mbunju)	Eland	Taurotragus oryx
57.	Pongo (mbawaa)	Bushbuck	Tragelaphus scriptus
58.	Pundamilia	Zebra	Equus barchellii
59.	Sheshe	Puku	Adenota vardoni
60.	Simba	Lion	Panthera (Felis) leo
61.	Simba-mangu	Caracal	Felis caracal
62.	Swalagranti	Grant's Gazelle	Gazella grantii
63.	Swalapala	Impalla	Aepyceros melampus
64.	Swalatoni	Tomson's Gazelle	Gazella thomsonii
65.	Swalatwiga	Gerenuk	Litocraneous walleri
66.	Sunguru	African Hare	Lepus capensis
67.	Tandala-mkubwa	Greater Kudu	Strepsiceros strepsiceros
68.	Tandala-mbogo	Lesser Kudu	Strepsiceros imberbis
69.	Taya (Kihea)	Otibi	Ourebia ourebi
70.	Tembo (ndovu)	Elephant	Laxodonta african
71.	Tohe-kusi	Southern Reedbuck	Redunca arundinum
72.	Tohe-milima	Mountain Reedbuck	Redunca fulvorufula
73.	Tohe-ndope	Bohor Reedbuck	Redunca redunca
74.	Tumbili	Vervet Monkey	Cercopithecusioethiops

FOURTH SCHEDULE

(Section 70)

DANGEROUS ANIMALS

Sn.	Swahili Name	English Name	Scientific Name
1.	Chui (Linnoeus)	Leopard	Panthara pardus
2.	Faru (Linnoeus)	Rhinoceros	Diceros bicornis
3.	Kiboko	Hippopotamus	Hippopotamus amphibius (Linnaeus)
4.	Nyati (mbogo) (Sparraman)	Buffallo	Syncerus caffer
5.	Simba (B)	Lion	Panthera leo (Linnaeus)
6.	Tembo (ndovu) Africanalumenbach	Elephant	Laxodonta

**UGANDA COUNTRY
REPORT**

EXECUTIVE SUMMARY

This study was undertaken by Ugandan legal experts as part of the initiatives of the three East African states to set up a uniform wildlife legislation. It highlights some of the international and regional treaties and conventions relating to wildlife management which Uganda is committed to observe and implement. The study also highlights the need for Uganda to give the requisite force of law to the salient provisions of these international and regional instruments, notable of which is the CITES.

The study makes comprehensive examination of Uganda's policies and legislation relating to wildlife protection and conservation. Uganda has put in place strong legal safeguards through her legislation, namely, the Constitution, the National Environment Statute, the Wildlife Statute and other sectoral laws to protect and conserve her natural resources.

To ensure that the country implements her international obligations in the field of wildlife management, Uganda has enacted the Ratification of Treaties Act, 1998. This Act enables Uganda to give the necessary force of law to the various regional and international instruments discussed in this study, and many more, which are related to the subject under study.

The salient municipal enactments discussed in this study include the Constitution of the Republic of Uganda, 1995. Article 123 of the Constitution empowers the President or a person authorized by him to make treaties, conventions, agreements or other arrangements between Uganda and any other country or between Uganda and any international organization or body in respect of any matter. Section 3 (1) of the National Environment Statute enjoins NEMA to promote international cooperation between Uganda and other states in the field of environment. The Statute further provides for linkages between lead agencies in respect to management of the country's natural resources. Section 91 of the Uganda Wildlife Statute, 1996, requires Uganda to give the force of law to the conventions, treaties or any part thereof, to which Uganda is a party. These enactments coupled with the Ratification of Treaties Act, 1998 give Uganda the impetus to join her sister East African states in the promulgation of a uniform wildlife legislation.

CHAPTER ONE

1.0 INTRODUCTION

Uganda's cultural, social, scientific, economic and aesthetic are characterised by a rich natural heritage of wildlife. The country is strategically located in an ecological zone that lie between the dry East African Savanna and the wet Western African rainforests. It also lies astride the migratory routes of animals between the West and East, and between the North and South of the continent (NEAP Report, 1995). Because of her geographical location, Uganda is one of the African countries with the greatest diversity of animal and plant species. This country's rich fauna and flora need to be conserved and preserved for the ultimate benefit of the present and future generations. Currently, the country's wildlife resources are being threatened with reduction and/or extinction mainly due to activities of humankind. This phenomenon has been aggravated by the modern economic and development trends in the country which have resulted into the alteration of the natural habitat, the home of wildlife resources.

1.1 Background

Traditionally, the country's natural wildlife was protected by customary norms which attributed human existence to the dieties that were closely associated with wildlife species, both animal and plant species. To a great extent, there customary norms, which were the virtue of life across generations ensured that wildlife species coexisted with human kind without much threat from the latter. Hunting, was too, regulated by and associated with rituals to the extent that the killing of an antelope, for instance, was celebrated by the community that hunted and killed it. Since hunting like any other activity was communal, instances of poaching were rare or unknown.

Towards the close of the last century, foreign religions together with European rule were introduced in the country. Most of these religions, especially Christianity condemned customary norms including African traditional religions, which, hitherto, acted to maintain an ecological balance due to the societies beliefs that their gods either were the living wildlife species or at least they were manifest in those species in a special way. In Uganda, the rituals associated with the *Nakayima tree* in Mubende District is common knowledge even to the young generations. Most tribes have tortems, which are directly linked with wildlife, in particular, animal species. The introduction of christianity, which came along with "modern laws", therefore, was to act as a catalyst towards the reduction and probably extinction of the country's wildlife species.

The first half of this century was characterised by the enactment of various laws to regulate human activities in relation to wildlife. These laws sought, albeit in an artificial way, to regulate human activities that would take place in areas which were known to have abundant wildlife species. The laws, in effect, sought to regulate the hunting and killing of wildlife species. This, it is asserted, was the undesirable aspect of the law because it did not only alienate wildlife species from humankind, but also enlightened him/her to hunt and kill animals, not only for home consumption, and perhaps rituals, but also for sale of their trophies.

The laws which were enacted by the colonial government and later adopted wholesale by the new independent Uganda in respect to wildlife protection included, The National Parks Act Cap 227, promulgated in 1952, and the Game (Preservation and Control) Act, Cap 226 as amended by Decree 13 of 1975, promulgated in 1959. The Uganda National Parks Act, created ten National Parks, which were

gazetted as areas of strict protection of wildlife species (See **Table 1**)

Table 1: National Parks

National Parks	Area Km ²
Queen Elizabeth National Park	1,978
Murchison Falls National Park	3,848
Rwenzori Mountain National Park	996
Mt. Elgon National Park	1,147
Lake Mburo National Park	260
Kidepo National Park	1,344
Mgahinga Gorilla National Park	33.7
Semliki National Park	220
Kibale National Park	766
Bwindi Impenetrable National Park	331

The Uganda National Parks Act basically relied on the concept of preservation rather than sustainable utilisation of the wildlife species by the human communities, that hitherto coexisted with these species.

On the other hand, the Game (Preservation and Control) Act, gazetted areas as Game Reserves (**Table 2**), controlled hunting areas (**Table 3**) and game sanctuaries (**Table 4**). To some extent, the Game (Preservation and Control) Act, permitted controlled hunting of wildlife species. This hunting was regulated by the Game Department, based on scientific research and studies which provided the Department with data on the location, number and age of the species. A licence to hunt and kill any wildlife species was, therefore, regulated by the knowledge of these parameters. Because of that, it was possible for the Government of Uganda to come up with appropriate data that a certain wildlife species was threatened or endangered and, therefore, required strict or regulated control. It was this scientific knowledge that enabled the country to place certain species on the list of schedules to the Convention on International Trade in Endangered Species (CITES). It is doubted, whether at the time of writing this report, Uganda is endowed with adequate knowledge about the location, numbers and ages of her animal species mainly because the country has been characterised by political strife in most parts of the country which are natural habitats for most of the wild animals, and hence no census has been undertaken in those areas recently.

Table 2: Game Reserves

Game Reserve	Area km ²
Ajai	158
Bokora Corridor	2,056
Bugungu	520
Karuma	820
Katonga	208
Kibale Forest Corridor	560
Kigezi	330
Kyambura	157
Matheniko	1,604
Pian-Upe	2,314
Toro	555
Total	9,282

Source: Table 2.4 NEAP Report, 1995.

Table 3: Controlled Hunting Areas

Name	Area km ²
Buhaka	18
East Madi	1,749
Kaiso Tonya	227
Kanema	241
Katonga	2,273
Lipau	899
Napak	225
North Karamoja	16,676
Sebei	2,531
Semliki	503
South Karamoja	8,972
West Madi	831
Total	35,145

Source: Table 2.5 NEAP Report, 1995

Table 4: Game Sanctuaries

Name	Area km ²
Dufite, Otze and Mt. Kei	489
Entebbe	52
Jinja	8
Kazinga	207
Malaba	31
Zoka Forest	207
Total Area	994

Source: Table 2.6 NEAP Report, 1995

During the NEAP process, it was identified that the country's laws then were inadequate to ensure adequate protection and sustainable management of the country's wildlife resources both *in-situ* and *ex-situ*. It was, therefore, recommended that new legislative measures be undertaken to strengthen the existing legal requirement then so that the country's wildlife resources, including those that migrate into country seasonally would be adequately managed.

1.1.2 Status of Wildlife before 1996

The year 1996 is a historical one in Uganda in as far as management of wildlife resources is concerned. This was the year in which the current Uganda Wildlife Statute, 1996, was enacted. The Statute ushered a new era of legal regime in Uganda in the field of management of wildlife resources.

Before 1996, Wildlife management was taken to be synonymous with the areas which were gazetted and controlled as wildlife areas. It was not viewed from the perspective of sustainable management of the resources themselves. To some extent, however, the law in place

Parks illustrates the fact that throughout its life, the old legal regime had failed to cope with the management of the country's wildlife fauna, probably due to institutional conflicts that existed between the Trustees of the Uganda National Parks and the Game Department. To a large extent, it is noted, inadequate protection of wild fauna could be attributed to two main factors in addition to the institutional issue raised, viz, lack of community involvement in the management of the wildlife resources due to the nature of the laws in place and secondly, the political strife in most parts of the country that facilitated poaching of these species.

From Table 5, it would be possible to tell which wildlife species was endangered, and basing on a scientific study carried out, it would be possible to determine what factors were responsible for the threat or extinction of that species and then project measures necessary to ensure that in future, the species would either be restocked, if it was extinct and could be found elsewhere, or could be protected until it multiplied in such numbers that would permit its controlled hunting.

Table 5: Population changes of selected mammalian fauna in the Queen Elizabeth and Murchison Falls National Parks

Species	Queen Elizabeth National Park		Murchison Falls National Park	
	1960-1970	1991	1960-1970	1991
Hippopotamus	15,000+	2,500	14,000	7,600
Elephant	2,500	225	13,550	308
Buffalo	16,000	5,000	25,000	1,600
Topi	4,500	500	-	-
Giraffe	-	-	200	80
Black Rhino	-	-	200	0
White Rhino	-	-	16	0

Source: Table 2.7 Page 31 NEAP Report, 1995.

ensured that species, especially those in National Parks were protected by establishing a policing mechanism in these parks to guard against poaching. By 1996, however, it had been realised that wildlife species in most areas were threatened by human activities associated with settlements which had been established in areas hitherto gazetted as wildlife protected areas. To that extent, therefore, wildlife species were threatened. An examination of Table 5 below which shows figures of selected populations of mammalian fauna in the Queen Elizabeth and Murchison Falls National

At a national level, the Constitution of the Republic of Uganda, 1995, the National Environment Statute, 1995 and the Uganda Wildlife Statute, 1996, have put in place legal measures for the preservation of both the environment and wildlife.

At the international level, preservation of wildlife is catered for by a number of legal instruments which have culminated into the World Conservation Strategy (WCS) by the International Union for the Conservation of Nature and

Natural Resources (IUCN) and the World Wildlife Fund (WWF). The strategy entrenched in the World Conservation strategy, namely, the establishment of wildlife protected areas within which species, communities and ecological processes can be preserved under conditions of minimum human influence have been incorporated in the Uganda Wildlife Statute, 1996.

Uganda is richly endowed with a lot of wild flora and fauna. The country is also richly endowed with conducive natural environment, in terms of climate, vegetation, mountains and water bodies. Of the 235,800 km² of the country's total area, 39,460km² is covered by water, largely fresh water bodies; 8.1% of the total land area is covered by natural forests and approximately 10% or about 21,000 km² of the total land area is gazetted as principle protected areas for wildlife.

In summary, loss of wildlife in the pre-1996 period could be attributed to several factors including, poor legal mechanisms that alienated the local communities from the wildlife communities, this alienation meant that wildlife species became enemies of humankind and hence would be killed at sight, whether the killing was calculated or not. Because of this fact, both poaching and encroachment on protected animals and areas increased and was rampant. Due to weak legal mechanisms, also, export of wildlife species and their trophies could not be checked. This meant that those species of wild animals that had high demand on the international market were to suffer to extinction levels.

Due to the increase in population pressure on the available arable land, the forests, which act as natural habitats for wildlife were cleared to levels that drove off the wild animals from these areas. Since some of these animals could not survive in other habitats, they died naturally, quite a good number of them were also killed as they strayed on people's rable land in search of new habitats.

Encroachment on the natural habitat extended from forested areas to wetlands. Those species, which could only survive in specific conditions, only found in wetlands perished. A good example of wetland reclamation in Uganda is the Kigezi (Kabale) land reclamation projects which started in the 1960s.

In conclusion, therefore, it is noted that the historical measures (customary norms), provided a conducive atmosphere for the sustainable management of wildlife resources in Uganda. The introduction of English law in Uganda, alienated wild animals from humankind, and, therefore, created a rift between the two leading to a situation whereby wild animals would be wantonly killed by humankind. The legal regime which was introduced in the first half of this century, together with the institutional safeguards failed to guarantee sustainable management of the country's wildlife resources.

The current national initiatives, which will be discussed in detail in the subsequent chapter have attempted to solve the problems identifies, but as will be clearly observed in that discussion, not all the loopholes identified have been sealed. It will be strongly recommended at the end of the report that even the current legal regime should be revised if the country's rich natural wildlife wantage is to be adequately conserved.

1.3 Scope of the Review

This study reviews all wildlife related legislation in Uganda and identifies gaps in the wildlife laws reviewed together with the institutional framework. It also reviews relevant international and sub-regional instruments that directly affect the management of wildlife both within Uganda and across borders. The review makes several recommendations to be adopted both at a national and sub-regional level if wildlife resources are to be adequately managed.

CHAPTER TWO

2.0 REVIEW OF POLICIES AND LEGISLATION RELATING TO WILDLIFE MANAGEMENT

Uganda has witnessed the emergency of new policies and legislation which attempt to fundamentally change the use and management of wildlife. On top of these national laws and policies, there are international conventions and treaties on wildlife which Uganda has ratified and has obligations to observe and enforce.

However, much as there are these laws and policies in place, there still exist several gaps, inadequacies, uncertainties and loopholes in these laws and policies which will continue (unless action is taken now) to act as constraints to wildlife protection.

2.1 The Wildlife Policy 1995

A new wildlife policy was put in place in November, 1995 by Ministry of Trade, Tourism and Industry (formerly known as the Ministry of Tourism, Wildlife and Antiquities). This policy document was translated into law, the Wildlife Statute, 1996. The policy was designed to provide guidelines for developing a new approach to wildlife conservation in Uganda. The policy highlights the mission of Uganda Wildlife Authority as to:

"conserve in perpetuity the resources within the National Parks and other wildlife areas to enable the people and the global community to derive ecological, economic, aesthetic and education benefits from Wildlife."

The policy intends to involve the people of Uganda as widely as possible in the conservation of the nation's wildlife. It

also intends to develop tourism, improve coordination between Ministries, plan for improvement of Parks and Wildlife reserves, provide increased revenue from wildlife, control trade in wildlife, adhere to international standards, improve the organizational structure and legal foundation, encourage research and planning, encourage education in wildlife conservation and encourage problem animal control. This policy is clearly manifested in the Wildlife Statute which attempts to implement many of its objective.

The main problem with this policy, however, is that it has never been gazetted in the Uganda gazette as an official document. The purpose of the gazette is of course to bring to the attention of the public intended goals and objectives of a particular government department. Thus, many people have remained ignorant of the policy.

There are other uncertainties related to the policy on wildlife trade. The policy asserts that Uganda is currently not permitting any trade internal or external in wildlife species or their products. That this should remain so until there is clear evidence that wildlife population could stand it. To date, no scientific studies have been undertaken to come out with specific details about wildlife populations in the country. The ecological studies which are undertaken by the Ecological Institute and Makerere University are marred by the political instabilities in most parts of the country such that it is not possible to get accurate results about wildlife populations for the whole country. Lack of scientific evidence and delayed promulgation of laws to support and implement the policy requirements has put wildlife resources at stake. The problem is accentuated by the fact that old schedules to the Game (Preservation and Control) Act (repealed) permitted controlled hunting of wildlife species. There is, therefore need to promulgate

new laws which should be in line with the policy. It is also recommended that once this has been done, the Minister should expedite the process of amending Schedules One and Two of the CITES Regulations attached to this report.

2.1.1 Uganda Wildlife Policy Implementation Framework

The policy provides that the overall responsibility of overseeing the management of wildlife and wildlife protected areas shall vest in the Executive Director of Uganda Wildlife Authority (UWA).

It defines the functions and makes clear identification and division of the roles of various organs of UWA. The various organs of UWA are, the Board of Directors, the Executive Director and Staff and Wildlife Committees.

The policy outlines the general management measures of the country's wildlife resources. It provides for commercial arrangements between UWA and private entities. The lost of these arrangements include, concessions, management contracts and joint ventures. UWA is provided as the link between the wildlife sector and other sectors in the field of management of the environment.

The policy also establishes the concept Protected Areas which it applies to National Parks, Wildlife Reserves, Wildlife Sanctuaries and Community Wildlife Areas. The nature of each of these protected areas is expected to be determined by subsequent Regulations. In addition to protected areas, the policy provides for protection of certain species of wild animals and wild plants either fully or partially. This forms the basis for promulgating Regulations for protection endangered and rare species, whether they are within or without protected areas.

This policy framework is innovative in various aspects. By requiring that a law be made, for the first time to involve the community in the management of wildlife, both *in-situ* and *ex-situ*, it guarantees survival of the rare and endangered species. This is achieved by UWA establishing collaborative arrangements with the communities for this purpose.

2.1.2 The Forestry Policy

The current Government forestry policy is to manage forest resources sustainably in protected areas, on public and private land and to ensure increased forest productivity by the private land and to ensure increased forest productivity by the private sector and local communities.

The policy goes beyond the provisions of the Forest Act, Cap 246, by providing for the local communities to participate in the management of forestry resources on both public and private land. It encourages conservation and hence sustainable management of the forestry resources, rather than the old concept of preservation, which, because of its strict nature, paved way for encroachment on the forestry resources.

The new forests policy is important in the management of wildlife resources since, by involving the public in the management of the forestry resources, it increases their existence. This is achieved because the policy indirectly discourages encroachment on the forests, which provide a natural habitat for wild animals. By discouraging encroachment on the existing forests, and encouraging the local community to manage their own forests, the policy increases the "home" for wild animals.

2.1.3 The Rangeland Policy

This policy is intended to manage Uganda's rangelands within their capacity to support livestock and wildlife. In so doing, the policy encourages co-existence of livestock and wildlife. To a great extent, this policy has been successfully implemented in the Lake Mburo National Park and neighbouring areas.

By permitting and encouraging the dual use of the rangelands in order to accommodate both the requirements of livestock owners and the Government, which manages wild animals for the benefit of the people, the policy ensures that wildlife species found in rangelands are not endangered. Each category of stakeholder in the rangelands exploits them to his/her satisfaction without endangering the interests of the other.

2.1.4 The Agriculture Policy

This policy is important in as far as management of wildlife is concerned because agricultural activities naturally compete for land with wildlife. The policy is designed to increase agricultural output through mechanisation and adoption of farming methods and systems that conserve and enhance land productivity. By adopting farming methods which will give higher yields per square unit of land, the policy ensures that the acreage of land cleared for agriculture is reduced and hence leaves large areas for wildlife.

It is noted that most Ugandans practice traditional methods of farming which include shifting cultivation and digging up hill, methods which do contribute to environmental

degradation. It is, however, hoped that once most Ugandans adopt better methods of farming in accordance with this policy, land for conserving wildlife will increase.

2.1.5 *The Wetlands Policy*

The Ugandan Wetland Policy aims at improving social and economic development which enhances environmental quality and resource productivity on a long term ecological balance and to protect transport and eco-tourism. The policy is geared towards promoting the conservation of wetlands so as to sustain their ecological and socio-economic functions for the present and future generations.

By encouraging conservation of the wetlands, the policy ensures that there is sustainable utilisation of the wetlands and the wildlife resources which are found in such an environment.

The policy, therefore, contributes to the reduction of dangers posed to wildlife, namely threat to their extinction, if the wetlands are mismanaged.

2.1.6 *Land Policy*

The Land Policy for Uganda, which has already been transformed into law, the Land Act, 1998, aims at guaranteeing security of tenure for all people in Uganda, especially the **bona fide** occupants of land, women and children. It also aims at encouraging proper land use through planning or zoning. Its objectives are expected to be achieved through encouragement of landowners/occupants to adopt better methods of harnessing the environment.

By guaranteeing security of tenure to land owners and occupants, the policy treats land as private property, which must be guarded jealously against degradation. In so doing, the policy ensures that those resources on land including wildlife are not threatened. For instance, once one is guaranteed ownership of land, such a person cannot practice poor methods of farming as doing so would be to his/her detriment.

2.1.7 *The Decentralisation Policy*

This policy is now manifest in the Local Government Act, 1997. It aims at decentralising to the lower levels of the local governments functions; power; and responsibilities and services ordinarily a preserve of the Central Government. By decentralising such, the policy encourages democratic participation in the management of the country's natural resources, which include wildlife.

The policy is, therefore, friendly and encourages, in accordance with the provisions of the Local Governments Act, the National Environment Statute and the Uganda Wildlife Statute sustainable management of wildlife resources.

In conclusion, the overall policies reviewed encourage sustainable management of wildlife resources. It is noted, however, that to achieve the desired goal, the Government must ensure that it puts in place both legal and institutional mechanisms which can guarantee coordination of the various players in the management of the environment. If this is done, then these policies will enhance the conservation of the country's wildlife resources.

2.2 **Wildlife Legislation**

2.2.1 *The Constitution of the Republic of Uganda 1995*

The Constitution contains a number of novel provisions on the environment which have direct impact on wildlife protection. In its National Objectives and Directive Principles of State Policy, the Constitution makes the protection of the environment one of the national objectives and principles of state policy. Clause (ii) of objective XXVII in particular provides that:

“the utilisation of the natural resources of Uganda shall be managed in such a way as to meet the development and environmental needs of present and future generations of Uganda”.

Clause (IV) of the same objective is to empower the state, including Local Governments to create and develop, parks, reserves and recreational areas and ensure the conservation of natural resources and promote the rational use of natural resources so as to safeguard and protect the biodiversity of Uganda.

Article 245, empowers parliament to provide through law, for measures to manage the environment and promote sustainable development as well as to promote environmental awareness. Parliament also has a duty under Article 237 (2) (b) to make laws empowering the government or local government to hold in trust for the people and protect National Parks, Game Reserves, Forest Reserves and any area/land to be reserved for ecological and touristic purposes for the common good of all citizens.

The 1995 Constitution of Uganda is, therefore, so innovative in as far as natural resource (wildlife) conservation and protection is concerned. It goes a long way to make natural

resource conservation and protection a 'constitutional' issue.

It caters for conservation, sustainable utilisation, public awareness and public participation in environment management, by providing for the enactment of adequate national legislation for the purpose and ensuring that the government adheres to its commitments on respect to international treaties and conventions²²¹.

The Constitution, therefore, lays a firm background for the conservation and protection of wildlife at a national and international levels.

2.2.2 The National Environment Statute, 1995

The National Environment Statute provides for Wildlife protection. Although, the Statute is not specific on Wildlife, it nevertheless has provisions which are related to the protection and sustainable use of wildlife. The main objective of the National Environment Statute is to further the principles of environmental management by facilitating the conservation and enhancement of the environment. Section 73 (2) is vital for the protection of Wildlife.

The Statute creates the National Environment Management Authority (NEMA) which is charged with the duty to coordinate, monitor and supervise all activities in the field of the environment. It coordinates relevant Ministries, departments and agencies of government²²². Therefore, the Wildlife Authority also falls under the umbrella of NEMA. This is a step towards actuating a more holistic approach to environmental issues in the sense that Wildlife is not in isolation from other components of the environment.

The National Environment Statute provides for conservation of biological resources in situ²²³ and ex-situ. NEMA is empowered to issue guidelines for land use methods which are intended for the conservation of biological diversity. The Statute further provides the selection and management of protected areas, selection and management of buffer zones near protected areas and other many wildlife related areas.

However, the problem with the Statute remains in the fact that it has not been implemented in relation to wildlife. The guidelines for land use methods, buffer zone management, to mention but a few have not been issued irrespective of the fact that the Statute has been in force for three years. The Statute is, however, important in the

management of wildlife resources by requiring that developers of projects which are out of character with the environment should carry out Environment Impact Assessment (EIA) before being permitted to undertake projects. Currently Statutory Instruments, the Environmental Impact Assessment Regulations, 1998 have been promulgated. It is noted that the EIA initiatives supplement the mechanisms envisaged under the Wildlife Statute (see S.16) which provides for EIA.

2.2.2 (b) The Environmental Impact Assessment Regulations 1998

These Regulations were made pursuant to the provisions of the National Environment Statute (NES) which require project developers to undertake Environmental Impact Assessment for their projects. The Regulations impose a strict duty on all developers who are required to carry out EIAs for their projects under NES. They lay down the procedures to be adopted by persons carrying out EIAs, right from the very initial stages of the project through to the life of the same.

The salient provision of these Regulation is the aspect of public participation in the EIA process. An enlightened public will automatically reject to consent to the undertaking of a project which has or is likely to have adverse effects on the wildlife resources. Therefore, these Regulations are key to the management of the country's wildlife resources.

2.2.3 The Water Statute, 1995

The water statute provides for the use, protection and management of water resources and supply. It also provides for the constitution of water and sewerage authorities and seeks to facilitate the devolution of water supply and sewerage undertakings. The Water Statute is part of environmental legislation Uganda has. Under this Statute, trees and shrubs may be removed for the purpose of accessing waterworks²²⁴. In, its enforcement Mechanism, there is a possibility to do harm on wildlife where it is impossible to avoid it.

2.2.4 The Uganda Wildlife Statute, 1996

This law came into force on 1st August 1996. The Statute repeals the National Parks Act (Cap 227) and the Game (Preservation and Control) Act (Cap 226). It amends the

²²¹ See Article 123.

²²² Sections 5 and 6.

²²³ Section 43

²²⁴ Section 102.

2.3 Institutional arrangements for Protection of Wildlife in Uganda

The Uganda Wildlife Statute, 1996, was passed after a lot of consultations had been carried out. The Statute established the Uganda Wildlife Authority (UWA) which replaced the Game Department and the Uganda National Parks Board of Trustees. UWA is charged with the task of managing wildlife resources in Uganda both **in-situ** and **ex-situ**.

UWA is located in the Ministry of Tourism, Trade and Industry. The Supreme organ of UWA is the Board of Directors. The administrative functions of the Board are executed by the Executive Director of UWA. The Executive Director is assisted by other staff appointed in accordance with the provisions of the Statute. The Statute establishes Wildlife Committees which assist the Executive Director in the planning and management of the various functions laid down in the Statute. UWA ensures that management of wildlife is maintained by coordinating with the National Environment Management Authority and other lead agencies established in various sectoral laws relating to the management of the environment.

By combining and putting the functions which hitherto were performed by two institutions, namely the Game Department and the National Parks Board of Trustees, under one management, the Uganda Wildlife ensures that departmental weaknesses are eliminated. UWA, therefore, has a wide mandate of managing resources, which were managed under different heads. In so doing, UWA ensures that the country's wildlife resources are sustainably managed.

2.4 Inadequacies and Loopholes in the Wildlife Statute

Although, the Wildlife Statute is innovative in many aspects, it nevertheless has several inadequacies and loopholes. A case in point is the interpretation section which omits several words which required statutory interpretation. Words like "possession" which had been interpreted in the repealed Game (preservation and control) Act, was not given any statutory meaning. Terms like "ranching", "farming", and even "utilisation of wildlife" required statutory interpretation. These are new concepts in Uganda's law and present problems of interpretation.

The offence sections have some loopholes too. It is not clear whether utilisation of wildlife without first obtaining a grant of use rights is an offence. Section 31 which the Wildlife Authority would use to charge offenders is quite ambiguous. It states:

"no person may engage in any activities of a like nature which involve utilisation of wildlife and wildlife products without first obtaining a grant of wildlife use rights".

The word "may" appears to have discretionary and not a mandatory tone in the section. If it was intended to be an offence, it would have included words like "it shall be an offence". This was a case of poor drafting of the law rendering several acts which should be offences not to be so. The Statute does not define "vermin", instead under section 58, it empowers the Board of Trustees of Uganda Wildlife Authority within a year to declare some animals as vermin. Three years already after the Statute was enacted have lapsed but no animals have been declared vermin due to this ambiguity.

The Wildlife Statute does not have prohibited methods of hunting non-protected species. This could mean that vermin control can be carried out of proportion by using any means. There should be prohibition on hunting any animal by means of snares or poison or poisoned weapons unless authorised by the Minister. There is need that bye laws made under the Wildlife Statute should incorporate the prohibition section to this effect. If this is not done, farmers may resort to quick killing of vermin or other unprotected animals by means such as snaring, poisoning or using poisonous weapons which may affect non-targeted species or result into maiming the animals.

There is need for immediate implementation of laws. The Wildlife Statute under Section 28 requires the Minister responsible for Wildlife to declare any species of wild plant or animals as protected species. It is now over two years since the statute became law but no single species have been declared protected species under the Statute.

The Minister responsible for wildlife should ensure that those provisions of the Wildlife Statute which are not yet implemented are implemented by fulfilling his obligations in that respect. Rules and Regulations for the implementation of the Statute need to be quickly made. Protected and vermin animals should be declared. The schedules to the Act should be able to accommodate a wider spectrum of endangered species not only of listed wildlife but also valid plants. Animals such as crocodiles should appear in the Schedule because they need urgent attention. The Statute adopts schedules of the repealed Game (Preservation and Control) Act. Some of these Schedules were made over thirty years ago.

Fish and Crocodiles Act (Cap 228) by deleting from it all provisions in reference to crocodiles and bringing the management of crocodiles under the Wildlife Statute.

This Statute, however, saves statutory instruments made under the Acts repealed or amended and also schedules to the Game (Preservation and Control) Act which were in force immediately before the commencement of the Wildlife Statute, until amended by statutory instruments made under the Statute.²²⁵

The Statute introduces a number of innovations regarding the management and use of National Parks and use of wildlife in Uganda. It abolishes the Game Department and the National Park Board of Trustees; the two agencies previously charged with the management of wildlife resources. It replaces them with a unified service, the Uganda Wildlife Authority (UWA)²²⁶. The Authority is charged with the management of wildlife within and outside protected areas. The Statute, therefore, solves the issue of departmental conflicts that were created by the old legislation by making wildlife management to be carried out by two separate departments.

The Wildlife Statute gives a wide definition of wildlife unlike the old legislation which mainly focused on animals. Under the Wildlife Statute, wildlife includes wild plants or wild animals of a species native to Uganda and includes wild animals which migrate through Uganda²²⁷.

The Statute opens the arena of conservation to the private section. It allows the Executive Director to enter into any suitable commercial or collaborative arrangement with any person for the management of protected areas to provide services therein and manage species or a class of species of animals or plants²²⁸.

It further provides for wildlife use rights. These are rights to hunt, farm, ranch, trade or use wildlife for educational or scientific purposes or general extraction. The Minister may, also, on the advise of the Board create additional wildlife use rights. The grant of these use rights is accompanied by payment of a prescribed fee. This piece

of legislation also introduces the concept of benefit sharing with the local communities. Under section 70 (4), the Board has a duty to pay 20% of the Park entry fees collected from wildlife protected areas to the Local Government of the area surrounding the wildlife protected areas from which the fees were collected.

The Statute opens the wildlife sector to popular participation. Under schedule 1, out of 15 members of the Board, five of them should be representative of Local Communities. It creates Local Government communities²²⁹. It also retains the requirement of the consultation of local people in cases where the Minister needs to declare some areas as wildlife conservation areas.

Furthermore, the Statute introduces the novel concepts of planning, environmental impact assessment and monitoring as veritable instruments of managing wildlife resources²³⁰.

The Statute also provides for the management of "vermin" and other problem animals²³¹ as well as measures for the licensing of professional trappers and hunters²³² and also makes provision for international trade²³³ in wildlife species.

Another innovative approach is the establishment of a funding mechanism to support the institutional structures. This fund which is to be based on disbursements from Government, fees and donations is expected to provide a convenient source of money to run the Authority²³⁴. The Statute also establishes a Wildlife Appeal Tribunal which hears appeals from the decision of Uganda Wildlife Authority. It is hoped that this tribunal will expedite cases involving wildlife matters.

The Statute, therefore, changes the philosophy of wildlife conservation in Uganda. It moves away from a state centered management system to a system that encourages more public and commercial involvement. This Statute poses wildlife as a sustainable resource. Implementation of the Statute promotes the conservation ethic and eradicates the view that wildlife is the property of nobody for taking and misuse.

²²⁵ Section 94.

²²⁶ Sections 2 and 96.

²²⁷ Section 2.

²²⁸ Section 15.

²²⁹ Section 13.

²³⁰ Sections 16 and 17.

²³¹ Sections 8 - 64.

²³² Sections 50 - 57.

²³³ Sections 66 - 68

²³⁴ Sections 64 - 74

There is need to update these Schedules as the situation on the Schedules do not correspond to what actually is the correct number of those species today. Some species have increased in numbers while others have been reduced drastically. This issue must be addressed soon. When declaring vermin animals, care should be taken to avoid generalisation of species of animals for instance classifying species such as monkeys and baboons as vermin animals because they are the most common types of wild animals which pose a great threat to crops. Only those specific species of animals or individuals in the group of species should be classified as vermin animals. If this is not possible, then the term vermin should be avoided altogether, and only the term "problem animals" adopted in such cases.

In order to effectively control protected animals which are a problem, the Wildlife Authority should consider delegating its functions to lead agencies such as Local Government as it is provided for under section 7 of the Wildlife Statute. This is because the Local Government is usually closer to the people usually disturbed by problem animals. What needs to be done here is to train the Local Government personnel on the methods to be used for controlling such animals and the value of conservation.

The Statute, however, introduces new mechanisms of protecting wildlife, both *in-situ* and *ex-situ*. The aspect of use rights is, in particular is a good idea which will guarantee that wildlife resources are utilised sustainably whether in protected areas or on private land.

2.5 The Local Governments Act No. 1 of 1997

The Local Governments Act established a decentralised system of Government based at the District as the lowest basic administrative unit. Below the District, the Local Council III or the sub-county level is the main unit of administration. There are also lower local councils, I and II.

The Constitution of the Republic of Uganda empowers the District Councils and lower councils or lower local units to exercise functions specified in its Sixth Schedule if such are delegated to them by the Government or Parliament²³⁵.

The functions and services specified in the Sixth Schedule of the Constitution are ordinarily a preserve of the Government. They include, land, mines, minerals and water

resources and the environment; National Parks, Forest and game reserve policy, and national research policy.

Once these functions and services are delegated to the District Councils, Line Ministries are expected to inspect, monitor and where necessary offer technical advice, support and supervision and training within their respective sectors.²³⁶ The National Environment Statute establishes a District Environment Officer who among several of his duties is expected to liaise with NEMA on all matters relating to the environment. This officer is expected to work hand in hand with the Local Environment Committees in the performance of their functions provided for in the Statute.²³⁷

Some of the functions such an officer is expected to perform is to offer technical advice to local councils on matters related to wildlife which falls within their jurisdictions as envisaged under Section 14(4) of the Uganda Wildlife Statute. Under this Section the Executive Director of Uganda Wildlife Authority (UWA) is expected to seek advice from the district council within whose area the wildlife protected area falls any proposals to include in the wildlife management plan at a national level.

From this brief discussion, it becomes evidently clear that Local Governments established under the Local Governments Act, 1997 play a vital role in management of the environment, wildlife in particular. Therefore, the Local Governments Act, 1997 is one of the most important pieces of legislation in Uganda that regulate the conservation of wildlife resources and involve the public in the management of these resources. Public participation in the management of wildlife resources enhances their conservation. This aspect rhymes with what is envisaged under the Uganda Wildlife Policy, namely, to involve the public in the management of the country's wildlife resources.

2.6 The Ratification of Treaties Act: Act No. 5 of 1998

This is an enabling Act. It lays down the procedure to be followed in ratifying a treaty by the Government of Uganda. A treaty under this Act is defined to include a convention, agreement or other arrangement made under Clause (1) of Article 123 of the Constitution. Article 123 (1) of the Constitution provides that the President or a person authorised by the President may make treaties,

²³⁵ See Article 189(2) of the Constitution of the Republic of Uganda, 1995.

²³⁶ Local Governments Act, op.cit SS 97 and 98.

²³⁷ S. 16 National Environment Statute, 1995.

conventions, agreement or other arrangements between Uganda and any other country or between Uganda and any international organisation or body, in respect of any matter. The Act was made pursuant to Article 123 (2) of the Constitution which mandates Parliament to enact laws to govern ratification of treaties.

Uganda is a party to a number of regional and international treaties which concern preservation and conservation of the wildlife resources. The Ratification of Treaties Act, therefore, is a handy tool in the field of management of wildlife resources. In case any regional treaty or memorandum of understanding is entered into between Uganda and any of her sister states, it will easily be ratified since the procedure for doing so is already laid down in this Act.

2.7 The Land Act, 1998

The Land Act which has recently been enacted provides for the tenure, ownership and management of land; amends and consolidates the Law relating to tenure, ownership and management of land; and provides for the other related or incidental matters. Consistent with the 1995 Constitution, the Land Act provides for four forms of Land tenure; freehold, leasehold, customary and mailo.

The Act has good provisions for the protection of wildlife²³⁸. For instance in accordance with Article 26 and clause (2) of article 237 of the constitution, government or Local Government can acquire land for public use. Public use could mean acquiring land for purposes of declaring it as a wildlife protected area. The Land Act, therefore, reinforces the Wildlife Statute in its bid to strengthen the legal regime in relation to the protection of the country's wildlife resources.

Furthermore the Act has provisions which oblige an occupier of land to manage and utilise the land in an environmentally sound way and in accordance with provisions of the National Environment Statute, the Forests Act, the Wildlife Statute and any other Laws.²³⁹ This, therefore, has the protective effect on wildlife, because wildlife is part of the environment.

The Land Act favours the allocation of rights to private individuals or groups to enjoy wildlife use rights on their land. However, regulations have not been made under this new law to give particular effect to the law in favour of wildlife. It is recommended that regulations be made under

the Act so that its provisions which require to be put in motion by means of regulations become operative.

2.8 The Prohibition of Burning of Grass Decree, 1974

This law prohibits burning of grass except in accordance with the Decree, notwithstanding the provisions of any written Law to the contrary. Enforcement measures are given to the Sub-County Chief who may in writing after consultation with an officer of the Veterinary or Agriculture Assistant authorise controlled burning of grass for a specific purpose.²⁴⁰ The Parish or Sub-County Chiefs are given supervisory powers under the same section. Under section 2 (2), burning of grass in a forest reserve can be authorised by an officer of the Forests Department in writing. Section 2(7) empowers the Minister by statutory instrument to make regulations for:

- (a) the control and prevention or extinguishing of fire;
- (b) the burning of grass in certain areas and at certain times; and generally the carrying out of the provisions of this Decree.

The Decree protects wildlife resources since it prohibits burning of grass, an aspect that might affect wildlife adversely, if not controlled. By controlling the burning of grass, which is one of the natural habitats for wildlife, the Decree ensures that wildlife resources continue to live in those habitat, which they are accustomed thus rendering them less vulnerable.

2.9 The Game (Preservation and Control) Act - Cap. 226

This Act was repealed by the Wildlife Statute, 1996 and, therefore, is no long Law in Uganda. However, section 94 (1) (c) of the Wildlife Statute saves the schedules to the Game (Preservation and Control) Act. Although these schedules would act for the moment, they are quite inadequate and only protect a few wildlife species. For example the schedules do not include invertebrates and wild plants. This was partly because the Game (preservation and control) Act had a very narrow definition of animal as:

“any vertebrate animal, a bird, the young of any vertebrate animal and the egg of a bird”.

²³⁸ Section 43.

²³⁹ Section 44.

²⁴⁰ Section 2 (c).

There is, therefore, need to widen the scope of these regulations so as to reflect the provisions of the Wildlife Statute. The widening of the scope of these regulations, however, requires an adequate scientific study, which has not been undertaken, and hence which must be undertaken soon. For the moment, these regulations remain almost redundant.

2.10 The Fish - Cap 228

This law has been amended by the Wildlife Statute. The crocodiles were removed from the Act and brought under the management of Uganda Wildlife Authority. However, they have not been given the protection status by including them in their schedules. Therefore, the Wildlife Statute which amends the Fish and Crocodiles Act, to this effect, has let crocodile species unprotected by the Law. The Nile Crocodile is an endangered species and in appendix 1 of CITES. This means that since they have been left out of the schedule, they can be hunted or taken freely under section 29 of the Statute without any licence. There is, therefore, an urgent need to declare protected species under the Statute and include the crocodile species on the list of protected species.

2.11 The Forests Act, Cap 246

The Act provides for the protection of forests through the creation of forest reserves in which human activity is strictly controlled. It seeks to control commercial harvesting of forest products through the use of licences²⁴¹.

However, unlike the Wildlife Statute, the Forests Act is quite old, by nature too narrow in scope and content and does not reflect the current reforms in environmental laws in Uganda. The Act emphasizes the commercial value of forests and gives less attention to conservation of wildlife species. The Act, however, remains a veritable tool in the field of protection of wildlife species since most of the wild animals are to be found in forests, for instance the Gorilla, which is found only in Bwindi Impenetrable Forest.

The Forestry Bill, 1999, which is in its advanced stages of completion, however, caters for these loopholes. Once passed by Parliament, it will reflect the current trends and knowledge on wildlife conservation.

2.12 The Plant Protection Act

The Act provides for the prevention of the introduction and spread of diseases destructive to plants. Under Section 3,

the Commissioner for Agriculture is charged with the duty of administration of this Act. Under Section 4, the Minister has power to make rules for the prevention of spread of pests etc.

The Act, however, needs to be updated. There is also need to make subsidiary legislation to make the Act conform with current knowledge of plant quarantine and other protection measures. By protecting plants from destruction by pests, the Act ensures that the natural habitat for wild animals, the vegetation cover is not injured, and hence increases chances of survival of these wild animals. The Act is relevant to wildlife conservation since it protects plants from disease attack. Plants are part of wildlife and also form the basic food resource for wild animals.

2.13 The Animal Diseases Act Cap. 218

The Act provides for the control and prevention of the spread of disease to animals. This law is protective to the animals in the field of Wildlife in as far as it protects them from diseases that would attack them if not controlled. The administration of the Act is vested in the Minister responsible and the Commissioner of Veterinary services and animal industry. The enforcement mechanism, however, needs to be strengthened. Although this Act basically relates to domestic animals, it is noted that some diseases which affect domestic animals, such as foot and mouth disease do affect wild animals as well. By protecting domestic animals from disease attack, therefore, the Act goes a long way to reduce incidence of disease attack amongst wild animals. The Act is very important because it is difficult to treat wild animals if affected by disease. It is a preventive tool in that regard.

2.15 The Animal (Prevention of Cruelty) Act, Cap 220

The Act provides for the prevention of cruelty to Animals. Under section 14, the Minister is empowered to appoint an authorised officer to carry out the provisions of this Act. He may also grant and revoke licences. This law would be protective to wild animals in instances of indiscriminate hunting or use of unauthorised means of trapping or hunting but its enforcement is inadequate. There is need for improvement on the enforcement mechanisms under the Act. The Act is also relevant in instances where individuals are granted permits or licences to rear wild animals or farm them. Once a wild animal is in the hands of an individual then the provisions of this Act can be invoked against such a person if he/she mistreats the animal.

²⁴¹ Section 12.

2.16 The Cattle Grazing Act, Cap 222

The Act makes provisions for the control and regulation of grazing of cattle, to prevent overstocking and overgrazing. The administration of this Act is entrusted upon the Commissioner of the Veterinary Services and Animal Industry, under the direction of the Minister.²⁴² The Minister may by statutory instrument declare an area to be non-grazing area.²⁴³ A non-grazing area can be reserved specifically for wildlife, especially where domestic and wild animals co-exist. This Act, too, requires the improvement in its enforcement mechanism.

2.17 The Animal (Straying) Act, Cap 223

This Act provides for the control of the straying of domestic animals. The power of control is vested in a Police Officer, Veterinary Officer or an Administrative Officer. The Act does not provide for the protection of straying wild animals. The Act is, however, protective to wild animals in cases where sick domestic animals would stray in the wildlife protected areas and spread their diseases they would be infected with to the wild animals.

2.18 The Public Health Act, Cap 269

The Act consolidates the law regarding the prevention of public health. For the sake of good health of persons and or domestic animals, wildlife may be interfered with. For instance the control and prevention of disease may entail the clearance of bush or long grass.²⁴⁴ This Act therefore, needs to take into consideration environmental matters regarding the protection of wildlife. The positive aspects of this Act in relation to wildlife conservation lie in the fact that the Act enforces personal hygiene on individuals, thus protecting the environment from pollution. Pollution of the environment, say water pollution, would endanger the existence of wildlife which survive in such an environment. The Act, therefore, is an important tool in enhancing the environment which is the natural habitat of wildlife.

2.19 Conclusion

In conclusion, therefore, the policies and pieces of legislation discussed together with the institutional framework, in particular under the Uganda Wildlife Statute have both strong and weak points. The strong points in the Wildlife Policy include the requirement that the public participates in the management of wildlife resources, and requiring that scientific studies be undertaken to enhance wildlife conservation. The weak point of the policy is that it assumes too much in terms of scientific knowledge available in respect to wildlife resources. Adequate public participation in the management of wildlife resources require awareness arising, which is provided for in the policy. It is, however, noted that this is an expensive undertaking which Uganda cannot manage without donor funds. In that respect, the policy moves ahead the realities on the ground, and, therefore, needs to be revisited so that it becomes more realistic.

Some of the pieces of legislation discussed in this study are outmoded and, therefore, do not cope with the modern trends of science and technology. In that respect, they fail to address environmental issues which are necessary for the protection of wildlife. Recommendations have been made for their revision and/or amendment. The Wildlife Statute, a recently enacted law, which is the benchmark for the protection of wildlife too has some loopholes. These have been pointed out in the study. They need to be addressed immediately so that the country's wildlife resources are adequately protected.

The Wildlife Statute, however, has good provisions, which if properly implemented can enhance the conservation of wildlife resources. These included the requirement that an environmental impact assessment be undertaken by any developer whose activities may have or are likely to have an impact on the life and existence of wildlife. The requirement that individuals be granted use rights, too, is a good innovation in the law which would ensure monitoring of the activities undertaken in relation to wildlife, especially that managed on individual farms. This kind of monitoring is good in that it ensures the safety of these resources.

²⁴² Section 4.

²⁴³ Section 8.

²⁴⁴ Section 95.

CHAPTER THREE

3.0 A COMPARATIVE STUDY OF OTHER SUB-REGIONAL WILDLIFE POLICIES AND LEGISLATION

3.1 The Tanzanian Policy for Wildlife Conservation

The Policy was approved by Cabinet in March, 1998. The Policy Mission Statement recognises three important aspects, namely; that the importance of wildlife is not only as a source of wonder and inspiration, but an integral part of the country's natural resources and future livelihood and well-being of the people of Tanzania; the acceptance of trusteeship in wildlife for the benefit of future generations; and the need for specialist knowledge, trained manpower, and international cooperation in the conservation of wildlife.

According to this policy, the objectives of wildlife protection in Tanzania are to-

- continue the establishment of Protected Areas on the basis of systems planning;
- stress maintenance and development of a Protected Area network in order to enhance biological diversity;
- promote the conservation of wildlife and its habitat outside core areas (National Parks, Game Reserves and Ngorongoro Conservation Area) by establishing Wildlife Management Areas;
- transfer the management of Wildlife Management Areas to local communities, taking care of corridors, migration routes, and buffer zones and ensuring that the local

communities obtain substantial tangible benefits from wildlife conservation; and,

- prevent illegal use of wildlife throughout the country by taking appropriate surveillance, policing and law enforcement.

The Tanzanian policy, generally aims at involving the people in the management of wildlife within their communities.

Like the Ugandan Policy, the Tanzanian Policy is geared towards sustainable utilisation of wildlife resources. Both policies encourage and promote public participation in the management of wildlife resources.

3.2 The Tanzania Biodiversity (Conservation and Management) Act (Revised Edition) (Draft)

The purpose of this Act is stated as to promote the conservation of biodiversity throughout Tanzania so that its abundance is maintained at optimum levels commensurate with other forms of land-use in order to support sustainable utilisation of biodiversity for the benefit of the people; of Tanzania; the sustainable management of biodiversity conservation areas; the conservation of selected examples of biodiversity in Tanzania; the protection of rare and endemic species of wild plants and animals; ecological acceptable control of problem animals; the enhancement of economic and social benefit from biodiversity management by establishing biodiversity use rights and the promotion of tourism; the implementation of relevant international treaties; conventions, agreements or other arrangement to which Tanzania is a party; and public participation in biodiversity management.²⁴⁵

²⁴⁵ Section 2.

The Act encourages scientific research including monitoring of species status and habitat condition as well as taking into account the views of affected communities. The Act further authorises the introduction of alien species of plants or animals into the wild habitats of Tanzania.²⁴⁶

The Act has a number of similarities with the Uganda Wildlife Statute, 1996. In its Part III, the Act devotes itself to the creation of protected areas and their general restrictions. The Ugandan Statute has similar provisions in Parts IV and V. The Tanzanian Act like the Ugandan Statute, has provisions relating to hunting to wildlife.²⁴⁷ The two sister laws, too, provide for wildlife use rights and generally dealing in wildlife trophies. In particular, the Statutes provide for international trade in wildlife species.²⁴⁸ In a bid to enhance protection of the country's biodiversity, the Tanzanian Act has provisions relating to citizen suits, and empowers any person to commence a civil suit in that behalf.²⁴⁹ The Ugandan Wildlife Statute lacks this aspect, although the lacunae is catered for under the country's Constitution,²⁵⁰ and the National Environment Statute.²⁵¹

Although the two Statutes, the Tanzania Biodiversity (Conservation and Management) Act and the Uganda Wildlife Statute, 1996 appear to approach the problem of wildlife conservation from different angles, the objectives of the two pieces of legislation are more or less similar. This aspect, and several other similarities in these pieces of legislation create a conducive environment for harmonising the two countries wildlife laws, the purpose of this report.

There are, however, some disparities in the two pieces of legislation which call for harmonisation, if the two countries biodiversity is to be adequately protected. These areas shall be discussed after examining the Kenyan legislation.

3.3 The Kenyan Wildlife Policy and Laws

The Kenyan Wildlife Policy, 1996 states that;

“The Government holds in trust for present and future generations nationally and globally the biological diversity represented by Kenya's extraordinary variety of animals, plants and ecosystems ranging from coral reefs to alpine moorlands and from deserts to forests. Special

emphasis is placed on conserving Kenya's assemblage of large mammals found in four other places on earth.”

The policy calls for the harmonisation of land-use planning and policies; coordination of official activities with cross-sectoral effects; integration of administrative jurisdictions over wildlife; increased cross-sectoral collaborative efforts with regard to both environmental planning; and, economic planning and the realisation that biodiversity management must be treated as part of the wider national economic and social goals.

The policy generally encourages community participation in the management of the country's biodiversity. It has a number of similarities with the Ugandan Wildlife Policy, 1995, although the two countries have varied biodiversity, the main difference being created by the fact that Uganda is a land-locked country, while Kenya has a coastline.

The two policies, almost in an equal force, do emphasise collaborative management of wildlife resources and as such encourage community participation in the management of the countries biodiversity. Kenya has got several pieces of legislation relating to management of the country's biodiversity. The central management of wildlife resources in Kenya, however, is centralised and managed by the Kenya Wildlife Service (KWS) a counterpart of the Uganda Wildlife Authority (UWA).

The 1976 Kenya Wildlife (Conservation and Management) Act, Cap 376 combines the former Game Department and the Kenya National Parks into a single agency, the Wildlife Conservation and Management Department under the Ministry of Tourism and Wildlife. KWS was established under the 1989 amendment of the 1976 Act as a parastatal body. KWS has a new approach to conservation and management of wildlife in Kenya.

Kenya is currently in advanced stages of enacting a new law to govern wildlife. This is intended to take into consideration their new policy initiatives of 1996. It is hoped that once Kenya accomplishes this task, the country will have adequate laws for conservation and management of the country's biodiversity. The new law will also address a number of cross-cutting issues in respect to wildlife conservation among the three East African States. These

²⁴⁶Section 3.

²⁴⁷See Part IV of the Tanzanian Act, and Parts VII and VIII of the Ugandan Wildlife Statute.

²⁴⁸See Sections 85 and 86 of the Tanzanian Act and Part X of the Ugandan Wildlife Statute.

²⁴⁹See S.109 of Tanzania Act.

²⁵⁰Article 50 of the Constitution of the Republic of Uganda, 1995;

²⁵¹See Section 4(3) of the National Environment Statute 1995.

include addressing the issue of public participation in the management of migratory species.

3.4 Areas requiring Harmonisation in the pieces of Legislation Governing Conservation and Management of Wildlife in the East African Region

3.4.1 Migratory Species

The three East African countries share boundaries with each other at one point or the other. In particular, the countries share the Lake Victoria, which is a habitat for some wildlife species. Apart from this common boundary feature, Kenya shares a boarder with Uganda on the western part, and Tanzania, on the Southern end. Uganda shares a common boundary with Tanzania on the Southern end of the Country.

Because of these interlocking boundary features, there are a number of wildlife species that move from country to country, crossing the political boundary marks. Some migratory species, for instance cross the Kenya-Tanzania political boundary in search of food and water. Others cross the Tanzania-Uganda boundary and the Uganda-Kenya boundary for a similar purpose.

Because of this phenomenon, there is need for the three East African states to have a common arrangement for the protection of those species that cross from country to country on a seasonal basis. The rationale for this requirement is that although each of the three East African States have fairly adequate laws for the conservation and protection of wildlife, these pieces of legislation differ in the scope and manner in which they protect wildlife in particular jurisdictions. To that end, it is possible that some species may be protected in one state while they may not be so protected in the State to which they migrate.

A harmonisation of the East African Wildlife Legislation would, therefore, ensure that any lacunae existing in the national legislation is adequately catered for.

3.4.2 Traffic in Wildlife Species and Trophies

Cooperation in this field is emphasised in the CITES and the Lusaka Agreement. The pieces of wildlife legislation in the three sister states make it illegal to trade in wildlife species and trophies without a valid permit or licence. These permits and licences can, however, be enforced only in municipal jurisdictions. In that regard, therefore, there is need for the three East African states to have a uniform piece of legislation or measures that will curb or stop illegal trade in wildlife enforced in either of the states,

disregardless of the country origin of the specie or trophy.

3.4.3 Endangered Species List

Because each of the three East African States developed its wildlife legislation at a different time and in different circumstances, some of the countries have provided adequate measures for the protection of the endangered species according to the CITES categorisation; while others have not.

There is need, therefore, for the three countries to have uniform standards for the protection of wildlife so that should a specie transgress the political boundary of a state in which it is ordinarily protected, it should not fall prey of humankind in the country where it migrates because it is not so protected in its latter habitat.

3.4.4 Compliance and Enforcement Institutions

Unlike most municipal penal and procedural laws, environmental and natural resources law, whether national, regional or international reflect a more interdependence aspect, especially in their enforcement.

The rules of customary international law, now codified in the Vienna Convention of Treaties estop countries to invoke principles of their internal legislation, including their constitutions as a reason for failure to comply with international obligations.

However, international law remains applicable to states, not individuals in the states. To this extent, therefore, there is need, to specifically establish compliance and enforcement mechanisms at an international or regional level to facilitate the enforcement of international law across national boundaries. Indeed, the existence of regional or sub-regional conservation arrangements envisages the establishment of mechanisms to enforce and monitor compliance of the regional or sub-regional arrangements.

Strong and effective institutions created by consent of member states to an organisation like the East African Cooperation would achieve this virtue. In case of wildlife conservation, the Lusaka Agreement envisages the creation of a Task Force to monitor and even prosecute all those involved in illegal trade of wildlife resources. Since the three sister East African states are in the process of re-uniting as a cooperation, it would be a justifiable case if they established a joint Task Force to handle matters related to illegal trade and other dealings in wildlife resources so that the regional wildlife resources are protected jointly for the common good of the sub-region.

3.4.5 Cooperation in Wildlife Research

Wildlife resources, like tame animals and plants need to be researched on with a view to establishing their predators, especially diseases and natural calamities like adverse climatic conditions. Research in diseases and other phenomena affecting wildlife resources is very important especially in cases of migratory species. As animals and birds cross the country's political frontiers in search of food and water or natural protection cover, they move with the diseases they would contracted at one time or another. These diseases may be transmitted not only to other wildlife in the country to which they migrate into, but may also be transmitted to domestic animals and even human beings.

To avoid the extinction of the wildlife species and enhance the sub-regional wildlife resources, therefore, it is

necessary that the three East African countries establish a joint research institute in wildlife issues.

3.5 Conclusion

In view of the dire need by the three East African states to enhance management of their wildlife resources, especially the migratory species of animals and birds, there is need for cooperation. Cooperation in research, enforcement and monitoring mechanisms would help these countries to achieve their national objectives in the long-run.

Where there are already established mechanisms, say by agreement, these countries need to explicitly honour their obligations under such arrangements, for it is only through cooperation that each of them can achieve its national goals in respect to wildlife resources, and be able to fulfil its obligations under the international arrangements.

CHAPTER FOUR

4.0 ENFORCING COMPLIANCE WITH CITES

CITES is an international treaty which calls on the Parties to impose international trading restrictions on certain types of trade and on certain species, and also calls on the Parties to document their trade. The obligation created under the convention binds the state Party to it; it does not directly, bind nor create a legal obligation on the citizens of individuals in that state.

There is, therefore, need to enact municipal law in order to give legal effect to the Convention nationally, create legal obligations and impose penalties on the individuals. Under the Convention, Parties are obliged to adopt various legal and administrative measures to implement the provisions of the Convention (Article VIII paragraph 1). The effectiveness of a Party's compliance with the Convention will, to a rare extent depend on the comprehensiveness and effectiveness of the national legislation to give effect to the Convention. As a result, Parties are under very clear obligation to take measures to adopt CITES-related legislation and prohibit trade in CITES specimens whenever the conditions laid down by the Convention have not been met. These obligations must be considered the very keystone of the Convention (de Klemm, 1993). Many if not most, of the problems which relate to inadequate enforcement of CITES are due to parties having incomplete or otherwise inadequate national legislation (Stephen Nash, 1994)

4.1 Status of Uganda

A report of the 9th Meeting of the Conference of the Parties held at Fort Lauderdale (USA) on 7th to 18th November, 1994 relating to "National Laws for Implementation of the Convention" as contained in Doc. 9.24 assesses the

measures taken by each Party to enforce Article VIII, paragraph 1 of the Convention.

(Kyoto, 1992), directed the CITES Secretariat, within available resources:

"to identify those Parties whose domestic measures do not provide them with the authority to:

- (i) designate at least one Management Authority and one Scientific Authority;
- (ii) prohibit trade in specimens in violation of the Convention;
- (iii) penalise such trade;
- (iv) confiscate specimens illegally traded or possessed."

The Secretariat, with funding from United States of America, contracted the IUCN, Environmental Law Centre (the ELC) and TRAFFIC USA to carry out analysis of national legislation to implement CITES.

After the analysis, the legislation of each Party or other entity was rated according to the extent to which its national legislation provides for the implementation of the Convention as follows:

- (a) Category 1: Legislation generally meets requirements for the implementation of CITES.
- (b) Category 2: Legislation meets many requirements for CITES implementation, while additional legislation is needed in some areas.

(c) Category 3: Legislation meets some requirements for CITES implementation, while additional legislation is needed in may area.

(d) Category 4: Legislation does not generally meet the requirements for CITES implementation.

Uganda was rated in Category 4. Uganda's analysis was based, inter alia, on the then Game (Preservation and Control) Act and related subsidiary law, the Forest Act, the Fish and Crocodile Act. After this rating it was proposed that the Conference of the Parties should, in order to further implement Resolution Conf. 8.4, especially with respect to Parties in Category 4, adopt a resolution requiring those Parties to "take all necessary measures to develop national legislation for implementation of CITES and ensure that this legislation will be in effect by the tenth meeting of the Conference of the Parties". It was further proposed that punitive measures be proposed and adopted at COP 10 against those Parties which have not complied with the above by then. This matter was considered at COP 10 and though punitive measures were proposed, none was recommended. Parties concerned were implored to implement the requirements.

From 1990-1995 Uganda was involved in the review and revision of her environmental laws. A separate and comprehensive exercise was conducted for revision of the national legislation on wildlife conservation. The exercise took a low pace from 1990 to 1992. After 1992, the exercise had to speed up due to the restructuring exercise within the Civil Service.

The greatest impact of the restructuring exercise was the fact that under it, the Game Department, which had hitherto been responsible for the sustainable management of wildlife under the Game (Preservation and Control) Act, was to cease to exist as a Department and the management of wildlife, as per the adopted Government's policy, was to be vested in a single parastatal.

This meant that even the National Parks Act, which was for the management of national parks and advocating for strict protection, had to be immediately revised. The wildlife and related legislation were reviewed, a policy developed and adopted and legislation drafted. When COP 10 took place, the Statute had just been passed. An analysis of the said statute had already been conducted by the CITES Secretariat when it was still at advance stages as a Bill. Uganda was rated as being under category 3 this time. This was the position at COP 10. Due to the haste in enacting the new law, as noted above, it was not possible to enact provisions which would effectively give legal effect to CITES. Enabling

powers to effect this through regulation was however created under section 3 (1) (g) and (h) which provides that the purposes of the statute is to promote (g) the control of import, export and re-export, of wildlife species and specimens; and (h) the implementation of relevant international treaties, conventions, agreements or other arrangements to which Uganda is a Party". Sections 68 (1) and 92 (1) of the Statute clearly provide for the power to make regulations to further give legal effect to the Statute.

Given this broad enabling power, the proposition for making of regulations, as will be seen later, is based on the powers specified in Part V on protected species and Part X on International Trade in Species and Specimens. The proposed regulations which are in draft form are; The Wildlife (Endangered Species Convention) Regulations, 1998 and the Cooperative Enforcement Operations Directed At Illegal Trade in Wild Fauna and Flora Order, 1998.

It is intended that Uganda moves to Category 1, hence the terms of this report. Uganda, has not finalised legislation which specifically implements the provisions of CITES. However, as pointed our earlier, two draft sets of regulations are in an advanced stages of completion. These will specifically implement the provisions of CITES once given the force of law.

The Constitution, in article 123 provides that:

"(1) The President or a person authorised by the President may make treaties Conventions, agreements, or other arrangements between Uganda and any other country or between Uganda and any international organisation or body in respect of any matter".

Clause (2) of that article provides:

"(2) Parliament shall make laws to government ratification of treaties, conventions, agreement or other arrangements made under clause (1) of this article".

Given the spirit of this article under which the Ratification of Treaties Act, 1998 was enacted. The National Environment Statute, 1995 (Statute No. 4 of 1995) (section 107), and the Uganda Wildlife Statute 1996 (Statute No. 14 of 1996) (section 91) have similar effect; Section 91 of the Uganda Wildlife Statute, 1996 provides:

"(1) Where Uganda is a party to any Convention or treaty concerning wildlife, or in a case where such

convention or treaty is required by the Constitution to be ratified, after it has been ratified in accordance with the Constitution, the Minister may, by statutory order, and with the approval of Parliament signified by its resolution:

- (a) set out the provision of the convention or treaty;
- (b) give the force of law in Uganda to the convention or treaty required to be given the force of laws in Uganda;
- (c) amend any enactment other than the Constitution for the purpose of giving effect to the convention or the treaty;
- (d) make such other provision as may be necessary for giving effects to the convention or treaty in Uganda or for enabling Uganda to perform its obligations or exercise its rights under the convention or treaty.
- (e) The provision of any convention or treaty set out in any order made under this section shall be evidence of the contents of the convention or treaty in any proceedings or matter in which the provisions of the convention or treaty came into question.

4.2 Analysis of the Treaty Provisions vis-a-vis the Constitution

Under strict statutory interpretation, it is our view that neither the provision in the Environment Statute nor that in the Wildlife Statute conflicts with the Constitution. As has been pointed out by de Klemm, the Convention can be incorporated under municipal law through:

- (a) "A provision inserted into the Wildlife Act prohibiting the import, export and, preferably also, the possession of and domestic trade in all wild species, or in any species listed by regulations, except under a permit".

All other matters may then be left to regulations. This technique is used, for instance, by Indonesia where the export of any wildlife is subject to an export permit.

- (b) The CITES ratification Act, or any other relevant Act such as the Wildlife Act, may contain basic provisions prohibiting any action in contravention of the Convention provisions in relation to any of the species listed in the Convention appendices.

This method has been used, for instance, by Belgium in its CITES ratification Act and by Switzerland through a provision of its Animal Welfare Act of 1978.

This latter Act empowers the Swiss federal government to prohibit or otherwise regulate the import, export and transit of any wild animal species and lays down special penalties for violations of the Convention provisions. All other matters are dealt with by regulations. It is also possible to use legislation regulating foreign trade when such legislation empowers the government to control the import and export of any kind of goods. In such cases, regulations made under the main Act for the specific purposes of implementing CITES may be all that is needed. This method is used by Zimbabwe where very comprehensive regulations were made under the Control of Goods Act.

- (c) The third possible technique consists in enacting a separate Act dealing exclusively with international trade in wild species. This is what has been done, for instance, by Australia and Singapore".

4.3 Proposed Regulations to Implement CITES

The need for national legislation to implement at least some of the self executing provisions of the Convention (ie Article III, IV and V) was recognised by the Conference of the Parties by Resolution Conf. 6.6. Having recognised the need to have specific legislation for CITES and having legal power to do so by regulation, it is proposed that the Convention be given legal effect through the incorporation of most of the relevant provisions of CITES in the draft Regulations. Part X of the Statute already provides the general prohibition on such trade.

4.4 Problem Area with existing law

Though it is yet too early to evaluate the effectiveness of the Uganda Wildlife Statute which was enacted in 1996, some difficulties have already been encountered with respect to the implementation of some of its provisions. One notable area is seen in the interpretation section and the use of words or phrases. In drafting regulations for CITES and also developing modalities for the implementation of Part VI of the Statute on "Use rights", shortcomings were encountered in some of the words and phrases as defined in the Statute. The difficulties were, *inter alia*, in the definition of "animal", and "domestic animal" "hunt". On International trade; the use of the words "species and specimen" more especially when considering the heading of Part X as against the provisions of sections 66-68. Some of these issues were raised in detail under the CITES

Secretariat evaluation of this law before COP 10 (Annex 5).

Though such issues arise, they can be cured under paragraph (c) of subsection (1) of section 91 which allows for the amendment of any enactment other than the Constitution for the purpose of giving effect to the Convention or the treaty. The position is further enhanced by the Ratification of Treaties Act, 1998.

Section 3(b)(ii) of the Act provides that;

“All treaties shall be ratified as follows:

(b) by Parliament by resolution -

(ii) in the case of a treaty in respect of which the Attorney General has certified in writing that its implementation in Uganda would require an amendment of the Constitution”.

4.5 Scheduling of Species to Accord Different Protection Status

4.5.1 Historical Background

The schedules that were adopted under the Game (Preservation and Control) Act have their roots in the recommendations of the International Conference for the protection of the Fauna and Flora of Africa which was held in London on 8th November, 1933. The conference attended by delegates from Union of South Africa, Belgium, Great Britain and Northern Ireland, Egypt, Spain, France, Italy, Portugal, Angola, Egypt, Sudan negotiated a convention which was to apply to all African territories they held.

Article 8 of the Convention provided for the species listed in Class A to be protected as completely as possible. The hunting, killing or capturing of any species in this Class was to be by a special permission granted under special circumstances by the highest authority in the country (territory). Such permission would be granted only for scientific purposes or when essential for the administration of the country (territory).

Species listed in Class B were not requiring rigorous protection as those in class A. However, the hunting, killing and capture of the species in this list could be authorised under a special licence granted by the competent authority. The licence so granted was to be limited as regards the period and the area within which hunting, killing or capturing may take place.

In accordance with the provisions of the International Convention for the Protection of African Fauna and Flora the then Game Ordinance and later the Game (Preservation and Control) Act adopted the following schedule:

(a) First Schedule

(i) Part A

This part listed Ugandan species which were not to be hunted throughout the country except under a special permit issued by the Minister.

(ii) Part B

Listed species not to be hunted or captured in specified areas except under special permit.

(iii) Part C

Listed species not to be captured throughout the country if they are immature or females accompanied by young.

(b) Second Schedule

This schedule contained the list of species which may be hunted under basic and supplementary licences and gave fees for supplementary licences.

The third and fourth schedules were repealed.

(c) Fifth Schedule

Listed birds which may be hunted by a holder of the bird licence.

(d) Sixth Schedule

Consisted of boundary descriptions of protected areas.

(e) Seventh schedule

Described licences and indicated fees charged under each licence.

(f) Schedule 8 to 10 were repealed.

(g) Eleventh schedule listed species of African animals not occurring in Uganda which animals and their trophies are protected by the International Convention of 1933.

4.5.2 Proposal for Schedules for CITES Regulations

Taking CITES into account it is proposed that the scheduling specimen of species be as follows:

- (i) First Schedule: Species protected under CITES appendix I, II and III which occur in Uganda and elsewhere in the world.
- (ii) Second Schedule: Ugandan species which, though not included in CITES list are endangered or threatened and which require stricter protection.

No use rights can be granted for these.
- (iii) Third Schedule: Species which may be traded in and for which use rights can be negotiated. This schedule

can be further divided into possible areas for use right throughout Uganda and non possible areas for use right in given areas.

For the purpose of this Schedule, Ugandan species which may be hunted, farmed or ranched are listed. The area where any of the use rights may apply should be specified and in case of hunting the season must be indicated.

Further still, depending on clarification of definition of "general extraction" under paragraph (f) of subsection (1) of section 30 of Part VI, this schedule could also list species for which there has been expressed desire to make collections from the wild for commercial purposes e.g butterflies, beetles, birds e.g. canaries; reptiles e.g. snakes and chameleons of non CITES types, amphibians etc. The draft regulation is attached.

CHAPTER FIVE

5.0 IMPLEMENTATION OF INTERNATIONAL AND REGIONAL TREATIES, CONVENTIONS AND PROTOCOLS RELATING TO WILDLIFE IN UGANDA

5.1 Relation between International and Municipal law in Uganda

Uganda follows the same tradition as Britain and many other states within the commonwealth of nations which basically follow the common law principles in relation to adoption of treaties in their municipal territories. Under this tradition, a treaty whether ratified or not, does not have a binding force in national law. It basically does not have the necessary force to affect the rights of subjects and their property in their sovereign states. Such a treaty, however, remains binding upon states vis-a-vis other states and other international persons party to it at the international level. In cases of breach of an international or regional treaty, therefore, the rights of the violator state can be questioned in a tribunal constituted internationally or regionally.

The only exception to this principle is in cases of human rights and humanitarian law where individuals are amendable to international obligations and tribunals in cases of crimes against humanity. Under the 1995 Constitution of the Republic of Uganda, the President or any person authorised by him/her may make treaties, conventions, agreements or other arrangements between Uganda and any other country or between Uganda and any international organisation or body in respect to any matter.²⁵²

Such treaty, convention, agreement or other arrangement, however, will not have a legal force in Uganda until Parliament has made laws to govern its ratification and actually ratified or incorporated it in the municipal laws.²⁵³ The Constitution, however, does not provide for how Uganda may accede to treaty obligations and up to now, Parliament has not enacted a law for that purpose. The Ratification of Treaties Act, 1998.

Apart from the 1964 Geneva Conventions Act,²⁵⁴ which incorporates the 1949 Geneva Convention into Uganda's municipal law, the situation has remained unclear in regard to international treaties and conventions under the 1995 Constitution. In light of the lacunae apparent in the 1995 Constitution, it can be discerned from the practice adopted in 1964 that at least an Act of Parliament must be made to incorporate any treaty or convention or other arrangement in Uganda's municipal law.

5.2 Special obligations for Uganda to Incorporate International Treaties, Conventions and other arrangements in her Municipal Law

It is now a recognised principle of international law that once a state enters into an international treaty with one or more states or international organisation or body, it undertakes obligations under such treaty which it ought to honour. The obligation is both legal and moral.

The obligation has legal consequences because of the principle of *pacta sunt serranda* (pacts entered into

²⁵²See Article 123 (1) of the 1995 Constitution of the Republic of Uganda

²⁵³Ibid. Article 123 (2)

²⁵⁴Cap 323 of the 1964 Laws of Uganda/



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²⁵²See Article 123 (1) of the 1995 Constitution of the Republic of Uganda

²⁵³Ibid. Article 123 (2)

²⁵⁴Cap 323 of the 1964 Laws of Uganda/

shall be followed), which is the basis of international law and has been codified in the Vienna Convention on the Law of Treaties to which Uganda is a party. The Vienna Convention *inter alia* provides that:

“Every treaty in force is binding upon parties to it and must be performed in good faith; and that; a party may not invoke the provisions of its internal law as a justification for failure to perform a treaty”²⁵⁵.

The obligation is a moral one on the other hand because by entering into negotiations and accepting undertakings, the state raises expectations of compliance on the part of other states or international persons involved. It is, therefore, just that equitable that the state in question honours its obligations undertaken under the treaty.

The position of the World court (International Court of Justice (ICJ)), in that regard was recently demonstrated in the **HEADQUARTERS AGREEMENT OPINION**²⁵⁶. In the case, ICJ held that a law passed by the United States Congress which limited the access to United National Headquarters of the latter's invites and which was contrary to the United National Headquarters Agreement did not absolve the United States from its international responsibility under the Agreement. Indeed the American judge on the ICJ Bench, Judge Schwebel in his separate opinion unequivocally stated that:

“It is axiomatic that on the international legal plane, national law cannot derogate from international law, that a state cannot avoid its international responsibility by the enactment of domestic legislation which conflicts with international obligations”²⁵⁷.

Considering the foregoing discussion, and the fact that Uganda is a party to a number of international and regional treaties and agreements, there is, therefore, sufficient authority in general for the proposition that she has to implement the provisions of such treaties and agreements in her municipal jurisdiction, where necessary by adjusting her existing legislation. The recently enacted Ratification of Treaties Act, 1998 caters for these propositions.

In Uganda Constitution is the supreme law of Uganda and has binding force on all authorities and persons throughout the country. In its objective XXVII, the Constitution enjoins the state of Uganda to promote sustainable development and public awareness of the need to manage land, air and water resources in a balanced and sustainable manner for

the present and future generations. It further provides that the utilisation of the natural resources of Uganda shall be managed in such a way as to meet the development and environmental needs and that the state, including local governments shall, *inter alia*, create and develop parks, reserves and recreation areas and ensure the conservation of natural resources. Uganda is also enjoined under the same objective to promote the rational use of natural resources so as to safeguard and protect the bio-diversity of Uganda.

Under objective XXVIII, the constitution provides that Uganda's foreign policy shall be based on the principles of among other things, respect for international law and treaty obligations, peaceful co-existence and settlement of international disputes by peaceful means. The same objective requires Uganda to actively participate in international and regional organisations for the well-being and progress of humanity. The state is further enjoined to promote regional economic, and political cooperation and integration.

This paper discusses harmonization of wildlife legislation in the East African region, of which Uganda is a member. By undertaking in her constitution to promote and honour international and regional cooperation, Uganda has already expressed her commitment to promote cooperation in the East African region in the field of wildlife. A review of the existing national legislation in the field of wildlife in Part III of this paper indicates that Uganda has specifically incorporated in her legislation the normative demands of international law and is committed to implement international and regional treaties and conventions on wildlife conservation. Few cases where Uganda has not yet expressly provided for such demands are discussed in this part of the paper.

5.3 Incorporation of normative demands and National Implementation of International and Regional Treaties, Conventions and Protocols on Wildlife Conservation

This part of the paper examines in detail the extent to which normative demands of international and regional wildlife conservation laws can be conveniently harmonised with those of her sister states in the East African Region. Uganda is a party to key conventions which relate to the conservation of biological diversity and hence conservation of wildlife. See Table below:

²⁵⁵See Articles 26 and 27 of the Vienna Convention on Treaties.

²⁵⁶1988 ICJ Rep. 11

²⁵⁷Ibid at page 42.

An Inventory of International and Regional Wildlife Conventions and Protocols to which

East African Countries are Parties

X	A	B	C	D	E	F	G	H	I	J	K	L	M	N
UG	NR	R	R	R	R	R	NR	NR	R			S	S	R
TZ	NR	R	NR	R	R	R	R	R				S	S	
KE	NR	R	R	R	R	R	R	R	R				NR	

Key:

X: Instrument UG: Uganda TZ: Tanzania KE: Kenya
 R: Ratified NR: Not Ratified S: Signatory

- A: 1950 International Convention for the Protection of Birds and Related Instruments.
- B: The 1968 African Convention on the Conservation of Nature and Natural Resources.
- C: The 1971 Ramsar Convention on Wetlands of International Importance Especially as Waterfowl Habitat as amended.
- D: The 1972 Convention concerning the Protection of the World Cultural and Natural Heritage.
- E: The 1973 Washington Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) as amended.
- F: The 1982 United Nations Convention on the Law of the Sea.
- G: The 1983 International Tropical Timber Agreement.
- H: The 1983 FAO International undertaking on Plant Genetic Resources.
- I: The 1985 Nairobi Convention and Protocols for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region.
- J: The Convention on Biological Diversity.
- K: The 1995 New York Agreement for the Implementation of the provisions of the United Nations Convention on the Law of the Sea of 10 December, 1982, relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks.
- L: The 1995 African-Eurasian Waterbird Agreement (AEWA).
- M: The 1979 Convention on the Conservation of Migratory Species of Wild animals (Bonn Convention).
- N: International Convention to Combat Desertification in those countries experiencing serious Drought and/or Desertification; particularly in Africa (Paris, 1994).

According to Article 40 (5) of the Vienna Convention on the Law of Treaties, Uganda is bound by amendments to these Conventions which were in place before she became a party to them. Article 40(5) provides that;

“Any state which becomes a party to the treaty after the entry into force of the amending agreement shall, failing an expression of a different intention by that State;

- (a) be considered a party to the treaty as amended; and
- (b) be considered as a party to the unamended treaty in relation to any party to the treaty not bound by the amending agreement.”

Uganda has to accede to those amendments which were not yet in force at the time it became a party to these conventions. These amendments include; the Regional Amendment to the Ramsar Convention of 28 August 1987 and the Gaborone Amendment to CITES of 30 April, 1993.

5.4 The Biological Diversity Convention, 1992

The need for Uganda to specifically modify her national legislation in order to implement international and regional treaty obligations has been discussed in the foregoing part of this paper. The Convention on Biological Diversity further imposes a duty on parties to it to take measures including legislation to implement its provisions.

The Convention, in particular;

- (a) Under Article 6 requires state parties to integrate sustainable utilization of natural resources into national strategies and plans and programmes;
- (b) to promote **in-situ** conservation in accordance with Article 8 and in particular protect traditional knowledge about conservation and protecting threatened species;
- (c) to promote **ex-situ** conservation in accordance with Article 9;
- (d) to promote sustainable use of biological diversity²⁵⁸;
- (e) to create economically and socially sound incentives for conservation and sustainable utilisation²⁵⁹;

- (f) to promote research training and public awareness and education²⁶⁰;
- (g) to introduce environmental impact assessment²⁶¹;
- (h) to govern access to genetic resource and promote transfer and access technology;
- (i) to promote biosafety²⁶²;
- (j) to promote international co-operation in the protection of biological diversity under various provisions.

Most of the foregoing provisions have been incorporated in the National Environment Statute.²⁶³

In fact, part VII of the National Environment Statute is a *replica* of the most salient provisions of the Biodiversity Convention discussed above. The Uganda Wildlife Statute, 1996, which was promulgated after the 1995 attempts to a considerable degree to incorporate the normative demands of the Biodiversity Convention. According to its long title, the Statute is intended to provide for sustainable management of wildlife, to consolidate the law relating to wildlife management; to establish a coordinating, monitoring and supervisory body for that purpose and for other matters incidental to that purpose and for other matters incidental to or connected therewith the foregoing.

Considering that Uganda's practice on incorporation of treaties in her municipal legislation, *inter alia*, involves incorporating the provisions of a treaty or convention in her local statutes, and in light of the foregoing discussion, it can be concluded that Uganda has incorporated the normative demands of the Biodiversity Convention, although it might be found that on the ground, such provisions are not actually implemented to the letter. What, however, has not been fully catered for in terms of conservation of wildlife and its habitat, is the requirements of Article 5 of the Convention in regard to cooperation in the conservation of biological diversity and its utilisation in cases of areas beyond national jurisdiction and on matters of mutual interest in the East African region. To that extent, Article 5 of the Convention has to be borne in mind when considering harmonisation of wildlife conservation legislation in East Africa.

²⁵⁸Under Article 10.

²⁵⁹Under Article 11.

²⁶⁰Under Articles 12 and 13.

²⁶¹Under Article 14.

²⁶²Under Article 19.

5.5 The African Convention on the Conservation Nature and Natural Resources, 1968

The Convention is the primary Pan-African legal instrument for the conservation of the environment in general and biological diversity in particular. The Convention adopts an ecosystem approach to environmental management. It provides for measures to ensure conservation, utilization and development of soil²⁶⁴, water²⁶⁵ flora²⁶⁶ and fauna resources²⁶⁷, in accordance with scientific principles and taking into account the interests of the inhabitants²⁶⁸. Parties to the Convention undertake to establish and manage protected areas (conservation areas) and to protect certain species²⁶⁹.

The Convention obligates the parties to prohibit and regulate trade in specimens and trophies of protected species²⁷⁰. States are required to take into account the conservation of and management of the natural environment in their development plans, to promote conservation education and related research²⁷¹. The Uganda Wildlife Statute, incorporates the salient provisions of this convention into Uganda's municipal law by specifically legislating on them²⁷².

Therefore, if the proposed harmonisation of wildlife conservation laws takes place in East African region, Uganda will fit the cooperation easily since she has already incorporated the normative demands of this vital convention into their municipal legislation.

5.6 Convention on Wetlands of International importance especially as Waterfowl Habitat, 1971 (The Ramsar Convention)

The Convention provides for the protection of biological diversity in wetlands. The concept of wetlands under the convention has a wide coverage. It includes; areas of marsh, fen, peatland or water whether natural or artificial, permanent or temporary, water that is static, or flowing, brackish or salt including areas of marine water, the depth of which at low tide does not exceed six meters." Uganda

does not have a coastline, but the definition given in this Convention caters for all water courses and lakes.

The principle objective of the convention is to provide the intergovernmental framework to make conducive environment for international cooperation in the field of use of wetlands²⁷³. Indeed in 1987 at Regina, the Conference of the Parties interpreted this objective to mean "wise use" of the wetlands by the parties²⁷⁴. Sustainable use has been defined to mean the use of the present generations of the environment which does not compromise the needs and aspirations of future generations.

Under Article 24, the Convention requires that for a state to become a party, it must include at least one wetland on the list of wetlands of international importance. The Convention further requires that states should take active conservation measures in wetlands included in the list. Uganda has already complied with the requirements of the Convention and has already identified and included Lake George and its surrounding swamp lands on the list. Probably Uganda would have to include more conservation areas to the list since she is endowed with vast water bodies of ecological importance.

The criteria for selection of such wetlands according to the Convention should be on account of their international importance in terms of ecology, botany, zoology, limnology or hydrology.²⁷⁵ The 1980 Caligari Conference made the selection of conservation wetlands more elaborate especially in relation to waterfowl. The modifications made included taking into account other important aspects and values of the wetlands including rare, vulnerable and disappearing plant and animal species.

Further emphasis is laid on international cooperation among the parties in taking measures for conservation shores, wetlands or species of animals [such as migratory species endemic in wetlands]. The 1990 Montreux Conference established a Conference of the parties, a Bureau and a Fund for that purpose.

²⁶⁴Statute No. 4 of 1995.

²⁶⁵See Article IV.

²⁶⁶Ibid Article V.

²⁶⁷Ibid Article VI.

²⁶⁸Ibid Article VII.

²⁶⁹Ibid Article II and XI.

²⁷⁰Ibid Articles X, VII and schedule: list of Protected Species.

²⁷¹Ibid Article IX.

²⁷²Ibid Articles XIV and XII.

²⁷³See Parts III and IV and V of the Uganda Wildlife Statute, 1995.

²⁷⁴See Article 3 (1).

²⁷⁵See Resolution 33 of the Conference.

²⁷⁶See Article 2 (2)

5.7 Implementation of the Ramsar Convention in Uganda

By identifying a specific wetland as a conservation area, Uganda has moved far in implementing this Convention. It has already put in place the National Policy for the Conservation and Management of Wetlands Resources, 1994. The policy among other issues emphasises;

“No drainage of wetlands; sustainable use; environmental sound management; diversification of uses and user and Environmental Impact Assessment (EIA) for all projects.”

The policy further establishes an Inter-Ministerial Committee on Wetlands chaired by the Permanent Secretary in the Ministry of Natural Resources as a principal coordinating organ for the implementation of the policy.

This policy has been specifically incorporated in the National Environment Statute, 1995 which includes provisions on management of wetlands²⁷⁶. Under this Statute, all development in wetlands is required to be subject to EIA. The Authority under this Statute is required to establish guidelines for the sustainable use of wetlands and to complete a register of wetlands of local, national and international importance²⁷⁷. The Statute limits the uses of water courses and water bodies, lake shores and river banks in such a way as to promote sustainable use and to restore degraded environment²⁷⁸.

Although the statute covers the management of wetlands in a broad sense, it still lacks specific regulations/subsidiary legislation to specifically provide for standards to be followed in the conservation of the wetlands. At the time of writing this paper, it was learnt that the government of Uganda has already prepared a draft bill for the Wetlands Act, which will specifically provide for the conservation of the Wetlands.

5.8 The Convention concerning the protection of World Cultural and Natural Heritage Paris, 1972 (The World Heritage Convention)

The principle objective of World Heritage Convention is to protect objects of cultural and natural Heritage, which are of value to the present and future generations.

“Natural heritage” includes natural features consisting of physical and biological formations or groups of such formations which are of outstanding universal value from the aesthetic or scientific point of view, and also includes natural sites or precisely delineated areas of outstanding value. The Convention urges parties to integrate the protection and conservation of natural and cultural heritage into national planning and development programmes. Parties are supposed to take necessary steps for conservation of natural and cultural heritage which can only be achieved through the cooperation of the international community.”

The Convention establishes a World Heritage list on which the World Heritage Committee may list those properties which form part of the World cultural and Natural Heritage. The World heritage Committee may publish a World Heritage in Danger list for those properties which are in danger from human or natural influences²⁷⁹. The Convention establishes a Secretariat and a Fund to assist the parties in the Conservation of the World Cultural and Natural Heritage. The fund is made up of both compulsory and voluntary contributions of the parties²⁸⁰.

5.9 Implementation of the World Heritage Convention in Uganda

Uganda has gone far in implementing the World Heritage Convention by including on the list two sites namely; the Rwenzori National Park and Bwindi National Park. Future proposals include, the National Parks of Mt. Elgon and Mgahinga.

The National Environment Statute, 1995²⁸¹, and the Wildlife Statute, 1996²⁸², implement provisions of Convention in terms of conservation of wildlife both *in-situ* and *ex-situ*.

5.10 The Convention on International Trade in endangered species of fauna and flora; Washington, 1973 (CITES)

The main objective of the CITES is to control trade in endangered species and where the species are not endangered, it attempts to ensure that they will not be so endangered.

²⁷⁶See Part VII Sections 34 - 38 of the National Environment Statute, 1995.

²⁷⁷Ibid Section 38.

²⁷⁸Ibid Sections 35 and 36.

²⁷⁹Ibid Articles 8 - 13.

²⁸⁰Ibid Articles 14, 13 and 16.

²⁸¹Sections 42 - 45.

²⁸²Sections 18 - 29.

The Convention, however, enables those countries which may benefit from trade in such species to continue to do so by providing a system of permits. The endangered species envisaged under CITES are both plants and animals.

The Convention has four appendixes. Appendix I contains a list of endangered species. Trade in these species is required to be very strictly controlled. Species under this category are not to be endangered further²⁸³. The species listed under appendix I can only be exported pursuant to a permit issued by a Management Authority of a state after prior advice of a scientific Authority. The import country is also required to grant an import permit taking into account the fact that the survival of the species will not be impaired, the ability of the importer and the uses for which of is required. It does not encourage the use of specimens solely for commercial purposes²⁸⁴. Re-export of these species is also subject to strict control as their export.

Appendix II lists those species which may be threatened with extinction if trade in specimens of the same species are not tightly controlled. Strict control measures as those applicable in the case of Appendix I are called for.

Appendix III includes a list of species which are regulated by individual parties and which such parties believe need international cooperation to regulate²⁸⁵. The list under this trade appendix too requires strict control measures for the listed species.

Appendix IV sets up model forms to be used as permits and licences under the convention.

Parties are required to take penal measures against violators of the provisions of the convention and to establish rescue centres and to maintain records of trade in specimens of regulated species. They are also required to make reports on the legislative, regulatory and administrative measures they have taken to implement the convention²⁸⁶.

State parties are required to designate Management and Scientific authorities and to communicate the stamps, seals, or other devices they use to authenticate permits and certificates to the Secretariat²⁸⁷. Parties are further urged to adopt national legislation which are stricter than the Convention. The Secretariat in place acts as a coordinating

centre for states to enforce the provisions of the Convention. It also organises meetings of the Conference of parties. It further acts as a clearing house for exchange of information among parties and makes recommendations for the better management of endangered species and the implementation of the Convention in general.

5.11 Implementation of CITES in Uganda

The Wildlife Statute, 1996 has specific provisions relating to the preservation of populations of rare, endemic and endangered species of wild plants and animals²⁸⁸. CITES standard forms for permits and certificates had been in use before the enactment of the Wildlife Statute in 1996. The Game Department used them as a basis for the control of traffic in specimens of endangered species.

It is, however, observed that while the Wildlife Statute has provisions relating to CITES, these provisions are inadequate and there, is therefore, a need to put in place subsidiary legislation to specifically provide for the implementation of CITES in Uganda. The Fish Act, the Forest Act and many other Statutes in the field of agriculture do not make any specific mention of CITES provisions.

It has been noted that CITES imposes a greater duty on parties to make laws which are stronger than the Convention. It is recommended that in making such stricter laws in the East African Region, the three sister states put in place arrangements like extradition of endangered species once they cross borders illegally and other measures at a regional level for the purpose of realising the objectives of the Convention. The current provisions in the Wildlife Statute for Uganda, if supported by other legislation's, like the proposed Forestry Act, would suffice if regional measures are put in place as suggested in this paper.

5.12 The Stockholm Declaration, 1972

The Declaration was adopted by the United National Conference on the Human Environment at Stockholm in June, 1972. The Conference played an essential role in increasing the awareness of the importance of conserving the environment.

Principle 2 of the Declaration declares the need to safeguard the natural resources of the earth [including flora

²⁸³See Article II (1).

²⁸⁴Ibid III (3).

²⁸⁵Ibid Article II (3).

²⁸⁶Ibid Article VIII.

²⁸⁷Ibid Article IX.

²⁸⁸See Section 20, Uganda Wildlife Statute, 1996.

and fauna and especially representative samples of particular ecosystems] for the benefit of present and future generations through careful planning and management. Principle 3 calls for the maintenance of natural resources and where practicable their improvement or restoration. Principle 4 calls for the conservation of wildlife and their habitats.

The Declaration has also got some other provisions which in one way or the other relate to the conservation of wildlife, namely; those concerning pollution control²⁸⁹, the need for integrated planning²⁹⁰, education, awareness, research and technological transfer²⁹¹, international cooperation²⁹², and control of weapons of mass destruction²⁹³. With regard to the shared natural resources [including wildlife] Principle 21 of the Declaration provides that;

“States have in accordance with the Charter of the United Nations and principles of international law, the sovereign right to exploit their own resources pursuant to their own environment policies and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction”.

Principle 21 restates two important rules of customary international law. The first rule of customary international law in issue is that of the responsibility of states for environmental damage/wrongs originating from their acts, from their jurisdiction or control and acts of their agents. This principle, which was demonstrated by the Arbitral Tribunal in the TRIAL SMELTER ARBITRATION is instructive in this regard. The Tribunal held, *inter alia*, that;

“.....no state has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another or the properties or persons therein, when the case is of serious consequence and the injury is established by clear and convincing evidence.”²⁹⁴

The Arbitration matter in that case was in regard to transboundary air pollution. The decision is relevant to wildlife conservation in the three East Africa States in a number of ways. In case of conservation of wildlife

especially that which goes across borders of one state, it would be necessary to ensure that a state does not, in addition to being limited in terms of damaging her own natural resources, go ahead to injure those of her neighbour. The second principle relates to the role of states in conservation of natural resources within their territories.

5.13 Implementation of the Stockholm Declaration in Uganda

Section 91 of the Uganda Wildlife Statute requires the government of Uganda to ratify treaties, Conventions and other arrangements in accordance with the Constitution with the approval of Parliament. The Wildlife Statute and the National Environment Statute have provisions relating to conservation of Wildlife in cases of cross-border cases. However, it is not clear whether Uganda would punish or have remedy from her neighbours who commit wrongs against wildlife across borders.

It is, therefore, necessary that she expressly adopts this Declaration in accordance with the 1995 Constitution so that by the time of harmonising wildlife laws for the region, the Declaration will have already become law in Uganda.

5.14 The Rio Forest Principles²⁹⁵

The Rio de Janeiro Conference adopted “The Non-binding Authoritative Statement of Principles for Global consensus on the management, conservation and sustainable development of all types of forests”. The declaration was aimed at reconciliation on how opposed views on the World’s forests should be managed and developed. The Conference accepted that forests have ‘multiple and complementary functions and uses²⁹⁸’. The complex and unique nature of forests was recognised as well as their capacity to provide resources to satisfy human needs and environmental values.

Further recognised was the sovereign right of states to exploit their forest resources²⁹⁹ as well as the duty to protect forests and to carry out afforestation and reforestation programmes³⁰⁰. Principle 4 is particularly relevant to conservation of wildlife and it provides thus;

²⁸⁹Principles 6 and 7.

²⁹⁰Principles 13, 14, 15 and 17.

²⁹¹Principles 18, 19 and 20.

²⁹²Principles 22, 23, 24 and 25.

²⁹³Principle 26.

²⁹⁴See Harris: “Cases and Material on International Law”, page 245.

²⁹⁵See UNGED A/cont. 151/REF. 1 of 13 June, 1992.

²⁹⁶See Preamble paragraph (b).

²⁹⁷See Principle 2 (a).

³⁰⁰See Principles 3 and 5.

"The vital role of all types of forests in maintaining the ecological process and balance at the local, national, regional and global levels through, *inter alia* their role in protecting fragile ecosystems, watersheds and freshwater resources and as rich storehouses of biodiversity and biological resources and sources of genetic material for biotechnology products as well as photosynthesis, should be recognised".

The principles also called for the rational management of forests, increased scientific research, the provision of additional financial resources and technology transfer, the regulation of trade and utilization of forest products and the control of pollution of forests from all resources³⁰¹. Uganda's Forest Act does not specifically incorporate these principles but the proposed law of forests has been drafted in such a manner that when finally passed by Parliament it will cater for the principles put forward in the Rio Declaration.

5.15 The Lusaka Agreement on Cooperative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora

The Agreement recognises that conservation of wild fauna and flora is essential to the overall maintenance of African's biological diversity and that wild fauna and flora are essential to all sustainable development of Africa. It further recognises that intense poaching has resulted in severe depletion of certain wildlife population in African states and that this has been caused by illegal international trade. This illegal trade, it is observed under this Agreement, has persisted inspite of the existence of strong national and international legal instruments.

To achieve its objectives, the Agreement puts in place a Task Force known as the Task Force for Cooperative Enforcement Operations directed at illegal trade in wild fauna and flora³⁰². The Task Force is composed of a Director, Field Officers and an Intelligence Officer and other staff. The Field Officers are seconded to the Task Force by each party and retain their national law enforcement authority during their time of service with the Task Force. The Task Force has in each part a legal capacity required for the performance of its functions under the Agreement. It, therefore, has a supranational law enforcement authority under this Agreement.

In their operations, the officers of the Task Force while retaining their national law enforcement authority are

empowered to conduct cross-border investigations and where necessary may use undercover operations.

The basic functions of the Task Force as enumerated under the Agreement include to-

- facilitate cooperative activities among the National Bureaus in carrying out investigations pertaining to illegal trade;
- investigate violations of national laws pertaining to illegal trade, at the request of the National Bureaus or with the consent of the parties concerned, and to present to them evidence gathered during such investigations;
- collect, process and disseminate information on activities that pertain to illegal trade, including establishing and maintaining databases;
- provide, upon request of the parties concerned, available information related to the return to the country of original export, or country of re-export, of confiscated wild fauna and flora; and,
- perform such other functions as may be determined by the Governing Council.³⁰³

Before setting forth these functions, parties to the Agreement were first convinced that adequate cooperation in enforcing the laws for the protection of wildlife was necessary among members of the international community if illegal trade was to be eliminated. The only loophole in the Lusaka Agreement is that unlike the CITES which lists down endangered species, the former does not and leaves the question of determining the legality of trade in the species to the national laws. It, however, attempts to cover this gap by obligations parties to investigate and prosecute cases of illegal trade.

To ensure that the officials of the Task Force fulfill their obligations, the Agreement grants them privileges and immunities in their official capacities, which include -

- immunity from arrest, detention, search and seizures and legal process of any kind in respect of words spoken or written and all acts performed by them; and that they shall continue to enjoy such privileges and immunities after the completion of their functions as officials of the Task Force;

³⁰¹ See Principles 268, 270, 271 and 272.

³⁰² See Article 5 (1).

³⁰³ See Article 5 (9).

- inviolability of all official papers, documents and equipment;
- exemption from all visa requirements and entry restrictions;
- protection of free communication to and from the headquarters of the Task Force;
- exemption from currency or exchange restrictions as is accorded representatives of foreign governments on temporary official missions; and,
- such other privileges and immunities as may be determined by the Governing Council.³⁰⁴

5.16 National Implementation of the Lusaka Agreement

The Uganda Wildlife Statute, 1996, establishes the Uganda Wildlife Authority which is a body corporate with perpetual succession and a common seal and capable of, *inter alia*, suing and being sued in its own name.³⁰⁵ The Lusaka Agreement requires state parties to establish National Bureaus for the purposes of achieving the objectives of the Agreement. The Uganda Wildlife Statute was promulgated in 1996 and incorporates the provisions of the Lusaka Agreement, in particular those relating to the functions of the Agreement which, though not *in-Parameteria*, are intended to serve the same purpose.³⁰⁶

The Authority under the Uganda Wildlife Statute serves the same purpose as the National Bureau suggested under the Agreement. It is, however, necessary that for the Authority to effectively serve the purposes set forth in the Lusaka Agreement, the Minister by powers conferred upon him by Section 91 shall by statutory order and with the approval of Parliament designate the Authority expressly to perform the functions of the Lusaka Agreement.

5.17 The Bonn Convention on the Conservation of Migratory Species of Wild Animals, June, 1979

The Bonn Convention recognises that the conservation and efficient management of migratory species of wild animal requires concerted efforts of all states within their national

jurisdiction of which species spend part of their lives. It uses the system of listing like the CITES. This Convention together with its subsidiary 'Agreements' between Range States through which listed species migrate, aim to conserve species by parties restricting harvests, conserving habitat and controlling other adverse factors.

Most of the 'Agreements' aimed at benefiting migratory species listed in Appendix II are of a regional nature. A good example of such is the 1995 African - Eurasian Waterbird Agreement (AEWA-Agreement). However, considering their ultimate purpose, they should be understood to have an international effect.

5.18 National implementation of the Bonn Convention

The Uganda Wildlife Statute under Section 28 (2) provides for the protection of migratory species of wild animals which is in line with the Bonn Convention. It is recommended that Kenya and Tanzania should incorporate the same provision in their wildlife conservation laws for proper implementation of the proposed regional wildlife law.

5.19 National implementation of the Convention

The Uganda Wildlife Statute has several provisions relating to the protection of individual species of wildlife or a variety of them³⁰⁷. It further has several provisions relating to harvesting of wildlife subject to compliance with the use 'rights' license³⁰⁸. All these measure are conducive for the protection of Birds as provided for under the 1950 convention. However, there is need for the Minister to make specific Regulations for the adoption of this Convention if it should be applicable in Uganda in its totality.

5.20 The United Nations Law of the Sea, Montego Bay, 1982

The basic objective of the convention is to establish "a legal order for the seas and oceans which will facilitate international communication, and will promote peaceful uses of seas and oceans, the equitable and efficient utilization of their resources, the conservation of their living resources, and the study, protection and preservation of the marine environment."³⁰⁹

³⁰⁴See Article 5 (1).

³⁰⁵See Section 5.

³⁰⁶See Section 6 of the Uganda Wildlife Statute, 1996.

³⁰⁷See section 28.

³⁰⁸See Part VI of the Statute.

³⁰⁹See Preamble to the Convention, Paragraph 4.

The Convention contains comprehensive provisions relating to conservation of marine living resources. The general rule is that the coastal state has authority to ensure the conservation of biological resources in the zones over which it exercises jurisdiction (i.e territorial sea, EEZ and the continental shelf). Another established rule of international law is that a ship on the high sea is subject to the exclusive jurisdiction of its flag state. This means that non-flag states cannot take enforcement action on the high seas when a fishing vessel is suspected of undermining regionally agreed measures for the conservation and management of straddling of highly migratory fish stocks.

Because of this principle, distant fishing nations started to catch rapidly declining fish stocks of fish in some areas of the high seas and in most cases in the vicinity of the Exclusive Economic Zones (EEZ) of the coastal states. If a coastal state agreed upon conservation measures with other states, it could have no legal basis for enforcing those measures unless the distant fishing nation had also agreed to such measures.

The General Assembly of the United Nations convened a Conference which adopted an Agreement for the implementation of the provisions of the United Nations Convention on the Law of the sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks.³¹⁰

The Agreement establishes a framework procedure allowing non-flag states to board and inspect fishing vessels of another state on the high seas.³¹¹ The Agreement obligates parties to establish regional measures/procedures in accordance with global standards it has set out. If a regional organisation has not established such procedures within two years of the adoption of the Agreement, it must adopt the basic procedure set out in Article 22, pending establishment of its own procedures. The Agreement makes it possible also for fishing vessels to be subjected to inspection even by non-party states to the regional measures.³¹²

Inspection is to be conducted for the purpose of ensuring compliance with such regional measures. The necessary implication of this Agreement is that non party states will be bound by the regional measures to which they have not

agreed. The Agreement also constitutes the global legal basis for permitting the inspecting state to bring a suspected vessel to a port for further investigation in case there are reasonable grounds for believing that the ship has committed a "serious violation", as defined in the Agreement³¹³.

5.21 National implementation of LOSC

Uganda is not a coastal state, and there is no regional fisheries organisation between the East African States. However, such organisation is necessary for Uganda which is a landlocked country because it would enable her to enjoy freedom of fishing on the high seas³¹⁴. Uganda would also have a right to participate, on an equitable basis, in the exploitation of an appropriate part of the surplus of the living resources of the Exclusive Economic Zone of coastal states of the same sub-region or region³¹⁵. Under this Agreement, states whose nationals exploit the living resources in the areas of the high seas have a duty to cooperate with other states in taking necessary measures for their respective nationals for the conservation of the living resources of the high seas.³¹⁶

The East African States, have, however, the Lake Victoria Fisheries organisations which was signed at Kisumu in 1994. This Agreement caters for the conservation and management of fresh water fisheries resources.

5.22 The 1985 Nairobi Convention and Protocols for the protection, management and development of the Marine and Coastal Environment of the Eastern African Region and Protocol on protected areas and wild fauna and flora in the region and protocol on cooperation in combating marine pollution in cases of emergency

The basic objective of the Nairobi Convention which is a UNEP Regional Seas Convention is the protection, management and development of the marine environment of the Eastern African Region. Uganda does not have a coastal line and has not ratified this convention. It is, however, recommended that she ratifies the Convention since conservation of wild fauna and flora in the coastal region is of benefit not only to those countries with a coastal area but even the land locked ones like Uganda.

³¹⁰See UN Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks, UN Doc. A/Conf.164/37 (1995), when twenty-six states signed it. The Agreement needs at least 30 ratifications or accessions in order to come into force (Art. 40).

³¹¹See Article 21 and 22 of the Agreement which relate to enforcement of international measures by non flag states.

³¹²Hayashi, 1996.

³¹³Ibid.

³¹⁴See Article 87 (1) (e) of the Convention.

³¹⁵See Article 69 (1).

³¹⁶See Articles 117, 118 and 119.

5.23 Protocol concerning co-operation in combating marine pollution in cases of emergency in the East African Region: Nairobi, 1985

The Protocol aims at fostering regional cooperation in the field of protection of marine and coastal environment from the threat of pollution resulting from the presence of oil or harmful substances in the marine environment as a result of marine emergencies.

This protocol is good for the conservation of marine wild fauna and flora for the benefit of the whole of the East African Region. Landlocked countries like Uganda should show their support and enthusiasm for such measures so as to encourage sustainable utilisation of the marine wildlife for both the present and future generations.

5.24 The Short Protocol on the Conservation of Common Natural Resources, Khartoum, January 1982

The Protocol was concluded by Uganda, Sudan and Zaire. It contains four substantive articles one of which contemplates the creation of a Commission on the black market and contraband and the prosecution of all those who trade without permit in objects coming from protected species in applying territorial law and restoring the objects seized to the state of origin.

CONCLUSIONS

A discussion of wildlife legislation both at a national regional and international level in this paper has revealed several aspects concerning conservation of wildlife, in particular, its management, both **in-situ** and **ex-situ**.

First and foremost, the discussion revealed that Ugandan national legislation discussed which were made before the completion of the NEAP process in 1994 are outmoded. do not incorporate the modern trends of scientific thinking and management of wildlife resources. That because such laws are outmoded, they need to be either repealed or revised to enable them incorporate the normative demands of the numerous international and sub-regional treaties and other arrangements in respect of wildlife conservation.

The study further revealed that most of the post 1994 legislation discussed has fairly adequate institutional frameworks and other provisions for the management of wildlife both in Uganda and across the country's political frontiers. Several of these statutes have provisions relating to either ratification of treaties entered into by the Ugandan Government or at least require the Government of Uganda to enter into such arrangements with other international persons. Adequacies and inadequacies of these laws have been identified and discussed.

The international legal instruments discussed revealed that Uganda has a duty, if it should protect her rich wildlife resources, to ensure that it complies with the requirements stipulated in these instruments. It was generally realised that the current national legal mechanisms in respect to conservation of wildlife are not adequate to control aspects like illegal transfrontier trade in wildlife species and trophies and guarantee the safety of migratory species.

The necessary conclusion drawn from this discussion, therefore, is that there is a dire need by each of the three East African states to enter into arrangements with her neighbours if the sub-regional wildlife resources are to be protected and conserved for the present and future generations.

CHAPTER SIX

6.0 RECOMMENDATIONS

6.1 Management Issues of Sub-regional Significance

- (a) To the extent possible, the definition of critical terms in national legislation relating to wildlife and other aspects of biodiversity should be harmonised, to facilitate collaboration amongst the countries.
- (b) The traditional narrow orientation towards wildlife in national laws should be replaced by a broader perspective on biodiversity, ecosystems and habitats. At the national level, this will promote integrated management.
- (c) The three countries need to agree and demarcate common migration corridors for effective management of migratory species. National laws should provide for the establishment, protection and management of migration corridors, through the use of mechanisms such as conservation easements, joint management agreements with affected landowners and communities and where necessary, through land acquisition.
- (d) Legal protection under national laws should be specifically extended to migratory species (as provided for in the Uganda legislation) including marine species.
- (e) National legislation which do not provide for EIA, should provide for environmental impact assessment for biodiversity-related activities, including activities with transboundary implications. This will necessitate harmonisation of EIA procedures in the three countries.

EIA should specifically be required for any proposed degazettement or downgrading of a protected area.

- (f) The countries should establish a cooperative framework and enabling laws that will facilitate the joint establishment, planning and management of transboundary protected areas, ecosystems, coastal marine protected areas, etc.

Enforcement

- (a) The definition of wildlife-related crimes and the sanctions for such crimes should be harmonized in national legislation, to ensure a level-playing field and avoid the situation where crimes are "cheaper" to commit in one country than another.
- (b) There is a need for updating of penalties to reflect prevailing economic realities and to compensate for the environmental costs of the offence. Countries should consider mechanisms for the regular updating of penalties.

National laws should contain provisions that facilitate:

- joint cross-border investigations
- mutual co-operation in judicial proceedings, including extradition, service of process, recognition and enforcement of judgements, reciprocal rights of standing, etc.
- handling and return of confiscated specimens
- measures to combat illegal trade and trafficking.



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The foregoing provisions should, where relevant, reflect the countries' obligations under international agreements such as CITES and the Lusaka Agreement.

Community

1. Effective management of wildlife, both in protected areas and outside, will require partnerships with local communities.

a. Legal frameworks should be developed in each country that facilitate effective involvement of communities, through:

- benefit and responsibility sharing arrangements
- well-defined user rights that are consistent with the conservation objectives in a particular area
- public participation in planning and management

b. Collaborative or similar management arrangements should be used as a tool to give effect to the recommendations in (a), above, particularly with respect to the conservation and sustainable use of wildlife and other elements of biodiversity on community and private land. To be effective, such agreements should:

- be site-specific to reflect local realities and the needs, aspirations and traditional ecological knowledge of local people. Model agreements can be a starting point, but need to be carefully adapted through collaboration of the partners.
- clearly spell out the responsibilities and rights of each partner.
- be enforceable between the parties and valid against third parties.
- provide a mechanism for conflict resolution and dispute settlement.

c. In cases where communities and ecosystems straddle national boundaries, governments should jointly work out collaborative management or similar agreements with the relevant communities, to avoid inconsistent

rights and responsibilities existing on either side of the border.

d. The concept of user rights outside protected areas should be incorporated in national legislation, and harmonized to avoid sub-regional disparities, particularly at border areas.

e. Countries should develop effective methods of providing prompt, fair and adequate compensation for wildlife-related losses. Such methods need to be non-bureaucratic and transparent to avoid fraud.

f. The dedication of any area to wildlife protection (whether a protected area or outside) should as much as possible protect and accommodate the traditional/historical rights of communities living in that area.

Where full accommodation of existing rights are not compatible with the purposes of conservation, then these rights should be compensated promptly, fairly and adequately.

g. The principle of compensation should apply not only to individual land rights, but where possible should extend to rights of access and use of common resources as well, especially in a wildlife management context. Where feasible and appropriate, compensation in such cases might take the form of providing equivalent rights elsewhere.

h. Governments should establish incentives for private land owners to devote land to biodiversity conservation and management. Options for the use of private land in this regard include game ranching, or the management of private land by government wildlife institutions pursuant to a management agreement.

Capacity Building

a. Effective management of wildlife at the national and sub-regional level will require vigorous and harmonized capacity-building efforts, including:-

i. establishment of a cooperative framework and enactment of enabling laws that will promote and strengthen wildlife research, both within countries and at the sub-regional level.

- ii. the harmonization of curricula at wildlife-training centres within the sub-region and the possible establishment of a sub-regional centre of excellence.
 - iii. establishment of effective channels of information exchange between the countries on biodiversity issues.
 - iv. increased public awareness of biodiversity-related issues, including relevant laws.
 - v. regular sharing of legal innovations and draft laws between the countries.
- b. Better coordination between relevant government bodies will require joint staff training programmes (of wildlife, forestry, fisheries, customs and police officers, etc.) to ensure that common goals and approaches will be pursued in harmony, especially when it comes to implementation on the ground.
- c. The involvement of local communities in biodiversity protection and management will require sustained capacity building, of government institutions and communities, in order to:-
- change prevailing antagonisms and attitudes (the “police-policed” relationship needs to be changed to a partnership); and
 - to assist in the formulation of local management strategies and agreements.
- d. Where possible, qualified NGO’s should be encouraged to serve as facilitators of the process of planning, negotiating agreements and training.

Institutional Arrangements

1. National laws should establish cost-effective

institutional frameworks that minimize inter-sectoral conflict, duplication and overlapping mandates.

- a. To facilitate integrated management, the combination or merger of institutions having wildlife-related mandates should be considered.
- b. Where institutional merger is not feasible, the national legal framework should spell out in detail the type of coordination required between relevant government agencies. Legislation could establish the basic framework of coordination, with regulations and inter-agency agreements establishing the precise mechanisms, the chain of command, the channels of communication and the like.

International Arrangements

1. National laws should be put in place in all three countries to implement international wildlife-related treaties. Absence of enabling laws compromises the efficacy and enforceability of such treaties.
 - a. Wherever possible, countries should endeavour to harmonize their treaty practices.
 - b. Countries should establish and keep up to date national treaty registries. Such registries would:
 - maintain the texts and information concerning the status of relevant treaties
 - make such texts and information accessible by the public
 - allow for sharing and exchange of information among countries.
 - c. The countries should identify together international agreements of priority interest to the sub-region, and should identify harmonized approaches to the domestic implementation of such agreements.

AAPPENDIX

DRAFT REGULATIONS FOR CITES

STATUTORY INSTRUMENTS

1999 NO. _____

THE WILDLIFE (ENDANGERED SPECIES CONVENTION) REGULATION, 1999

(Under sections 68 (1) and 91 of the Uganda Wildlife Statute, 1996)

Statute No. 16 of 1996

IN EXERCISE of the powers conferred on the Minister responsible for Wildlife by subsection (1) of section 68 of the Uganda Wildlife Statute, 1996 and after consulting the Minister responsible for trade, these regulations are made this _____ day of _____ 1999.

PART 1 - PRELIMINARY

Citation:

1. These Regulations may be cited as the Wildlife (Control of Trade in Endangered Species of Wild Fauna and Flora) Regulations 1999.

Interpretation

2. (1) Unless otherwise provided, the words and phrases used in these Regulations shall be read as one with the interpretation contained in section 2 of the Uganda Wildlife Statute, 1996.
(2) For the avoidance of any doubt, where an interpretation in these Regulations conflicts with that in the Statute, the interpretation in Statute shall, prevail.
(3) Subject to subregulations (1) and (2), in these regulations, unless otherwise provided:

“Convention”: means the Convention on International Trade in Endangered Species of Wild Fauna and Flora;

“Country of origin”: means the country in which a specimen was taken from the wild; captive bred or artificially propagated.

“Competent authority”: includes an officer so designated or authorised to act for the purpose of these Regulations under the Fish Act, Forests Act or a lead agency as defined under the Uganda Wildlife Statute;

“issuance”: means the completion of all procedures involved in preparing and validating a permit or certificate and its delivery to the applicant;

“management authority” means a national administrative authority designated in accordance with article 13(1) of the Convention on

International Trade in Endangered Species of Wild Fauna and Flora hereinafter referred to as CITES;

“National Bureaus” means a governmental entity with the competence encompassing law enforcement, designated or established by a Party to the Lusaka Agreement on Cooperative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora;

“offering for sale” or “offered for sale” or “offers for sale” means offering for sale and any action which may reasonably be constructed as such including advertising or causing to be advertised for sale and invitation to treat;

“personal or house hold effects” means dead specimen, parts derivatives thereof, that are the belongings of a private individual and that form or are intended to form part of his/her normal goods and chattels;

“place of destination” means the place at which a specimen will normally be kept after it is introduced into the country, in case of live specimens it shall be the place where the specimen is intended to be kept after any period of quarantine;

“population” means a biologically or geographically distinct total number of individuals;

“primarily commercial purposes” means all purposes the non-commercial aspects of which do not clearly predominate;

“re-export” means export from Uganda of any specimen that has previously been imported or introduced;

“re-introduced into Uganda” means introduction into Uganda of any specimen that has previously been exported and re-exported.

“sale” means any form of sale. For the purpose of this Regulation, hire, barter or exchange shall be regarded as sale, cognate expressions shall be similarly construed.

“Scientific authority” means a scientific authority designated in accordance with article 13(1)(b) of the CITES;

“species” means a species, subspecies or population thereof;

“specimen” means any animal or plant whether alive or dead of the species listed in the First Schedule and Third Schedules, any part or derivatives thereof whether or not contained in other goods. A specimen shall be considered to be a specimen of a species listed in First, Second and Third Schedules if it is or is part of or derived from an animal or plant at least one of whose “parents” is of a species so listed. However, in the case of hybrid plants if one of the “parents” is of a species listed in the 1st Schedule the provisions of the more restrictive first schedule shall apply only if the species is annotated to the effect in the schedule.

“trade” means the introduction into Uganda including the introduction from the sea and the export and re-export therefrom, as well as the use, movement and transfer of possession within Uganda of specimen subject to the provisions of this Regulation.

Purpose of Regulation

3. (1) The purpose of these Regulations is to:
- (a) implement the Convention on International Trade in Endangered Species of Wild Fauna and Flora;
 - (b) make provision for regulation of domestic trade in all wildlife species and species listed in appendices of CITES;
 - (c) generally give legal effect to CITES, the Uganda Wildlife Statute 1996, the Forests Act and the Fish Act.
- (2) In the fulfillment of the purposes under sub regulation (1) of these Regulations,
- (a) the First Schedule in Column 1, 2 and 3 adopts plants and animal species as listed in Appendices I, II and III, respectively, as amended by the Conference of the Parties and Notification to Parties;
 - (b) the Second Schedule lists species of plants and animals which are nationally endangered but which may or may not have been listed on CITES appendices and prohibits national and international trade in the specimen of the species;
 - (c) the Third Schedule lists species in which both national and international trade may be authorised under certain conditions.

Statute No. 16 of 1996; Cap 246; and Cap 228

PART II

Institutional Arrangement for the Enforcement of CITES

4. (1) In accordance with Article IX (a) of the CITES the Minister has designated the Commissioner for Wildlife as the Management Authority.
- (2) In accordance with Article IX (b) of the CITES the Minister shall appoint four specialists from the fields of ecology, mammalogy, herpetology or entomology, onthology, and five ex-officio members drawn on merit from NEMA, UWA, Forestry, Fisheries and Wildlife Unit to serve as the Scientific Authority for the purposes of the Convention.
- (3) The names of the specialist appointed under subregulation (2) of this Regulation shall be published by Notice in the Gazette.

- (4) The Management Authority and the Scientific Authority appointed under subregulations (1) and (2) of this Regulation shall, in the performance of their respective functions, consult the relevant competent authority or lead agency.

The functions of the Management Authority

5. (1) The functions of the Management Authority appointed under sub-regulation (1) of Regulation 4 shall include:
- (a) the issuance of CITES export, re-export, import permits or certificates;
 - (b) convening meetings of the Scientific Authority;
 - (c) preparation of CITES annual reports;
 - (d) communication, with CITES Secretariat, Parties to the Convention or any other lead agency or person performing similar or related functions.
- (2) In the fulfillment of the above functions, the Management Authority shall -
- (a) in the case of the export of any specimen of a species included in Column 1 of the First Schedule, state whether or not it is satisfied that:
 - (i) the specimen was not obtained in contravention of the laws of Uganda for the protection of fauna and flora in accordance with Article III (2) (b) of the CITES;
 - (ii) the living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment in accordance with Article III (2) (c) of the CITES;
 - (iii) an import permit has been granted for the specimen in accordance with Article III (2) (c) of the CITES;
 - (b) in the case of the import of any specimen of a species included in Column 1 of the First Schedule, state whether or not it is satisfied, as the Management Authority of the State of re-export, that the specimen is not to be used for primarily commercial purposes contrary to Article III (3) (c) of the CITES;
 - (c) in the case of a re-export certificate, it , as the Management Authority of the State of re-export,
 - (i) state, whether or not it is satisfied that the specimen was imported into Uganda in accordance with the provisions of the present Convention as provided for under Article III (4) (a) of the CITES;

- (ii) state that it is satisfied that any living specimen will be so prepared and shipped as to minimise the risk of injury, damage to health or cruel treatment as provided for under Article III (4) (b) of the CITES;
 - (iii) state that it is satisfied that an import permit has been granted for any living specimen as provided for under Article III (4) (c) of the CITES;
 - (iv) state that the competent authority of the state of export has issued a valid certificate of health or quarantine certificate;
 - (d) in the case of the introduction from the sea of any specimen of a species included in Column 1 of the First Schedule state that it is satisfied that:
 - (i) the proposed recipient of a living specimen is suitably equipped to house and care for it as provided for under Article III (5) (b) of the CITES;;
 - (ii) the specimen is not to be used for primarily commercial purposes as provided under Article III (5) (c) of the CITES;
- (3)
 - (a) in the case of the export of any specimens of species included in Column 2 of the First Schedule, state whether or not as the Management Authority of the State of export, it is satisfied that:
 - (i) the specimen was not obtained in contravention of the laws of Uganda for the protection of fauna and flora as provided for under Article IV 2(b) of the CITES;
 - (ii) any living specimen will be so prepared and shipped as to minimise the risk of injury, damage to health or cruel treatment Article IV (2) (c) of the CITES;
 - (b) in the case of the re-export of any specimen of a species included in Column 2 of the First Schedule, state whether or not, as the Management Authority of the State of re-export, it is satisfied that:
 - (i) the specimen was imported into Uganda in accordance with the present Convention;
 - (ii) any living specimen will be so prepared and shipped as to minimise the risk of injury, damage to health or cruel treatment as provided for under Article IV (5) (b) of the CITES;
 - (c) in the case of the introduction from the sea of any specimen of a species included in Column 2 of the First Schedule, it shall, as the Management Authority of the State of introduction state whether or not it is satisfied that any living specimen will be

handled as to minimise the risk of injury, damage to health or cruel treatment as provided for under Article IV (6) (b) of the CITES.

- (4) (a) in the case of the export of any specimen of a species included in Column 3 of the First Schedule from any State which has included that species in Appendix III, it has, as the state of export, state whether or not it is satisfied that;
 - (i) the specimen was not obtained in contravention of the laws of Uganda for the protection of fauna and flora as provided for under Article V 2. (a) of the CITES;
 - (ii) any living specimen will be so prepared and shipped as to minimise the risk of injury, damage to health or cruel treatment as provided for under Article V (2) (b) of the CITES.
 - (b) in the case of re-export of any specimen of species included in Column 3 of the First Schedule, it, as the Management Authority of the State of re-export, grant a certificate that the specimen was processed in Uganda or is being re-exported from Uganda.
 - (c) to grant, cancel or perform such other functions with respect to permits and certificates as specified in regulation 7;
 - (d) to grant any valid exemption as specified in the Convention (Article VII);
 - (e) to initiate and establish direct communication between itself and any other Management Authority of State Party to the Convention.
- (5) In the exercise of its functions under these Regulations, the Management Authority shall not grant an import or export permit unless the Scientific Authority has advised that it is satisfied that the import or export will not be detrimental or contribute to trade which is detrimental to the survival of any species and subspecies.

Functions of the Scientific Authority

6. (1) The functions of the Scientific Authority shall include -
- (a) to advice the Management Authority or competent authority on matters relating to the issuance of CITES export, re-export or import permits or certificate;
 - (b) to recommend species that may be traded in or offered for sale nationally or internationally;
 - (c) in consultation with the competent authority, to monitor population of wild fauna and flora in trade or offering for sale.

- (2) In the performance of the above functions the Scientific Authority shall
- (a) in accordance with Article III. 2, III.5, IV.2 and IV.6 of the CITES, advise the Management Authority and the competent authority on whether or not a proposed export or introduction from the sea of any specimen in Column 1 or 2 of the First Schedule will be detrimental to the survival of the species involved;
 - (b) in the case of a proposed import of specimen in Column 1 or 2 of the First Schedule, advise the Management Authority and the competent authority in accordance with the provisions of Article III. 3 of the CITES on whether or not the purpose of the import is not detrimental to the survival of the species involved;
 - (c) in the case of a proposed import of a live specimen in Column 1 or 2 of the First Schedule, state whether or not it is satisfied that the proposed recipient of the specimen is suitably equipped to house and care for it in accordance Article III.3 of the CITES;
 - (d) in the case of a proposed introduction from the sea of specimen in Column 1 of the First Schedule, advise the Management Authority and the competent authority on whether or not the introduction will be detrimental to the survival of the species involved;
 - (e) monitor the export permits granted for specimens in Column 2 of the First Schedule as well as the actual exports of such specimens, and advise the Management Authority and the competent authority of suitable measures to be taken to limit the grant of export permits when it has determined that this is necessary to maintain that species throughout its range are at a level consistent with its role in the ecosystems, and well above the level at which that species might become eligible for inclusion in Column 1 of the First Schedule as required by the provisions of Article IV. 3 of the CITES;
 - (f) advise the Management Authority and the competent authority on the choice of a rescue centre or other place for the disposal of confiscated specimens as required by the provisions of Article VIII. 4. of the CITES;

PART III - PERMITS, CONDITIONS AND ISSUANCE CERTIFICATE OR LICENCES

Prohibitions on trade or offering for sale.

7. (1) Subject to subregulation (4) of regulation 5, no person shall possess, trade in or offer for sale any specimen of species included in the Schedule these Regulations unless he or she has a valid permit, certificate or licence issued by the Management Authority or the relevant competent authority as the case may be.

**Statute No. 16 of 1996;
Cap. 228 and Cap. 246.**

- (2) Without prejudice to sub-regulation (1) of this regulation; the provisions of the Wildlife Statute; Fish Act; Forests Act or these Regulations, no person shall -
- (a) import into Ugandan any specimen of species or its derivatives included in the First Schedule of these Regulations;
 - (b) import directly into Uganda any specimen of species listed in columns I or II of the First Schedule taken from the sea beyond the jurisdiction of any country;
 - (c) export from Uganda any specimen of species listed in the First Schedule;
 - (d) re-export from Uganda any specimen of species listed in the First Schedule;
 - (e) possess any wildlife or plant listed in the First Schedule which specimen of species is imported into Uganda, or exported or re-exported from Uganda contrary to the Convention, or any Forestry or Fisheries or Wildlife Legislation, or these regulations;
 - (f) engage in domestic trade in any specimen of species listed in the Second and Third Schedules;
 - (g) possess any specimen of species listed in the First, Second and Third Schedules;
 - (h) generally engage in any activity that is in contravention of the Convention.

Statute No. 16 of 1996

- (3) A person who contravenes sub-regulation (1) of this regulation commits an offence and is liable, on conviction to the penalty prescribed in section 77 of the Statute.

Restrictions and Exceptions

8. For avoidance of any doubt;
- (1) the prohibitions in regulations 7(1); (2) (a) (h), shall apply even if lawful possession or domestic trade or offer for sale is authorised under regulation 10.
 - (2) the prohibitions in paragraphs (a), (b), (c) and (d) of subregulation (2) of regulation 7, on importation, exportation and re-exportation shall not apply:
 - (a) to wildlife or plant listed in the First Schedule that are being transhipped through Uganda provided such wildlife or plants remain in Customs Custody.
 - (b) to wildlife or plants when a valid certificate has been issued by the management authority of the country of origin or the country

of re-export to the effect that the wildlife or plant was acquired prior to the date the Convention applied to it.

- (c) subject to sub-regulation (3), to wildlife or plants that are accompanying personal baggage or part of a shipment of the household effects of a person moving their residences to or from Uganda;
 - (d) to wildlife or plants listed in Column 1 of the First Schedule that have been bred in captivity or artificially propagated, for commercial activities, and which shall be treated as if listed in Column 2 of the First Schedule;
 - (e) to wildlife or plants when a valid certificate has been issued by the management authority of the country of export to the effect that the wildlife or plant was bred in captivity or artificially propagated, or was part of or derived from a wildlife or plant bred in captivity or artificially propagated;
 - (f) to herbarium specimens, other preserved, dried or embedded museum specimens, and live plant material when they are imported, exported or re-exported as a non-commercial loan, donation or ex-change between scientists or scientific institutions that have been registered by a management authority of their country, and when a valid label issued or approved by such management authority is clearly affixed to the package or container.
- (3) The exemptions under of subparagraph (c) of subregulation (2) of this regulation shall not apply to:
- (i) importation by Ugandan residents of wildlife or plants listed in Column 1 of the First Schedule that were acquired outside Uganda.
 - (ii) importation by Ugandan residents of wildlife or plants listed in Column 2 of the First Schedule that were taken from the wild in a foreign country, if that country requires export permits.

Import of Species in the First Schedule

9. Without prejudice to the general effect of regulation 7, a person may, under these Regulations-

- (a) import into Uganda any specimen of species listed in Column 1 of the First Schedule from any other country if he or she has -
 - (i) obtained, prior to the importation, a valid foreign export permit issued by the country of origin or a valid foreign re-export certificate issued by the country of re-export in accordance with paragraphs (a), (b) and (c) of subregulation (1) of regulation 5;

- (ii) subject to paragraph (i) a valid Uganda import permit issued under these Regulations;
 - (iii) the import permit issued under paragraph (a) (i) shall be in the format specified in the Sixth Schedule.
- (b) not import directly into Uganda any Specimen of species listed in Column 1 of the First Schedule which wildlife or plant was taken from the sea beyond the jurisdiction of any country unless he or she has obtained prior to such importation a valid import permit issued under subregulation (1) of regulation 7.
 - (c) not import into Uganda any specimen of species listed in Column 2 of the First Schedule from any foreign country unless he or she has obtained, prior to such importation:
 - (i) a valid foreign export permit issued by the country of origin; or
 - (ii) a valid foreign re-export certificate issued by the country of re-export.
 - (iii) a valid Ugandan import authority.
 - (d) not import directly into Uganda any wildlife or plant listed in Column 2 of the First Schedule taken from the sea beyond the jurisdiction of any country unless he or she has obtained, prior to such importation, a valid import permit from Uganda issued under regulation 7.
 - (e) not import into Uganda any wildlife or plant listed in Column 3 of the First Schedule from a foreign country that has listed such animal or plant in Appendix III unless he or she has obtained, prior to such importation, a valid foreign export permit or re-export certificate issued by such country and a valid import permit from Uganda Management Authority;
 - (f) not import into Uganda any wildlife or plant listed in Column 3 of the First Schedule from a foreign country that has not listed such wildlife or plant in Appendix III unless he or she has obtained, prior to such importation, a valid import authority from the Management Authority.

Export or Re-export of Species in the First Schedule.

- 10. (1) Without prejudice to the general effect of regulation 7, a person may:
 - (a) export or re-export from Uganda any wildlife or plant listed in Column 1 and 2 of the First Schedule if he has obtained, prior to such exportation or re-exportation, a valid Uganda export permit or re-export certificate issued under subregulation (2) of this regulation;

- (b) export or re-export from Uganda any wildlife or plant listed in Column 3 of the First Schedule by Uganda if he or she has obtained, prior to such exportation or re-exportation, a valid Uganda export permit or re-export certificate issued under subregulation (2) of this regulation;
 - (c) export or re-export from Uganda any specimen of species listed in Column 3 of the First Schedule that has not been listed by Uganda if he or she has obtained, prior to such exportation or re-exportation, a valid re-export certificate or certificate of origin issued under subregulation (2);
- (2) The Management Authority may, in the exercise of its functions under regulation 7 issue an export permit, or re-export certificate or certificate of origin under this regulation.
 - (3) An export permit or re-export certificate or certificate of origin referred to in these regulations shall conform to the standard CITES certificate as specified in Article VI of the Convention and be in the format in the Fourth Schedule.

Procedure for application

- 11. (1) A person may apply for a permit or certificate in order to import, export or re-export trade or offer for sale wildlife or plants listed in the First Schedule.
- (2) An application under sub regulation (1) of this regulation -
 - (a) shall be submitted to the Executive Director, CITES Management Authority and the competent authority responsible for forestry or fisheries;
 - (b) The application shall contain general information contained in Schedule 7 to these Regulations.
 - (c) in the case of a wild animal or plant:
 - (i) the scientific and common names of the species or taxa to the rank listed in the First Schedule sought to be covered by the permit, the number of wild animals or plants, and the activity sought to be authorized (such as importing, exporting, re-exporting);
 - (ii) a statement as to whether the wildlife or plant, at the time of application, is living in the wild; is living but is not in the wild; or is dead.
 - (iii) a description of the wildlife or plant including size; sex, if known, type of good, if it is a part or derivative.
 - (d) in the case of living wildlife or plants; a description of the type,

size or construction of any container the wild animal or plant will be placed during transportation; the arrangements for watering and otherwise caring for the wild animal or plant during transportation; the name or address of the person in a foreign country to whom the wild animal or plant is to be exported from Uganda or from whom the wild animal or plant is to be imported into Uganda; the country and place where the wild animal or plant was or is to be taken from the wild;

- (e) in the case of wild animals or plants listed in column 1 of the First Schedule, to be imported into Uganda, a statement of the purposes and details of the activities for which the wild animal or plant is to be imported; a brief resume of the technical expertise of the applicant or other persons who will care for the wild animal or plant; the name, address and a description, including diagrams or photographs,

of the facility where the wild animal or plant will be maintained; a description of all mortalities, in the two years preceding the date of this application, involving any wildlife species covered in the application (or any species of the same genus or family) held by the applicant, including the causes and steps taken to avoid such mortalities.

- (3) In all the cases under subregulation (2), copies of documents, sworn affidavits or other evidence showing that either that the wild animal or plant was acquired prior to the date the Convention applied to it; bred in captivity or artificially propagated; or was part of or derived therefrom; or that the wild animal or plant is an herbarium specimen, either preserved, dried or embedded museum specimen, or live plant material to be imported, exported or re-exported as a non-commercial loan, donation or exchange between scientists or scientific institutions.

Issue of Permit or Certificate

12. (1) The Management Authority may, on receiving an application under regulation 11, decide whether to grant or reject to grant a permit or certificate.
- (2) In making a decision under subregulation (1) of this regulation, the Management Authority shall consider the following factors -
- (a) whether the proposed import, export or re-export would be detrimental to the survival of the species;
- (b) whether the wild animal or plant was acquired lawfully;
- (c) whether any living wild animal or plant to be exported or re-exported will be prepared and shipped as to minimise the risk of injury, damage to health or cruel treatment;

- (d) whether any living wild animal or plant to be imported directly into Uganda from the sea beyond the jurisdiction of any country will be so handled as to minimise the risk of injury, damage to health or cruel treatment;
- (e) whether an import permit has been granted by a foreign country, in the case of proposed export or re-export from Uganda of any wild animal or plant listed in Column 1 of the First Schedule;
- (f) whether the proposed recipient of any living wild animal or plant listed in column 1 of the First Schedule to be imported into Uganda is suitably equipped to house and care for such wild animal or plant;
- (g) whether any wild animal or plant listed in Column 1 of the First Schedule to be imported into Uganda is to be used for primarily commercial activities;
- (h) whether the evidence submitted is sufficient to justify an exception, in the case of
 - (i) wild animals or plants that were acquired prior to the date the Convention applied to them;
 - (ii) wild animals or plants that were bred in captivity or artificially propagated, or were part of a or derived therefrom; or
 - (iii) wild animals or plants that are herbarium specimens; other preserved, dried or embedded museum specimens, or live plant material to be imported, exported or re-exported as a non-commercial loan, donation or exchange between scientists or scientific institutions.
- (i) whether in the case of wild animals or plants listed in Column 2 of the First Schedule, they are the subject of a large volume of trade and are not necessarily threatened with extinction.
- (j) whether the applicant has been charged and convicted of an offence relating to the matter in the application or under the Statute;
- (k) whether the applicant has failed to disclose material information required or has made false statement as to any material fact in connection with the application;
- (l) whether the applicant has failed to demonstrate a valid justification for the permit and a show of responsibility;
- (m) whether the application, if granted, potentially threatens a wildlife or plant population;

- (3) the Management Authority or the competent authority, may refuse to grant a permit or certificate if on further inquiry or investigation, it establishes that the applicant is not qualified or suitable for the grant.

Conditions of Issuance of a Permit or Certificate

13. If the Management Authority decides to grant a permit or certificate under regulation 12, the following conditions shall apply to the grant:

- (a) the permit must be presented to a customs agent or Authority's agent at a designated port of entry on importation into Uganda or prior to exportation or re-exportation from Uganda.
- (b) where appropriate or feasible, the Authority may require that an identifying mark be affixed on any wildlife or plant.
- (c) in the case of wild animals or plants that are herbarium specimens, either preserved, dried or embedded museum specimens, or live plant material to be imported, exported or re-exported as a non-commercial loan, donation or exchange between scientists or scientific institutions:
 - (i) the names and address of the consignor and consignee must be on each package or container; and
 - (ii) the letters "CITES", a description such as "herbarium specimens" and the code letters assigned by the Authority to the scientist or scientific institution;

Must be entered on the Customs declaration form affixed to each package or container.

Duration of permits or certificates

14.
 - (a) An export permit or re-export permit issued or granted under these Regulations shall only be valid for import purposes if presented within six months of the date of issue.
 - (b) The validity of an import certificate shall not exceed six months.
 - (c) The Management Authority shall issue a separate permit or certificate for each consignment.
 - (d) A permit issued under these Regulation is not transferable.
 - (e) All used permits shall be surrendered to the Customs Office concerned at the time of import or export and the Customs Office shall transmit the surrendered permits to the Management Authority.
 - (f) The Management Authority shall submit a certified photostat copy of the permit under paragraph (e) to the CITES Secretariat.

Importation and Exportation for Transit Purposes Rules

15. (a) A species or specimen imported under these regulations for the purpose of transit shall be imported only through a customs port specified in the First Column of the Fifth Schedule; and shall be a condition of the importation that the importer shall complete a transit declaration in the form contained in the Sixth Schedule.
- (b) A specimen imported under subregulation (1) shall be consigned to the consignee specified in the transit declaration and shall be exported within the period so specified from a customs port specified in the Second Column of the Fifth Schedule to these regulation.
- (c) Transit Declaration form should be completed and submitted to the competent authority, Commissioner of Customs and Management Authority with CITES export permit or certificate attached.
- (d) Exportation or Importation for transit purposes shall not be authorised for a non-party to the Convention.

Validity of Importation and Exportation for Transit Purposes

16. (a) A transit declaration issued under regulation 15 shall be valid only if the species or specimens for which it was issued remained in an area or place designated by the Management Authority;
- (b) The Management Authority shall, in consultation with the competent authority, by Notice in the Gazette or in the transit declaration form in the Sixth Schedule, designate an area or place to which the species or specimens in transit shall be kept prior to exportation.
- (c) A species or specimen in transit kept outside the area or place designated under paragraph (a) may be seized by the Management Authority, competent authority or its recognised agent.
- (d) A person who contravenes this regulation commits an offence.

Validity of Documents from Non-party

17. (a) This Regulations shall apply to all specimens and species listed in the First Schedule whether the shipment is to or from a country that is party to the Convention, or to from any other country.
- (b) Without prejudice to paragraph (a) an export permit, re-export certificate, certificate of origin or any other certificate is valid only if it is issued and signed by a management authority of a country that is a Party.

- (c) In the case of a shipment from a country not party to the Convention, comparable documentation issued by the competent authorities in that state which documentation substantially conforms with the requirement of the present Convention for permits and certificates may be accepted in lieu thereof by the relevant authorities in Uganda.
- (d) A document issued under paragraph (c) -
 - (i) may be in the form of an export or import permit, a letter from the proper authority, or any other form that clearly indicates the nature of the document;
 - (ii) must be issued by an official of the country responsible for authorizing the export of such wildlife or plants;
 - (iii) must specify the species and give the numbers of wildlife or plants covered by the document;
 - (iv) be in the format in the Eighth Schedule.

Trade in non-CITES Species

- 18. (1) No person shall possess or trade in the specimens of species listed in the Second Schedule unless he or she has a license issued by the competent authority on the advise of the Scientific Authority.
- (2) A person who contravenes this regulation is liable to the penalty prescribed in section 76 of the Statute.

Domestic trade or possession of species in the Schedules

- 19. Without prejudice to the general effect of regulation 7, no person shall -
 - (1) engage in domestic trade in any specimen and species listed in the First or Second Schedule unless he or she has obtained, prior to such trade, a valid permit or license issued under these Regulations.
 - (2) possess, trade in or offer for sale any specimens and species listed in Part 1 of the Third Schedule unless he or she has obtained, prior to such possession, a valid permit, a grant of use right or any other lawful possession issued under section 4, paragraph (c) subsection (1) of section 15, section 19, or any other provision of the Statute or any other law.

Part - MISCELLANEOUS PROVISIONS

Relationship with existing laws

- 20. (1) For the avoidance of any doubt, the Statute and these regulations shall be read and construed as being in addition to and not in derogation from or in substitution for any legislation relating to customs or regulations made under section 68 of the Statute, customary belief,

quarantine, public health or any other law whether made before or after the commencement of the Statute or these Regulations and the holder of a permit to import or export a specimen is not exempt from compliance with any of these laws that apply in relation to that specimen.

- (2) Without prejudice to the generality of sub-regulation (1) and of section 91, where the law or customary belief referred to above conflicts with or is inconsistent with the requirement of the Convention then the provision of the Convention or these regulations shall prevail and the law or customary belief shall to the extent of conflict or inconsistency be void.

Amendment of First Schedule

21. (1) The Minister shall, on the advise of the Management Authority, amend the First Schedule whenever the appendices to the Convention are amended.
- (2) Without prejudice to sub regulation (1) and for the avoidance of any doubt, an amendment to the Convention appendices in the First Schedule shall immediately have force of law as from the from date they have entered into force under the Convention.
- (3) The Management Authority shall, prior to the amendment in sub regulation (1), cause, by General Notice in the Gazette, for a list of the amendments to be published.
- (4) Notwithstanding the requirements of these Regulations with respect to the respective appendices in the First Schedule, the Minister may, in making the regulation under these regulations and on the advise of the Scientific Authority and the Management Authority direct that the controls applicable to Appendix 1 species under these regulations be made to apply to certain Appendix II or Appendix III species and from the date of the publication of that directive, those species listed shall be treated as if they are listed in Appendix 1 of the First Schedule.

Amendment of Schedules

22. The Minister may, on the advice of the Management Authority and after consultation with the Scientific Authority, competent authority and lead agencies, amend any other Schedule to these regulations.

FIRST SCHEDULE

CITES APPENDICES I, II and III

ANIMALS NOT BE HUNTED OR CAPTURED THROUGHOUT UGANDA

EXCEPT FOR RESEARCH PURPOSES AND UNDER A SPECIAL PERMIT

1. Gorrilla-Gorrilla beringii
2. Chimpanzee-Pan schweinfurthi
3. Roam Antelope (Femal) - Hippotragus equinus
4. Greater Kudu (Female) - Strepsiceros strepsiceros bea
5. White Rhinoceros-Ceratotherium cottoni
6. Ostrict-Struthio camelus
7. Heron (all species)
8. Egrets-Cosmerodius albus melanorhynchus
Mesophoyx intermedius brachyrhynchus
Egretta garzetta garzetta
Bubulcus ibis
9. Whale-headed Stork-Balaeniceps rex
10. Saddle-bill Stork-Ephippiorhynchus senegalensis
11. Marabou Stork-Leptoptilos crumeniferus
12. Greater Flamingo-Phoeniconaias minor
13. Lesser Flamingo-Phoeniconaias minor
14. Secretary Bird-Sagittarius serpentarius
15. Vulture (all species)-Aegypiidae
16. Ground Hornbill-Bucorvus abyssinicus
17. Owl (all species) - Taurotragus and Strigidae
18. Giant Eland-Taurotragus derbianus gigas
19. Aard Wolf-Proteles cristatus

THIRD SCHEDULE

Regulation 12(1)

STANDARD

CITES

Permit/Certificate

FOURTH SCHEDULE

Regulation 9(a)(iii)

FORMAT OF AN IMPORT PERMIT

FIFTH SCHEDULE
Regulation 13(a)
CUSTOMS PORT

First Column Customs Ports for Importatio•	Second Column Customs Ports for Exportatio•
Kampala Jinja Mbale Entebbe International Airport Merama Hill Kisoro Mpondwe Ishasha River Vurra Goli Atiak	Kampala Jinja Mbale Entebbe International Airport Mombasa

SIXTH SCHEDULE

Regulation 15

IMPORTATION AND EXPORTATION OF ANIMALS, AND PLANTS AND ANY OF THEIR DERIVATIVES FOR TRANSIT PURPOSES

TRANSIT DECLARATION

1. I of (address) declare that animals(s), plant(s) and derivatives listed here under are to be imported into Uganda for transit purpose through custom entry point.

List of specimen
.....
.....

2. I undertake to export the animals(s), plant(s) or derivatives through customs port at within days.

3. I understand that failure to export within seven days will render me liable to prosecution under the Wildlife Statute 1996.

4. I enclose authentic CITES permit or certificate from the Management Authority of
.....

Signature of importer

Signature of CITES
Management Authority
of Exporting Country

Signature of Customs
Official at the entry
point.

Place:

Date

Original to CITES Management Authority of Transit country.

Duplicate to Commissioner of Customs.

Triplicate to the National Bureau under the Lusaka Agreement.

Quadruplicate to be retained by issuing officer, e.g. Director UWA, Commissioner Forestry, Commissioner Fisheries.

SEVENTH SCHEDULE

Regulation 11 (b)

INFORMATION TO BE CONTAINED IN THE APPLICATION

- (i) applicant's full name, mailing address, telephone/fax numbers;
- (ii) if the applicant is an individual, the date of birth, height, weight, hair colour, eye colour, sex and any business, or institutional affiliation of the applicant related to the requested permitted activity; or
- (iii) if the applicant is a corporation, firm, partnership, association, institution the name and address of the Directors or principal officer and of the registered agent, if any, for the service of process;
- (iv) the location where the requested permitted activity is to occur or be conducted;
- (v) designated port to be used and, where necessary, clearance by the officials there;
- (vi) fee payable;
- (vii) V.A.T. status;
- (viii) the desired effective date of the permit (where possible);
- (ix) date;
- (x) signature of applicant;
- (xi) certificate in the following language;

I hereby certify that I have read and am familiar with the Wildlife (Endangered Species Convention) Regulations of Uganda and I further certify that the information submitted in this application for a permit is complete and accurate to the best of my knowledge and belief. I understand that any false statement in this application may subject me to suspension or revocation of this permit or certificate and also to criminal charges.

- (xii) such other information as the Management Authority on the advice of the competent authority determines relevant to the processing of the application.

EIGHTH SCHEDULE

Regulation 17(d)(iv)

I, _____ (signing official), hereby certify that the shipment of wildlife or plant covered by this document is in accordance with the laws of _____ (country), will not be detrimental to the survival of the species in the wild, and, if living, will be transported in a manner which will minimize the risk of injury, damage to health, or cruel treatment.

DRAFT REGULATIONS FOR LUSAKA AGREEMENT

STATUTORY INSTRUMENTS

1999 NO. _____

**THE COOPERATIVE ENFORCEMENT OPERATIONS DIRECTED AT ILLEGAL
TRADE IN WILD FAUNA AND FLORA ORDER, 1999.**

(Under section 91 of the Uganda Wildlife Statute, 1996)

Statute No. 16 of 1996

IN EXERCISE of the powers conferred on the Minister responsible for Wildlife by sub-section (I) of section 91 of the Uganda Wildlife Statute, 1996 and with the approval of Parliament signified by its resolution, this Order is made this _____ day of _____ 1999.

Citation

1. This Order may be cited as the Cooperative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora Order, 1999.

Interpretatio•

Statute No. 16 of 1996

2. Unless otherwise provided, the words and phrases used in these Regulations shall be read as one with the interpretation contained in Section 2 of the Ugnada Wildlife Statute, 1996.

“Agreement” means The Lusaka Agreement on Cooperative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora.

“Management Authority” means the Authority established under regulation 4 of The Wildlife (Endangered Species Convention) Regulations, 1999.

“National Bureau” means a Bureua established under Regulation 4 subregulation (1) of these Regulations.

“Task Force” means the Task Force established under the Operational Rules and Procedures of the Task Force for Cooperative Enforcement Operations Directed at Illegal Trade in Wildlife Fauna and Flora.

Purpose

- (1) The purpose of this Order is to give legal effect to the Lusaka Agreement on Cooperative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora in order to -
 - (a) eliminate illegal trade in wild fauna and flora both nationally and internationally;

- (b) establish a permanent Task Force for this purpose as required under the Agreement;
- (c) establish a National Bureau as required under the Agreement;
- (d) legalise activities of the Task Force and the National Bureau and grant them protection and autonomy in the exercise of their duties under the Agreement;
- (e) to give legal effect to the Operational Rules and Procedures of the Task Force for Cooperative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora under the Lusaka Agreement;
- (f) generally to provide for matters incidental to or connected with the effective enforcement and implementation of the Agreement.

Statute No. 16 of 1996

- (2) The Agreement is, subject to paragraph (a) sub-sections (1) and (4) of section 91, of the Uganda Wildlife Statute, 1996.

Establishment of enforcement agencies

- 4. (1) There is hereby established a National Bureau for Uganda in fulfilment of the Agreement.
- (2) The National Bureau shall be composed of -
 - (a) one officer from the law enforcement officers of the Uganda Wildlife Authority established under subsection (1) of section 5 of the Uganda Wildlife Statute, 1996;
 - (b) one officer from Interpol appointed under the Police Statute;
 - (c) one officer from customs department;
 - (d) one officer from the Forest Department;
 - (e) one officer from the Fisheries Department;
 - (f) a representative of the Management Authority for the Convention on International Trade in Endangered Species of Wild Fauna and Flora.
- (3) The Minister shall, by Notice in the Gazette, publish the names of the members under subregulation (2) of this regulation.
- (4) The Chairman of the National Bureau shall be the Management Authority under paragraph (f) of subregulation (2) of this regulation.
- (5) The Government, on the advise of the Ministry responsible for Tourism and Wildlife and Antiquities and in consultation with the competent

authority, shall second a representative under subregulation (2) of this regulation to the Task Force.

Functions of the National Bureau

5. The Functions of the National Bureau shall be -

- (a) to investigate cases of illegal trade and violation of national laws relating to wild fauna and flora;
- (b) subject to subsection (5) of section 11 of the Uganda Wildlife Statute, 1996, to prosecute cases under paragraph (a);
- (c) to provide to and receive from the Task Force information on illegal trade;
- (d) to coordinate with the Task Force on investigations that involve illegal trade;
- (e) to advise on the need for the use of under cover operation and obtaining the necessary consent for its application;
- (f) to establish an informational and data center for illegal trade and other matters related to the management of wild fauna and flora;
- (g) to establish such facilities and acquire the necessary firearms, investigation equipments and such other devices as may be required in its operation;
- (h) to ensure the confidentiality of classified information on its operations and that of the Task Force;
- (i) to develop and promote public awareness campaigns aimed at enlisting public support for the objective of this Order and the Agreement;
- (j) subject to Article 4.9 of the Agreement, to facilitate the return to the country of original export or country of re-export any specimen of species of wild fauna and flora confiscated in the course of illegal trade;
- (k) to prepare and submit quarterly reports to the Task Force, the Ministry responsible for wildlife, Uganda Wildlife Authority, the Forestry Department and the Fisheries Department on its activities;
- (l) generally to perform any other task assigned to it under the Agreement, by the Government or by a competent authority.

Statute No. 16 of 1996

Adoption of rules made under the Agreement

- 6 (1) The Operational Rules and Procedures of the Task Force for Cooperative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora under the Lusaka Agreement shall guide the National Bureau and the Task Force when operating in Uganda.

Statute No. 16 of 1996

- (2) Subject to paragraph (a) of subsection (1) and subsection (4) of section 91 of the Uganda Wildlife Statute, 1996, the Operational Rules are provided in the Second Schedule to this Order.

Protection from Liability

7. A member of the National Bureau or Task Force shall not be liable for any act done in good faith in the performance of his or her duties under this Order or the Agreement.

Privileges and Immunities

- 8 (1) Subject to paragraph 11 of Article 5 of the Agreement, the members of the Task Force so specified shall enjoy diplomatic privileges and immunities normally accorded to the diplomatic missions in Uganda.
- (2) Without prejudice to subregulation (1) of the regulation, the officials of the Task Force shall enjoy the following privileges and immunities while in Uganda -
- (a) immunity from legal process of any kind in respect of words spoken or written and of acts performed by them in their official capacity, such immunity to continue notwithstanding that the persons concerned may have ceased to be officials of the Task Force;
 - (b) immunity from seizure of their personal and official baggage;
 - (c) exemption from taxation in respect of the salaries, emoluments indemnities and pensions paid to them by the Task force for services past or present or in connection with their service with the Task Force;
 - (d) exemption from any form of taxation on income derived by them from sources outside the Republic of Uganda;
 - (e) exemption from registration fees in respect of their automobiles;
 - (f) exemption, with respect to themselves, their spouses, their dependant relatives and other members of their households, from immigration restrictions and alien registration;
 - (g) exemption from national service obligations, provided that, with respect to Uganda nationals such exemption shall be confined to officials whose names have, by reason of their duties, been placed upon a list compiled by the Director and approved by the Government;
 - (h) freedom to acquire or maintain within the Republic of Uganda or elsewhere foreign securities, foreign currency accounts, and other movables and the right to take the same out of the Republic

of Uganda through authorised channels without prohibition or restriction;

(i) the same protection and repatriation facilities with respect to themselves, their spouses, their dependent relatives and other members of their households as are accorded in time of international crisis to members, having comparable rank, of the staffs of chiefs of diplomatic missions accredited to the Republic of Uganda; and

(j) the right to import for personal use, free of duty and other levies, prohibitions and restrictions on imports;

(i) their furniture, household and personal effects, in one or more separate shipments, and thereafter to import necessary additions to the same;

(ii) one automobile, and in the case of officials accompanied by their dependants, two automobiles every three years, unless the Task Force and the Government agree in particular cases that replacements may take place at an earlier date, because of loss, extensive damage or otherwise;

(iii) reasonable quantities of certain articles including liquor, tobacco, cigarettes and foodstuffs, for personal use or consumption and not for gift or sale;

the Task Force may establish a commissary for the sale of such articles to its officials and members of delegations. A supplemental agreement shall be concluded between the Executive Director and the Government to regulate the exercise of these rights;

(k) automobiles imported in accordance with sub-order (i) (ii) of this Order may be sold in the Republic of Uganda at any time after their importation, subject to the Government regulations concerning payment by the buyer of customs duties;

(3) The identity card issued by the Task Force shall serve to identify the holder in relation to all Uganda authorities.

(4) Experts other than officials of the Task Force, performing missions authorized by serving on committees or other subsidiary organs of, or consulting, at its request, in any way with the Task force shall enjoy, within and with respect to the Republic of Uganda, the following privileges and immunities so far as may be necessary for the effective exercise of their functions;

(a) immunity in respect of themselves their spouses and their dependent children from personal arrest or detention and from seizure of their personal and official baggage;

- (b) immunity from legal process of any kind with respect to words spoken or written, and all acts done by them, in the performance of their official functions, such immunity to continue notwithstanding that the persons concerned may no longer be employed on missions for, serving on committees of, or acting as consultants for, the Task Force, or may no longer be present at the headquarters seat or attending meetings convened by the Task Force;
 - (c) inviolability of all papers, documents and other official material;
 - (d) the right, for the purpose of all communications with the Task Force, to use codes and to dispatch or receive papers, correspondence or other official material by courier or in sealed bags;
 - (e) exemption with respect to themselves and their spouses from immigration restrictions, alien registration and national service obligations;
 - (f) the same protection and repatriation facilities with respect to themselves, their spouses, their dependant relatives and other members of their households as are accorded in time of international crisis to members, having comparable rank, of the staffs of chiefs of diplomatic missions accredited to the Republic of Uganda;
 - (g) the same privileges with respect to currency and exchange restrictions as are accorded to representatives of foreign Governments on temporary official missions; and
 - (h) the same immunities and facilities with respect to their personal and official baggage as the Government accords to members, having comparable rank, of the staffs of chiefs of diplomatic missions accredited to the Republic of Uganda;
- (5) The Director shall communicate to the Government a list of persons within the scope of this Order and shall revise such list as may be necessary.

ANNEX

UNITED NATIONS ENVIRONMENT PROGRAMME PROGRAMME DES NATIONS UNIES POUR L'ENVIRONNEMENT UNEP/UNDP JOINT PROJECT ON ENVIRONMENTAL LAW AND INSTITUTIONS IN AFRICA WORKSHOP ON DEVELOPMENT AND HARMONIZATION OF ENVIRONMENTAL LAW ON SELECTED TOPICS IN EAST AFRICA

2nd to 10th February 1998

Venue: Sunset Hotel, Kisumu, Kenya

I. INTRODUCTION

This is a synoptic outline for a workshop to discuss the development and harmonization of environmental law on selected topics in the East African Region under the UNEP/UNDP/DUTCH Joint Project on Environmental Law and Institutions in Africa. The purpose is to provide a handy brief on the objectives of the workshop. A brief background, particularly how the workshop falls into the overall picture of the Joint Project, is provided. The section on participants indicates the mode of selection and the role to be played by the individuals. That is directly related to the schedule of the workshop, which outlines the procedure for the participation of those invited.

Finally, the section on the procedure for finalization of the report is outlined.

II. BACKGROUND

The East African Sub-Regional Project is a component of the UNEP/UNDP Joint Project on Environmental Law and Institutions in Africa funded by the Dutch Government. Systematic and essentially national activities are being conducted in Burkina Faso, Malawi, Mozambique and in Sao Tome and Principe. Although South Africa was identified by the Project Steering Committee as a project country, no systematic activities have been done there and no firm decision has been taken by the Government as to whether they will, in fact, be so involved. This uncertainty is occasioned by the broad constitutional, policy and legislative reorientations which have been evolving in the country since 1994.

The activities of the Joint Project in East Africa (Kenya, Tanzania and Uganda) focus on matters of sub-regional character. The underlying presupposition is that the physical and historical situation in East Africa offered an opportunity to initiate and encourage dealing with environmental issues according to problem-sheds. The historical facts are that (a) there is a history of regional cooperation among the countries from colonial times; and (b) there is shared legal tradition which derives from common law origins. It was resolved by the Project Steering Committee that the two historical facts could be relied upon to support harmonized legislation on selected themes in the commonly shared environment.

Representatives of the three governments met in February 1995 to work out general principles and modalities for their cooperation. Their second meeting was in May 1995 to discuss the general terrain of topics amenable to development and harmonization of laws. The final decision on six priority topics was taken at their third meeting in February 1996.

The six topics which were selected for the Project's activities are: (i) Development and harmonization of EIA Regulations; (ii) Development and harmonization of laws relating to transboundary movement of hazardous wastes; (iii) Development and harmonization of the methodologies for the development of environmental standards; (iv) Development and harmonization of forestry laws; (v) Development and harmonization of wildlife laws; and (vi) Recommendation for legal and institutional framework for the protection of the environment of Lake Victoria. For each of the topics, the delegates worked out generic terms of reference. However, each national team was subsequently to work out country-specific terms of reference to reflect national legal and institutional situations as well as existing priorities.

The respective national consultants were also selected by the National Coordinating Committees (NCC), working in consultation with an officer at the UNDP country office.

The national consultants have now completed their work. In each case, the reports have enjoyed review by the national panels constituted under the aegis of the respective NCCs. Draft reports, as they evolved, were circulated to the consultants in the three countries. In some cases, the consultants were able to take the reports of their counterparts into account in finalizing their reports. Therefore, some degree of harmonization of reports will, presumably, have been done.

The workshop which is proposed herein, will bring together the consultants for each topic for substantive discussions of their reports and to agree on recommendations as to what should be done next and by whom.

III. OBJECTIVES

The objectives of the workshop may be summarized as follows:

- (1) to ensure that the recommendations for policies and law for the respective topics are in harmony as far as possible;
- (2) to promote the development of legal and institutional machineries which are comparable in all the three East African countries in the absence of an over-arching sub-regional framework;
- (3) to harmonize the normative prescriptions and institutional machineries and therefore create an opportunity for harmonized enforcement procedures; and
- (4) to create an opportunity for dealing with the respective environmental problems according to the problem-sheds, which are essentially sub-regional.
- (5) to make recommendations on how each country should proceed towards implementation of the recommendations.

IV PARTICIPANTS

There will be four (4) broad categories of participants, over a seven days period:

- (1) Consultants who worked on each respective topic. These will work as specific sub-regional teams of experts of reach topic and the number per topic varies by the subject and from country to country. The selection of consultants was done so as to ensure complementarity of expertise and, therefore, full coverage of the topic.

A list of consultants by the topics is attached.

- (2) National Coordinators for the project will attend from each of the three countries. Since they are in the picture of the project and how the consultancies were carried out at the national level, the coordinators will attend throughout the workshop. They are to carry the national spirit and ownership, ensuring that the workshop recommendations are consistent with national legislative procedures and policies. They can therefore suggest adjustment in the recommendations while maintaining the overall objectives.

The meeting of country representatives in February 1995 had suggested that the national coordinator, who would eventually attend this workshop, should ideally have legal training. However, where the coordinator has no legal training then he/she should be accompanied to this workshop by another government officer who is fully aware of this project and is legally trained.

The rationale for this position is that the coordinator (and such an associate) would be responsible for ensuring that the documents emanating from the workshop are consistent with the national legislative framework, procedures and policies.

This provision should explain instances where the one national coordinator may be accompanied by an additional officer. The national coordinator and his/her associate would also have two procedural functions at the workshop. First, they would be advisors to the meeting of permanent secretaries (see below) on the substance and procedures of the project. Secondly, they will present the status report on the evolution of the project at country level, to the meeting of permanent secretaries.

- (3) There will be two principal Facilitators at the Workshop. The two persons will have read all the six reports from the three countries and identified the main features/typologies which require (i) improvement for internal cogency and/or (ii) harmonization from normative, procedural or institutional point of view.

It is proposed here that while the foregoing preparation should ideally cover all the six topics from the three countries, it may be practical for the respective facilitator to read broadly, but prepare detailed comments on only three topics. We anticipate that two teams of respective consultants on each topic will run concurrently for a maximum of two days for each topic, making a total of three days for the consultants' sessions. Thus, a facilitator would work in details with one group on three teams for the respective three days.

The East African Sub-Regional Project has been an intriguing experiment not only for the project management but also for members of the Steering Committee. The latter group is keen to follow the procedure and see the quality of the outcome. For these reasons, the project management has deemed it fit that the facilitators for each team of consultants should be from the institutions and members of the Steering Committee.

It is with gratitude we record here that Professor David Freestone (The World Bank) and Mr. Jonathan Lindsay (FAO) have accepted to assist as facilitators for the workshop.

- (4) A meeting for Permanent/Principal Secretaries responsible for environment from the three countries, was proposed by the 1995 meeting, as a component of the sub-regional workshop. Therefore, there would be only one such officer from each of the three countries, making a total of three.

Their meeting will be attended by the national coordinators as discussed above.

The permanent/principal secretaries are the accounting officers and policy leaders in their ministries. It was deemed essential that they receive a full briefing on the aspirations and activities of the project. In this way they can discuss the deliverables and take decisions and assume actual ownership of the outcome.

Ultimately, their cooperation and support is essential for the national level adoption and enactment of the recommendations of this project.

This explains the necessity of a meeting of these senior officers together with their national coordinators, with pertinent legal backing. It is also essential that this meeting be held towards the end of the workshop, to receive the report or outcome of the sessions of consultants.

The meeting will comprise a briefing on the overall Joint Project by the management, and a report on the national activities by each of the three coordinators; workshop reports from the meeting of consultants on each of the project topics, given by the national coordinators. In other words, each national coordinator will assume the repertory role for two of the six topics.

- (5) The overall workshop Chair will be by Director, UNEP Environmental Law and Institutions, Programme Activity Centre.

V. PROGRAMME OF THE WORKSHOP

The Workshop will be divided into two broad categories:

1. Meeting of Experts/Consultants
2. Meeting of Permanent/Principal Secretaries

The duration is from 2nd to 10th February 1998. The daily schedule will be from 0830 hours to 1700 hours, subject to variation by necessity.

Although the records of the proceedings will be kept by the Secretariat, it is proposed that a representative/consultant from one of the countries be the official rapporteur, responsible to the workshops, for the accuracy of the reports. Subject to confirmation by the meeting of consultants, we propose that the country teams be designated as rapporteurs as follows: EIA Regulations (Uganda); Lake Victoria Environment (Tanzania); Hazardous Wastes (Tanzania); Environmental Standards (Uganda); Wildlife (Kenya); and Forestry (Kenya).

Daily meetings of the experts will run on two Tracks, as below:

Dates	Track I in Topics	Track II Topics
2nd & 3rd February	EIA Regulations	Lake Victoria Environment
4th & 5th February	Hazardous Wastes	Wildlife Legislation
6th & 7th February	Environmental Standards	Forestry Legislation

Consultants for each topic will arrive the day before their respective topics schedules on the programme and depart after the end of the second day. The Coordinators as described above will stay from 1st to 10th February 1998.

- 8th February
 - Preparation of reports by the Coordinators
 - Arrival of Principal/Permanent Secretaries
- 9th and 10th February
 - Meeting of the Permanent/Principal Secretaries (with Facilitators from FAO and The World Bank and the National Coordinators). The six topics will be paced out over the two days and resolution adopted at the end of the deliberations. A detailed programme of work for the two days will be drawn in consultations with the national coordinators.

VI. OUTLOOK

At the end of the meeting of the experts, each consultant will be expected to have a clear picture of what additional amendments or changes they need to do to effect the harmonization. It will be urged that such amendments are completed within approximately two weeks after the workshop.

Secondly, the national coordinators will advise on the approximate schedule for the national consensus-building workshops and implementation of recommendations.

Finally, the consultants will make such other adjustments as may be recommended by the workshop. The national coordinators will advise on when the final reports will be submitted and, therefore, the activities concluded.

The principal/permanent secretaries may, in instances where they deem it practical, advise on when the legislative actions might be taken at national level on each topic.

**UNITED
NATIONS**



UNEP/UNDP/Joint Project

**United Nations
Environment
Programme**



UNEP

Distribution: RESTRICTED

**East Africa Sub-Project
20 April 1998**

ORIGINAL: ENGLISH

**UNEP/UNDP JOINT PROJECT ON ENVIRONMENTAL LAW AND INSTITUTIONS IN AFRICA
EAST AFRICAN SUB-REGIONAL PROJECT MEETING OF THE PERMANENT SECRETARIES
RESPONSIBLE FOR ENVIRONMENTAL MATTERS**

Nairobi, 15 April 1998

**REPORT OF THE MEETING OF THE PERMANENT SECRETARIES ON THE
DEVELOPMENT AND HARMONIZATION OF ENVIRONMENTAL LAW ON SELECTED
TOPICS UNDER THE EAST AFRICAN SUB-REGIONAL PROJECT**

Background:

1. The meeting of the Permanent Secretaries responsible for environmental matters in Kenya, Uganda and Tanzania met in Nairobi, Kenya at the UNEP Headquarters on 15 April 1998. The meeting marked a culmination of series of activities executed under the East African Sub-regional Project of the UNEP/UNDP/Dutch Joint Project on Environmental Law and Institutions in Africa which began in 1995. In particular, the Permanent Secretaries met to discuss, evaluate and assess the recommendations made by a series of six sub-workshops held simultaneously and back to back in Kisumu, Kenya from 2-10 February 1998.
2. The sub-workshops had reviewed and assessed the reports prepared by national consultants on the six priority areas identified earlier on, namely, Environmental Impact Assessment (EIA) Regulations, Hazardous Wastes, Environmental Standards, Lake Victoria Environment, Wildlife laws and Forestry laws. Furthermore, each sub-workshop had made a series of recommendations geared towards assisting the national consultants with mechanisms to strengthen their reports on the basis of discussions and comments made in the relevant sub-workshops.
3. Based on recommendations made by experts in the six sub-workshops, the meeting of Permanent Secretaries was convened as above stated to review the work of the experts and the recommendations for action. The one day meeting was followed by another day's meeting of the National Coordinators of the Project to finalize the documents, on the basis of instructions given by the Permanent Secretaries.

OPENING OF THE MEETING:

5. The meeting of the Permanent Secretaries was officially opened by Mr. Donald Kaniaru, Director, UNEP, ELL/PAC, at 9.10 a.m. on 15 April 1998 at UNEP Headquarters. The morning part of the meeting was chaired by Mr. Donald Kaniaru, while the latter afternoon part was chaired by Mr. Patrick Kahangire, Acting Permanent Secretary, Ministry of Natural Resources, Uganda.
6. In his opening remarks, Mr. Kaniaru expressed his hope that the intervening period had provided appropriate opportunities to the Permanent Secretaries to be briefed on the results of the sub-workshops by their National Coordinators, and that in turn, they had consulted their other colleagues in the relevant Government departments on the issues discussed. In that regard, he called upon the Permanent Secretaries to comment on each of the six areas, principally focusing on updates and actions taken since the sub-workshops in February 1998. He further requested them to endorse or modify or add to the recommendations or specific points made by the consultants to pave the way for targeted implementation.
7. He concluded by urging that the three Governments should advise the relevant departments dealing with the East African Co-operation Secretariat (EAC) of the evolving need to take up environmental policy coordination questions urgently, and the possibility of negotiating treaties or protocols to give legal effect to the recommendations made by the consultants. He assured the Permanent Secretaries that once EAC is advised by the Governments, UNEP would be ready to assist by making its expertise available to the EAC and the Governments.

BRIEF ON THE SCOPE OF THE JOINT PROJECT:

The Task Manager of the UNEP/UNDP Joint Project in Environmental Law and Institutions in Africa, Professor Charles O. Okidi, briefed the Permanent Secretaries on the scope, objective and status of the Joint Project including the sub-regional project. He clearly showed them what the Sub-Regional Project has achieved to date and where it stands in relation to the overall Joint Project.

STATEMENTS BY PERMANENT SECRETARIES:

The Permanent Secretaries made statements and, in particular, informed the other participants the role the Joint Project has played in their countries, in particular, in the field of the development of environmental law and institutions including building the capacities of their officials and institutions. Status of development of environmental legislation in each country were narrated in the statements including the constraints faced in the implementation of some of the activities.

The Permanent Secretaries appreciated the Joint Project efforts in organizing several capacity building workshops in the field of environmental law. They were also delighted with the efforts taken by the Project to utilize national experts to undertake review of the six priority areas. The exercise has succeeded in building a cadre of national expertise in the field of environmental law and ensures national ownership of the reports produced and laws and/or implementing regulations prepared.

8. All of them were thankful to the sponsor of the Joint Project, the Dutch Government, the implementors of the Project, UNEP and UNDP as well as all other supporting partner organizations, IUCN, FAO, and the World Bank. To this end, they unanimously recommended the extension of the Joint Project to permit them to complete the on-going activities and allow the Governments to develop regulations to implement the six areas. They emphasized that the extended period would equally permit them to focus on new priority areas identified by their experts.

PRESENTATION OF THE REPORTS OF THE SUB-WORKSHOPS:

9. On behalf of the National Coordinator from Tanzania, the National Coordinators from Kenya and Uganda officially presented to the Permanent Secretaries the reports which were adopted by the experts of each Sub-Workshop on the six areas discussed during their meetings held in Kisumu, Kenya from 2 to 10 February 1998. The presentation of each report was followed by discussion of the issues raised and recommendations made. As necessary, an update of

the facts or situation since February 1998 in each country was made. For instance, Uganda reported that they had their national consensus building workshop to review the reports and the revised reports have already been forwarded to UNEP. Kenya reported that it was going to hold its national workshop from 26 April to 1 May 1998 to review the consultants' reports and recommendations. Tanzania on the other hand, reported that it held its national workshop on 11 April 1998 whereby the reports were reviewed and recommendations made. As the result of the national workshop recommendations, Tanzania had requested for extension of time to permit the consultant to prepare the report on EIA while the one dealing with the forestry legislation to rewrite it to the required standards.

10. The reports presented were on the development and harmonization on the following six areas:-

- (i) Environmental Impact Assessment Regulations
- (ii) Forestry Legislation
- (iii) Transboundary Movement of Hazardous Wastes
- (iv) Methodology for the Development of Environmental Standards
- (v) Management of the Lake Victoria Environment
- (vi) Wildlife Legislation.

11. The presentation of each report was divided into four main sectors. They were namely:-

- (i) General overview of the reports as presented by the national consultants in the sub-workshop.
- (ii) Reasons justifying the need for sub-regional harmonization of each area presented.
- (iii) Common elements to be considered by Governments during the preparation of national legislation in each of the six areas.
- (iv) Conclusions made by each sub-workshop, namely, requesting EAC to assist in the preparation of an overarching agreement on the environment with sectoral Protocols on each of the six areas. While requesting UNEP to facilitate the development of the agreement and the protocols, reports urged the donor to favourably consider extending the Joint Project.

RECOMMENDATIONS:

12. The Permanent Secretaries endorsed all the six reports of the sub-workshops together with the recommendations made with minor adjustments. They all acknowledged that the reports were a clear testimony of success of the capacity which the Joint Project has built in their countries during the execution of Joint Project activities. They expressed satisfaction with the good quality of the reports which were presented to them. While they agreed that the Joint Project has succeeded in organizing capacity building in a number of areas in environmental management, they recommended more training programmes to include the private sector. Of priority importance, the Permanent Secretaries emphasized a training programme on EIA for the private sector.
13. While requesting UNEP to assist in the implementation of all the recommendations made, the Permanent Secretaries promised to commit themselves to support implementation of activities at national level. In addition, they promised to ensure that the recommendations they have adopted are forwarded to the EAC for implementation as proposed. They recognized the need for an overarching treaty/protocol on the environment which will facilitate future development of sectoral protocols on different priority areas. To this end, they requested UNEP to facilitate and support EAC and the Governments in the development of the proposed protocols, at appropriate moments.

14. To synthesize their endorsement of the recommendations made by their experts, the Permanent Secretaries requested UNEP to assist and support them in the preparation of a Memorandum of Understanding (MOU) on Environment as a matter of urgency. Consequently, the Permanent Secretaries mandated and instructed their National Coordinators to commence preparation of the draft MOU for their consideration. After consultation, the meeting agreed that the first meeting of the National Legal Experts under the sub-regional project will be held from 25 to 26 May 1998 to discuss and review the draft text which would have by then been prepared and circulated to the national experts for their input. The Permanent Secretaries expects the text to be ready for adoption at the latest in July 1998.
15. Furthermore, as recommended by the experts, the Permanent Secretaries strongly requested the extension of the Joint Project to allow them to complete the activities already under way. Extension would also permit Governments to strengthen and reinforce the completed activities by developing implementing regulations. They hope that the extended period would equally permit them to focus on new priority areas to be identified.

FOLLOW UP:

16. The Permanent Secretaries instructed the National Coordinators who met for another extra day on 16 April 1998, to finalize and compile documents discussed in their meeting.

They were instructed to prepare the following from the recommendations of the experts on the six areas which had been endorsed and the new recommendations which emanated from the meeting:-

- (i) To identify from the reports of the Sub-Workshops recommendations which cut across and common to all the six areas and those recommendations specific only to certain areas. The identification of these issues are attached as *Annex IV*.
- (ii) To identify recommendations which are addressed to Governments for their implementation. These are attached as *Annex V*.
- (iii) To identify recommendations addressed specifically to EAC for their action and execution. These are enclosed as *Annex VI*.
- (iv) To identify those recommendations which requested the support and assistance of UNEP and its affiliates in their implementation. These are enclosed as *Annex VII*.
- (v) To prepare for their adoption and signature, by July 1998, a MOU on Environment. MOU, they emphasized, will be benchmark for the success of the activities under the East African Sub-project.

CLOSING REMARKS:

17. After usual exchange of courtesies and appreciations for the cordial and friendly atmosphere, the meeting was declared closed at 18.00 hours on 15 April 1998.

**RECOMMENDATIONS ON THE DEVELOPMENT AND HARMONISATION OF
LAWS RELATING TO WILDLIFE MANAGEMENT**

Management Issues of Sub-regional Significance

- a. To the extent possible, the definition of critical terms in national legislation relating to wildlife and other aspects of biodiversity should be harmonized, to facilitate collaboration amongst the countries.
- b. The traditional narrow orientation towards wildlife in national laws should be replaced by a broader perspective on biodiversity, ecosystems and habitats. At the national level, this will promote integrated management.
- c. The three countries need to agree and demarcate common migration corridors for effective management of migratory species. National laws should provide for the establishment, protection and management of migration corridors, through the use of mechanisms such as conservation easements, joint management agreements with affected landowners and communities and where necessary, through land acquisition.
- d. Legal protection under national laws should be specifically extended to migratory species (as provided for in the Uganda legislation) including marine species.
- e. National legislation should provide for environmental impact assessment for biodiversity-related activities, including activities with transboundary implications. This will necessitate harmonization of EIA procedures in the three countries (please refer to the report of the committee on harmonizing EIA procedures). EIA should specifically be required for any proposed degazettement or downgrading of a protected area.
- f. The countries should establish a cooperative framework and enabling laws that will facilitate the joint establishment, planning and management of transboundary protected areas, ecosystems, coastal marine protected areas, etc.

Enforcement

- a. The definition of wildlife-related crimes and the sanctions for such crimes should be harmonized in national legislation, to ensure a level-playing field and avoid the situation where crimes are "cheaper" to commit in one country than another.
- b. There is a need for updating of penalties to reflect prevailing economic realities and to compensate for the environmental costs of the offence. Countries should consider mechanisms for the regular updating of penalties.

National laws should contain provisions that facilitate:

- joint cross-border investigations
- mutual co-operation in judicial proceedings, including extradition, service of process, recognition and enforcement of judgments, reciprocal rights of standing, etc.
- handling and return of confiscated specimens
- measures to combat illegal trade and trafficking

The foregoing provisions should, where relevant, reflect the countries' obligations under international agreements such as CITES and the Lusaka Agreement.

Community

1. Effective management of wildlife, both in protected areas and outside, will require partnerships with local communities.
 - a. Legal frameworks should be developed in each country that facilitate effective involvement of communities, through:
 - benefit and responsibility sharing arrangements
 - well-defined user rights that are consistent with the conservation objectives in a particular area
 - public participation in planning and management
 - b. Collaborative or similar management arrangements should be used as a tool to give effect to the recommendations in b, above, particularly with respect to the conservation and sustainable use of wildlife and other elements of biodiversity on community and private land. To be effective, such agreements should:
 - be site-specific to reflect local realities and the needs, aspirations and traditional ecological knowledge of local people. Model agreements can be a starting point, but need to be carefully adapted through collaboration of the partners.
 - clearly spell out the responsibilities and rights of each partner.
 - be enforceable between the parties and valid against third parties.
 - provide a mechanism for conflict resolution and dispute settlement.
 - c. In cases where communities and ecosystems straddle national boundaries, governments should jointly work out collaborative management or similar agreements with the relevant communities, to avoid inconsistent rights and responsibilities existing on either side of the border.
 - d. The concept of user rights outside protected areas should be incorporated in national legislation, and harmonized to avoid sub-regional disparities, particularly at border areas.
 - e. Countries should develop effective methods of providing prompt, fair and adequate compensation for wildlife-related losses. Such methods need to be non-bureaucratic and transparent to avoid fraud.
 - f. The dedication of any area to wildlife protection (whether a protected area or outside) should as much as possible protect and accommodate the traditional/historical rights of communities living in that area. Where full accommodation of existing rights are not compatible with the purposes of conservation, then these rights should be compensated promptly, fairly and adequately.
 - g. The principle of compensation should apply not only to individual land rights, but where possible should extend to rights of access and use of common resources as well, especially in pastoral and forest contexts. Where feasible and appropriate, compensation in such cases might take the form of providing equivalent rights elsewhere.
 - h. Governments should establish incentives for private land owners to devote land to biodiversity conservation and management. Options for the use of private land in this regard include game ranching, or the management of private land by government wildlife institutions pursuant to a management agreement.

Capacity Building

- a. Effective management of wildlife at the national and sub-regional level will require vigorous and harmonized capacity-building efforts, including:-
 - i. establishment of a cooperative framework and enactment of enabling laws that will promote and strengthen wildlife research, both within countries and at the sub-regional level.
 - ii. the harmonization of curricula at wildlife-training centres within the sub-region and the possible establishment of a sub-regional centre of excellence.
 - iii. establishment of effective channels of information exchange between the countries on biodiversity issues.
 - iv. increased public awareness of biodiversity-related issues, including relevant laws.
 - v. regular sharing of legal innovations and draft laws between the countries.
- b. Better coordination between relevant government bodies will require joint staff training programmes (of wildlife, forestry, fisheries, customs and police officers, etc.) to ensure that common goals and approaches will be pursued in harmony, especially when it comes to implementation on the ground.
- c. The involvement of local communities in biodiversity protection and management will require sustained capacity building, of government institutions and communities, in order to:-
 - change prevailing antagonisms and attitudes (the "police-policed" relationship needs to be changed to a partnership); and
 - to assist in the formulation of local management strategies and agreements.
- d. Where possible, qualified NGO's should be encouraged to serve as facilitators of the process of planning, negotiating agreements and training.

Institutional Arrangements

1. National laws should establish cost-effective institutional frameworks that minimize inter-sectoral conflict, duplication and overlapping mandates.
 - a. To facilitate integrated management, the combination or merger of institutions having wildlife-related mandates should be considered.
 - b. Where institutional merger is not feasible, the national legal framework should spell out in detail the type of coordination required between relevant government agencies. Legislation could establish the basic framework of coordination, with regulations and inter-agency agreements establishing the precise mechanisms, the chain of command, the channels of communication and the like.

International Arrangements

1. National laws should be put in place in all three countries to implement international wildlife-related treaties. Absence of enabling laws compromises the efficacy and enforceability of such treaties.
 - a. Wherever possible, countries should endeavour to harmonize their treaty practices.
 - b. Countries should establish and keep up to date national treaty registries. Such registries would:

- maintain the texts and information concerning the status of relevant treaties
 - make such texts and information accessible by the public
 - allow for sharing and exchange of information among countries.
- c. The countries should identify together international agreements of priority interest to the sub-region, and should identify harmonized approaches to the domestic implementation of such agreements.

**UNEP/UNDP/DUTCH JOINT PROJECT ON ENVIRONMENTAL LAW AND
INSTITUTIONS IN AFRICA**

**EAST AFRICAN SUB-REGIONAL PROJECT WORKSHOP ON HARMONIZATION OF
DRAFT REPORTS AND LAWS
February 2-10 1998**

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