



WILDLIFE TRADE AND THE IMPLEMENTATION OF CITES IN TANZANIA

Prepared for Uganda Wildlife Society by

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TABLE OF CONTENTS

TABLE OF CONTENTS	i
LIST OF ABBREVIATIONS	ii
LIST OF LEGISLATION	iii
INTERNATIONAL LEGAL INSTRUMENTS	iv
SECTION ONE: BACKGROUND	1
SECTION TWO: The Development of Wildlife Trade in Tanzania: A Historical Perspective	2
2.1 INTRODUCTION	2
2.2 THE PRE-COLONIAL ERA.....	3
2.3 THE COLONIAL ERA	4
SECTION THREE: An Overview of the Post-Independence Institutional, Regulatory and Legislative Frameworks Relating to Wildlife Trade	6
SECTION FOUR: A Review of the Wildlife Trade Related Laws and Policies	8
4.1 INTRODUCTION	8
4.2 A REVIEW OF THE WILDLIFE CONSERVATION ACT, 1974	9
4.3 A REVIEW OF THE WILDLIFE POLICY	11
SECTION FIVE: A Review of Tanzania’s Institutional Arrangements for CITES Implementation	14
SECTION SIX: A Comparative Perspective: The Implementation of the CITES in Other Jurisdiction’s - Lessons For Tanzania	19
SECTION SEVEN: CONCLUSIONS AND RECOMMENDATIONS	23
BIBLIOGRAPHY	25

LIST OF ABBREVIATIONS

CITES	Convention on International Trade in Endangered Species of Fauna and Flora
Cap.	Chapter
E.A	East Africa (Law Reports)
Ed./s	Editor/s
<i>et al</i>	and another/s
FZS	Frankfurt Zoological Society
GTZ	German Technical Cooperation
G.N.	Government Notice
Ibid.,	Ibidem (In the citation immediately above)
ILFEMP	Institutional and Legal Framework for Environmental Management
I.L.M	International Legal Materials
IUCN	International Union for Conservation of Nature
LEAT	Lawyers Environmental Action Team
L.N.T.S	League of Nations Treaty Series
No./s	Number/s
Op.cit	Opera Citate, (in the works already cited)
Pp.	Pages
p.	page
SUA	Sokoine University of Agriculture
SWRI	Serengeti Wildlife Research Institute
TANAPA	Tanzania National Parks Authority
TAWICO	Tanzania Wildlife Corporation
TAWIRI	Tanzania Wildlife Research Institute
TRAFFIC	Trade and Records Analysis of Flora and Fauna in Commerce
TWCM	Tanzania Wildlife Conservation Monitoring
TWPF	Tanzania Wildlife Protection Fund
UNDP	United Nations Development Program
UNEP	United Nations Environmental Program
U.N.T.S	United Nations Treaty Series
URT	United Republic of Tanzania
USA	United States of America
UWS	Uganda Wildlife Society
WD	Wildlife Division
WWF	World Wide Fund for Nature

LIST OF LEGISLATION

- Wildlife Decree, 1896, Laws of Tanganyika
- Wildlife Decree, 1898, Laws of Tanganyika
- Wildlife Decree, 1900, Laws of Tanganyika
- Wildlife Decree, 1903, Laws of Tanganyika
- Wildlife Decree, 1905, Laws of Tanganyika
- Wildlife Decree, 1908, Laws of Tanganyika
- Wildlife Decree, 1911, Laws of Tanganyika
- Fauna Conservation Ordinance, Cap. 302, Laws of Tanganyika
- Wildlife Conservation Act, No. 12 of 1974, Laws of Tanzania
- Wildlife Conservation (Amendment) Act, No. 12 of 1978, Laws of Tanzania
- Fisheries Act, No. 6 of 1970, Laws of Tanzania
- Tanzania Fisheries Research Institute Act, No. 6 of 1980, Laws of Tanzania
- National Parks Ordinance, Cap. 412, Laws of Tanganyika
- The Forestry Ordinance, Cap. 398, Laws of Tanganyika
- Tanzania Forestry Research Institute Act No. 5 of 1980, Laws of Tanzania
- Ngorongoro Conservation Area Ordinance, Cap. 413, Laws of Tanganyika
- Ngorongoro Conservation Area Ordinance (Amendment) Act, No. 5 of 1968, Laws of Tanzania
- Wildlife Conservation (National Game) Order, 1974 (G.N. 274/1974)
- Wildlife Conservation (Hunting of Animals) Regulations, 1974 (G.N. 274/1994)
- Wildlife Conservation (Dealings in Trophies) Amendment Regulations, 1989 (G.N. No. 278/1989)
- Wildlife Regulations (Capture of Animals) Regulations, 1974 (G.N. No. 278/1974)
- College of African Wildlife Management Act, No. 8 of 1964, Laws of Tanzania
- College of African Wildlife Management (Amendment) Act, No. 32 of 1994, Laws of Tanzania
- Tanzania Wildlife Corporation Act, (Establishing Order) (G.N. No. 231 /1980)
- Tanzania National Scientific Council Act, No. 51 of 1968, Laws of Tanzania
- Tanzania Fisheries Corporation Act (Establishment Order) (G.N. No. 58/1974)
- Serengeti Wildlife Research Institute Act, No. 4 of 1980, Laws of Tanzania

INTERNATIONAL LEGAL INSTRUMENTS

- Wildlife Conservation and National Parks Act, No. 28 of 1992, Laws of Botswana
- Convention on International Trade in Endangered Species of Fauna and Flora, 1973
- Convention Concerning the Preservation of Wild Animals, Birds and Fish of Africa, 1900
- Convention Relative to the Preservation of Fauna and Flora in their Natural State, 1933
- African Convention for the Conservation of Nature and Natural Resources, 1968
- Protocol Concerning Protected Areas and Wild Fauna and Flora in the Eastern African Region, 1985
- The Lusaka Agreement on Cooperative Enforcement Operation Directed at Illegal Trade in Wild Fauna and Flora, 1994

SECTION ONE

Background

This report is a product of a study commissioned by the Lawyers Environmental Action Team (LEAT) and funded by the Uganda Wildlife Society (UWS), with the support of the United States Agency for International Development (USAID) and the World Resources Institute (WRI), to examine, review and opine on the following:

* Statutory laws, national policies, programs and action plans that have been put in place to preserve or protect the wildlife resources of Tanzania and their relationship to the CITES.

* The institutional structures created under national legislation giving effect to the CITES provisions on regulation of international trade in wildlife resources, highlighting deficiencies, if any, in the institutional structures in place and the measures needed to rectify the deficiencies.

* Key trends in the international trade of the CITES-listed species with a view to showing whether the legal and institutional structures created under the CITES have succeeded in conserving/preserving Tanzanian wildlife.

* The literature and experiences from one or two countries in Africa or, and elsewhere, to show the way other countries have dealt with issues of international trade in wildlife regulated under the CITES; and

* Recommend measures that may help to reform, if necessary, the regime of international trade in endangered species with a view to protecting Tanzanian wildlife resources from the threat of extinction.

Accordingly, Dr. Hamudi Majamba of the Faculty of Law, University of Dar-es-Salaam was commissioned to come up with a comprehensive report focusing on the following:

- A background on wildlife trade issues in Tanzania since independence, including general trends in the trade of species, policy and legislative developments; and management and enforcement institutions.
- A review of the Tanzanian laws, policies and action plans developed to regulate wildlife trade and how the CITES has impacted them.
- A review of Tanzanian institutions that have managed wildlife trade and enforced related legislation, including implementation of the CITES provisions; and
- Provide a documentation of the legal and illegal trade in Tanzania of the CITES-listed species over the last thirty years and how the Tanzanian legal and institutional structures that manage this trade have succeeded or failed in their objectives and responsibilities. Successful legal and institutional concepts in one or two countries to be determined by the commissioners of the study, that can be applied in Tanzania.

SECTION TWO

The Development of Wildlife Trade in Tanzania: A Historical Perspective

2.1 Introduction

Tanzania is located on the eastern coast of Africa. It lies between 1 degree and 11 degrees south of the Equator. It is bordered by Uganda and Kenya to the north. Its southern neighbours comprise of Zambia, Mozambique and Malawi. Burundi, Zaire (Democratic Republic of Congo) and Rwanda border it in the West. It covers a massive area of slightly over 900,000,000 km. sq. including the Island of Zanzibar, Mafia and Pemba.

The wildlife of Tanzania comprises of a unique natural heritage and a resource that is of great importance both nationally and globally. Its importance lies both in the biological value of the species and habitat. The economic value of the wildlife resource and its potential to contribute to the sustainable development of the country, in terms of tourism, research and commerce makes it even more important.

The rich and diverse spectrum of fauna and flora, including the wide variety of unique species and sub-species found in the savannah grasslands of Tanzania has attracted a multitude of researchers such as zoologists, conservationists, ecologists and anthropologists, among many other professionals interested in wildlife history, its evolution, management, conservation and protection.

The diversity and degree of the uniqueness of Tanzania's wildlife heritage is evidenced by the variety and number of different species of primates, reptiles and plants. In terms of the habitats, the various grasslands and open woodlands of the Serengeti and Maasai Steppe in the northwest and northeast of the country support some of the greatest concentration of large mammals known to humankind.

Important areas of wetlands, swamps and flood plains are found throughout the country. A rich variety of lakes, including the great lakes of Victoria, Tanganyika and Nyasa which harbour a variety of fish species are a major ecological attraction. The biologically diverse range of forests, including restricted lowland forests and highly dispersed patches of coastal and montane forests also form part of the country's wildlife heritage. The stretches of mangrove forests from the land to the coast in some parts of the country make Tanzania boast of being endowed with some of the very few sites where bush meets the coast.

The diverse and unique wildlife resources making up the biodiversity of Tanzania has, in different historical epochs, undergone various social, economic, political and cultural changes. These changes have, in different and varying degrees, greatly shaped the framework for the utilisation, conservation and protection of the wildlife heritage. The changes, influenced in part by the upsurge of commodity production in societal relations, cross-cultural interactions and the emergence of private property, gave rise to a number of commercial transactions. The transactions included trade in certain species of wild animals and trophies.

The trade in wild animals and trophies, which later played a significant role in the decimation of certain wild animal species in huge numbers, went through two basic stages in the history of wildlife trade in Tanzania. The first of these stages was at the level of barter trade where local community members generally exchanged goods, including various species of wild animal products and plants. Whereas wild animal products and trophies were generally traded for the performance and use of certain tribal ritual and rites, the plants involved in this trade were mainly those considered to have medicinal value. Later, mainly as a result of the emergence of proprietary relations in the ownership of property and the means of production, a more commercialised large scale trade in certain species of wild animals emerged.

A brief exploration of the various stages in the history of trade in wild animals and trophies in Tanzania would now be undertaken. The exploration will shed light on some of the salient features in the historical development of trade in wild animal species and set a foundation for understanding the legal and institutional structures that were put in place to control and regulate trade in wild animal species and trophies in different historical periods. The institutional and legal structures analysed had a significant influence on the formulation and establishment of the current legal, institutional and policy-making regimes concerned with wildlife conservation and management.

2.2 The Pre-Colonial Era

The diversity of Tanzania's wildlife was generally maintained and nurtured by local people prior to the advent of foreign influence. Most society members in this era maintained cultures, traditions and customary rituals that to some extent ensured a symbiotic relationship between humankind and wild animals. These cultures and traditions were well known to community members and there existed mechanisms to enforce them. The rituals were, however, not enforced by any institutionalised legal machinery but by traditional authorities such as local chiefs and traditional religious leaders who applied communally accepted traditional norms to punish those who infringed the revered rules.

Among the many communities in Tanzania, some were hunter gatherers, others were hunters per se but observed traditional hunting rituals. Other communities just hunted for the pot. Trade in some wild animal products, such as hides and skins was practiced amongst a few tribes. This was usually practiced amongst those societies living on subsistence farming and those who were predominantly hunters.

The impact of the small scale trade and subsistence use of wildlife products did not have a significant effect on the continued survival of a number of wild animal species.¹ Large scale trade in wild animals and related products among local community members in the pre-colonial era in Tanzania before the advent of foreign influence was generally non-existent.

However, with the arrival of Arab slave traders along the east coast of Africa, things took a different turn. Features of specialised trade in ivory and other trophies, initially at a relatively small scale

¹ H. I. Majamba, *Indigenous Knowledge Systems and Wildlife Management: A Framework for Legislation and Policies for Sub-Saharan Africa*. Ph.D. Dissertation, Northeastern University, Boston, 1999 (See Chapter I)

but later at a larger one, begun to take shape. Some tribes, for example, the Nyamwezi engaged in long distance caravan trade, carrying elephant tusks all the way to the coast to trade with Arab merchants.

Later, the Arabs penetrated into the interior of Tanzania (then Tanganyika) and exercised direct and indirect authority over local tribes. They sized large amounts of ivory and transported it to the coast via Tabora.² At this time, relations and factors of production were still at a relatively rudimentary level and there was therefore no massive slaughtering of wild animal species to supply the trade in game.

Save for the pre-existing customary norms and practices which were basically focused at regulating and controlling the hunting of particular species of wild animals, trade in wild animal products and trophies between the Arab traders and local people was not regulated by any formal rules during the pre-colonial epoch.

The earliest formal legal rules and institutional structures which sought to control and regulate trade in wild animal species were introduced in Tanzania by the colonial administration regime.

2.3 The Colonial Era

By the time Tanganyika was declared a German Protectorate in 1885, trade in ivory and the slaughter of elephants to supply the Arab traders had increased but it was still at a relatively small scale level. With the advent of colonialism, trade in wild animal species and trophies became more pronounced. Commercial hunters came all the way from South Africa and contracted local people to shoot elephants and other valuable game on their behalf.

Detailed statistics kept by the German colonial administration reveal that trade in wild animal products increasingly became a thriving business and with the passage of time, it accounted for the massive destruction of wild animal species. The records also reveal that the trade in wild animals included the export of various live species of game to Germany. This trade was carried out through unscrupulous and dubious means, for example, by the use of dhows operating from secluded beaches undetected by the colonial administration.

The unlawful trade in wild animals denied the German custom officials an export tax due to the Kaiser and mechanisms had to be put in place to curb this practice. Consequently, the German colonial regime introduced formal codified rules and laws to regulate hunting methods and trade in wild animals and trophies. The earliest laws and regulations which were promulgated sometime in 1891 had a specific bias on protecting endangered species.

Further developments in the legislative framework for controlling trade in wild animals during the German colonial period have been associated with the enactment of the Wildlife Decree in 1896. Other wildlife decrees and implementing regulations were introduced in 1898, 1900, 1903, 1905 and 1908, culminating with the 1911 Decree which prohibited hunting of and trading in certain species of wild fauna.

By the time the British took control, Tanzania (then Tanganyika) had become so famous for its variety of big game and diversity of landscapes. These attracted a steady stream of wealthy hunters who

² Assa Okoth, A History of Africa (1855-1914), Pp. 17-21

hunted various wild animal species for both sport and trade. Elephant populations had tremendously recovered to the extent of necessitating their culling in order to keep their numbers in line with a growing population and expanding agricultural base. The enforcement of the legal rules regulating the hunting of elephants and trade in ivory contributed greatly to the recovery of the elephant population. The British colonial regime sought to maintain the achievement started by its predecessor.

In 1921, the British colonial administration established a Game Department whose main role was to control and regulate, among other things, trade in game. The efforts by the colonial administration was not very successful, as British colonial settlers in Tanzania, as elsewhere on the continent, mercilessly slaughtered wild animal species, including endangered ones, to supply the international trophy market.

The slaughter included those species that had previously been left unharmed by local people.³ Although the colonial government was a signatory to a number of international agreements that sought to conserve wild animals on the continent, trade in endangered species of wild animals continued unabated during the colonial era.⁴ In an effort to “blind fold” the international wildlife conservation pressure groups which had mounted, calling for a stop in the wanton destruction of Africa’s wildlife by colonial settlers, the British enacted a number of wildlife legislation and regulation.

The Fauna Conservation Ordinance was the colonial government’s main wildlife management legislation. The Ordinance was enacted with the objective of reflecting the colonial government’s “compliance” with the obligations under the international wildlife conservation and management legal instruments it had assented and ratified.⁵ Most of the provisions of the Ordinance and the regulations made thereunder were, however, gauged in a manner that ensured that the thriving trade in wild animals and trophies was not unduly affected. It is this wildlife management and conservation set up that was inherited by the independence government of Tanganyika.

³ See Sinclair, A.R.E, The African Buffalo, A Study of Resource of Limitation of Populations, 1977p. 233 and Benhard and Grizmer, Serengeti Shall Not Die, pp. 296-298

⁴ It was pressure from international wildlife conservation and protection groups that made colonial administrations ratify wildlife conservation and protection conventions. See Daniels, N.D Protecting the African Environment: Reconciling North-South Perspectives p. 12

⁵ Chapter 302, Laws of Tanganyika

SECTION THREE

An Overview of the Post-Independence Institutional, Regulatory and Legislative Frameworks Relating to Wildlife Trade

The post independence government of Tanzania retained colonial wildlife laws, policies and institutions. The bulk of these laws included those pertaining to controlling trade in wild animal species and trophies. As a result of the wholesale adoption of the colonial laws, the Fauna Conservation Ordinance became the independence government's main reference point in matters relating to wildlife management, protection and trade. The rules and regulations governing trade in wild animals and related products that were promulgated by the colonial administration under the Ordinance were subsequently incorporated in the adoption package.

The colonial wildlife legislative and institutional framework that the independence government indiscriminately adopted was that which the colonial regime derived from the 1900 Convention Concerning the Preservation of Wild Animals, Birds and Fish in Africa and the 1933 Convention Relative to the Preservation of Fauna and Flora in their Natural State.⁶ These Conventions were essentially premised on the elevation of private interests of colonial settlers who maintained that their rights to hunt and trade in wild animals and their products could not be invalidated by the merits of wildlife conservation.⁷

The implication of the immediate post-independence government's wholesale adoption of the colonial wildlife legal, institutional and policy frameworks, therefore, meant the reflection of continued exploitation of the country's wildlife resources for the interests of colonial masters in the metropolitan. The primary interest of the colonial wildlife administration was premised on commerce in certain wild animal species and trophies. This interest was reflected in the rules and regulation that were set up to control trade in wild animals. The loopholes in the regulations governing the process of licensing professional hunters to hunt in parks and reserves, for example, contributed to illegal hunting and poaching in the race to supply the illicit trade in wild animals' skins, ivory and other trophy products.

The administration and management of most parks in the immediate post-independence era was still largely controlled by expatriate staff who served in the colonial government. The personnel still operated on the colonial concept of wildlife conservation which emphasised supplying products to the international trophy market. This partly explains the continued bond between the independence government and Western powers in matters relating to wildlife conservation and management.

It was, therefore, not surprising that the independence government still relied on its former colonial powers albeit indirectly, through wildlife conservation and management organisations and

⁶ 94 B.F.S.P 715 and 17 L.N.T.S 241, respectively.

⁷ See Majamba, H. I. "*Ameliorating the Legal Prospects for Wildlife Conservation in Africa: Reflections on the African Convention for the Conservation of Nature and Natural Resources, 1968*". LL. M Thesis, Queen's University, 1994 Pp. 19-26

agencies, for assistance in the conservation and protection of the country's wildlife resources.⁸ Most wildlife conservation international organisations and agencies have strong links with former colonial governments. The governments usually have a strong influence on the distribution of the organisations' assistance packages to former colonies.

Assistance to former colonies in the area of wildlife conservation and management was channelled through specialised inter-state organisations and commissions created by various African governments, including Tanzania's, for this purpose. Wildlife conservation experts from Europe were also brought in to prescribe dozes for wildlife conservation and management under the international aid assistance package. The package included provision for training wildlife personnel to deal with, among other things, the regulation of trade in wildlife.⁹

With the advent of the concept of regionalism and African socialism, which were advocated for by some of the emerging influential leaders on the African continent, Tanzania's government approach to wildlife conservation and protection also changed.

The dependence on foreign ideas and concepts, including those pertaining to wildlife conservation and management, was approached with caution by the immediate post-independence government. The eurocentric concepts of wildlife conservation and management, which were primarily based on the notion that "west is best" were strongly criticised by policies promulgated by the Vanguard political party. The concepts were considered as part of a continuing effort to impose Western capitalist values in Tanzania at the local peoples' expense and to their detriment.

The shift in the political focus had an impact on the colonial wildlife conservation paradigm that was adopted at independence. As a result of the paradigmatic shift, the post-independence government become sceptical in accepting the idea (primarily based on the neo-colonial notion) that Western conservation organisations and agencies which were essentially under the indirect control of former colonial powers were better placed to determine the fate of the country's unique wildlife heritage.

The ratification of the African Convention for the Conservation of Nature and Natural Resources of 1968 by the independence government in 1974, the repeal of the inherited colonial principle wildlife law (the Fauna Conservation Ordinance, Cap.302) and the subsequent enactment of the Wildlife Conservation Act in the same year was partly influenced by the shift in the wildlife conservation paradigm. Ironically, some of the provisions that reflected colonial interests in regulating wildlife trade were retained by the Wildlife Conservation Act.

⁸ See the speech by the late Mwalimu Nyerere's (the President of Tanzania) delivered to the newly independent African States at symposium on the Conservation of Natural Resources in Modern African States held in Arusha in 1961. The report could be retrieved from the proceeding of the Symposium (IUCN Publication New Series, No. 1 1963)

⁹ See Jonathan Adams and Thomas Mc-Shane, The Myth of Wild Africa: Conservation Without Illusion, at Pp. 113-121 and Daniels, N.D., op.cit, at p. 12

SECTION FOUR

A Review of the Wildlife Trade Related Laws and Policies

4.1 Introduction

The genesis of the Convention on International Trade in Endangered Species of Wild Fauna and Flora¹⁰ (popularly referred to as “the CITES”) is traceable in the early 1960s,¹¹ when rampant trade in endangered wildlife species was its peak. Noting the imminent danger facing humankind and the animal kingdom due to the accelerated pace of wildlife carnage, the International Union for the Conservation of Nature (IUCN) stepped in to salvage the situation.

In its diligent effort to save the situation, the IUCN summoned States to enter into an international convention in 1963 with a view to control and regulate the export, transit and importation of rare and endangered wild animal species.¹¹ Further to the IUCN call, the United Nations Conference on the Human Environment recommended that a special conference of Parties be convened in order to adopt a Convention that would effectively control and regulate international trade in certain specified species of wild animals and plants.

The special conference adopted the CITES which was signed in Washington (USA) on 3rd March 1973 and entered into force on 1st July 1975.¹² Until 1999, there were over 144 Parties to the Convention. The Convention’s main objectives are stated in the preamble. These are basically focused at preventing international trade from threatening the survival of wild fauna and flora for both present and future generations.¹³

In its attempt to regulate and control trade in wild animals and plant species the CITES places endangered species of the animals and plants in different lists (appendices) depending on their biological status and degree of their transaction at the international trading market. The species listed in Appendix I consists of those that are in danger of becoming extinct or may become so as a result of uncontrolled trade.¹⁴ Species in this category may only be traded under very exceptional circumstances. Appendix II consists of those species that are not currently threatened with extinction but may become so unless their trade is strictly controlled and regulated in order to ensure their sustainability.¹⁵

The Tanzanian government became a signatory to the CITES in 1979. The provisions of the country’s principle wildlife conservation legislation was enacted in 1974, a year before the CITES entered

¹⁰ UNTS, Vol. 993, p. 243

¹¹ See generally Lyster, S. International Wildlife Law.

¹² 993 U.N.T.S 243, 12 I.L.M 1085 (1973)

¹³ Ibid., see the first and last paragraphs of the Preamble.

¹⁴ In Tanzania, Appendix I species include the African elephant, the black rhino, cheetah, leopard, viviparous African toads and tree ferns.

¹⁵ Tanzania species of flora and fauna found in Appendix II include a number of primates, cats, cranes, parrots, chameleons, aloes and orchids.

into force. To this extent, therefore, one may be inclined to argue that the CITES did not have a significant influence in enacting Tanzania's principle wildlife legislation.

Such perception is, however, misconceived as the regulations made under the provisions of the principal legislation address issues relating to the export and sale of wild animal products and trophies in accordance with the provisions of the CITES. Also the principle legislation in other wildlife related sectors take on board various aspects that reflect some compliance with the provisions of the CITES at both the local and international level in their treatment of species of wild animals and plants and the habitat necessary for their survival.

The current legislative framework governing wildlife management in Tanzania is made up of various principal legislation, by laws and regulations. The main legislation that reflect issues relating to the conservation, protection and general management of wildlife are the following:

- The Wildlife Conservation Act, No. 12/1974
- The Fisheries Act, No. 6/1970
- The National Parks Ordinance, Cap. 412
- The Forest Ordinance, Cap. 398 and
- The Ngorongoro Conservation Area Ordinance, Cap. 413

Most of the provisions of the above pieces of legislation have some relevance in the government's efforts to implement the CITES in the wildlife conservation and management regime. However, the most comprehensive legislation and the one that the basis of the wildlife management regime is the Wildlife Conservation Act of 1974.

A review of the Wildlife Conservation Act and the regulations made thereunder will suffice to elucidate the extent of Tanzania's compliance with the CITES provisions. It should be pointed out at the outset that the specific focus on the Wildlife Conservation Act in this regard should not be construed to imply that the other pieces of legislation and regulations on wildlife are irrelevant to the implementation of the CITES in Tanzania. Indeed, in the process of the review, reference will also be made to other relevant legislation on the matter.

4.2 A Review of the Wildlife Conservation Act, 1974¹⁶

As noted above, this is the principal wildlife management law. Although this legislation primarily deals with the management of wildlife populations inside areas designated as game reserves, game controlled areas and partial game reserves, some of its provisions, though not explicitly, reflects the requirement stipulated by the CITES relating to international trade in wild animal species and their trophies.

The provisions of section 63 (1) of the Wildlife Act, prohibits the export of any trophy unless there is issued a valid trophy certificate authorising such export. Sub-section 2 of this provision empowers the Director of wildlife to issue trophy export certificates to any person/s entitled to export any trophy. The

¹⁶ No. 12 of 1974 (as amended), came into force on 1st December, 1974, (See G.N 265/1974)

provision provides that such certificate be in a prescribed form. Indeed, the forms are prescribed by regulations made in pursuance of this provision. The regulations (as will be noted later in the report) require compliance with the CITES.

It should be pointed out here that the kind of trophies envisaged by section 63 do not include “manufactured trophies.” This is clearly stipulated by section 63 (3) of the Act. Manufactured trophies are defined in section 58 of the Act to mean:

“any article made from any tooth, tusk, horn, bone, claw, hoof, hair, feather, egg or any durable portion of any animal.”

Any person in possession of these is required to register them with a licensing officer.¹⁷ The importation of trophies, unless authorised by the Director of wildlife, is also prohibited by the provisions of section 64 of the Act.

Persons who have been convicted of offences under any law of Tanzania, or of any other country, designed for the protection of wildlife are disqualified from holding any license, permit or permission granted under any provision of the Act, including the export of wild animals and trophies. Such disqualification may, however, be lifted by the Director of wildlife by issuing a certificate under his hand.¹⁸

Section 65 of the Act provides for offences and prescribes penalties for persons who contravene the provisions of the Act, including unlawfully engaging in, among other transactions, the export and import of trophies. The penalties that could be meted out include a fine in the amount of 50,000 shillings or imprisonment for a term not exceeding 7 years, or both such fine and imprisonment. Where any person is convicted of an offence under the provisions of the Act, the court may order forfeiture to the government of any animal or trophy.¹⁹

The provisions of sections 56 and 65 of the Act reflects the obligation placed upon Contracting Party States to the CITES to take stricter domestic measures in their jurisdictions to ensure compliance with conditions of trade in wild animals species.²⁰

The schedules to the Wildlife Conservation Act also reiterate the requirements stipulated by the CITES. These list down different species of animals and stipulates conditions to be met in order to hunt the scheduled species and categories of animals that are to be specially protected, for example, those considered “national game.”²¹

The CITES directs Party States to impose strict domestic regulations and other legal mechanisms to supplement wildlife legislation in a bid to facilitate the control and regulation of trade in endangered species of flora and fauna.²² The rules and regulations made under the provisions of the Wildlife

¹⁷ *Ibid.*, see section 59 (2).

¹⁸ *Ibid.*, section 56

¹⁹ See section 78 of the Act. A lucid example of the strict operation of the penal provisions of the Act can be seen in the case of *Mwinyimadi Ramadhani v Republic*, (1960) E.A. 199

²⁰ See Article XIV (1) of the CITES

²¹ See The Wildlife Conservation (National Game) Order, 1974 Government Notice No. 274 of 8/11/1974

²² See Article XIV (1) of the CITES

Conservation Act, in many aspects, reiterate the CITES directive. The Wildlife Conservation (Hunting of Animals) Regulations, 1974 (as amended)²³ and the Wildlife Conservation (Capture of Animals) Regulations, 1974,²⁴ for example, were promulgated in pursuance of the Wildlife Conservation Act, whose provisions, as noted earlier, are not very explicit in terms of making reference to the CITES provisions.

These regulations prescribe, among other things, the requirements for exporting wild animals and trophies by providing a mechanism that ensures compliance with the CITES provisions. The regulations, for example, provides that any person who intends to export a wild animal is required to inform the Director of wildlife, in writing, of his/her intention to do so at least two weeks before the date of export. The exporter would also have to produce a letter from a zoological institution or similar establishment as evidence that the animal will be received by the institution or establishment. Within 90 days upon arrival, the institution or establishment, is required to acknowledge receipt of the animal.²⁵

The eighth schedule to the Wildlife Regulations (Dealings in Trophies) Amendment Regulations of 1989 provides for the species of wild animals that are required to be accorded such protection by the CITES.²⁶

The foregoing review reveals that the Wildlife Conservation Act makes a vivid attempt to give effect to the provisions of the CITES by requiring different levels of protection for wild animal species listed in the four schedules to the Act. The permit and licensing procedures and the regulations made in respect to the Act also prescribe the CITES-related conditions that have to be met before a trophy is exported.

From the above analysis of the Wildlife Conservation Act, it is clear that the Act was enacted before Tanzania ratified the CITES. However, regulations and schedules to the Act, which are substantive parts of statutes, contain detailed specifications on control and regulation of trade in all wild animal species, whether endangered or not, reflect the provisions of the CITES. Subsequent developments in Tanzania' wildlife regime, that have implications for the implementation of the CITES have been introduced by the promulgation of the wildlife policy in 1998. An analysis of this policy would now be in order.

4.3 A Review of the Wildlife Policy

Tanzania did not have a comprehensive wildlife policy until 1998. The country's guiding policy on wildlife conservation matters was generally ad hoc and uncoordinated until the promulgation of the wildlife policy. What may be referred to as one of the principle guides on wildlife conservation is often traced to the statement made by the late Mwalimu Nyerere in 1961 at the Symposium on the Conservation of Nature and Natural Resources in Modern African States held in Arusha. At this meeting, the late great African statesman stated that:

²³ See G.N. No. 191 of 1989

²⁴ Government Notice No. 272 of 8/11/1974 and Government Notice No. 278 of the same date, respectively.

²⁵ See sections 17, 18, 19 and 26 of the Regulations. (G.N. No. 278/1974)

²⁶ Government Notice No. 190 of 22/6/1989

“The survival of our wildlife is a matter of grave concern to all of us in Africa. These wild creatures amid the wild places they inhabit are not only important as a source of wonder and inspiration but they are an integral part of our natural resources and of our future livelihood and well being. In accepting the trusteeship of our wildlife, we solemnly declare that we will do everything in our power to make sure that our children’s grand children will be able to enjoy this rich and precious inheritance....”²⁷

The statement has since been referred to as the Arusha Declaration on Wildlife Protection. To the extent that one of the CITES major objectives is to regulate and control trade in endangered species of wild animals in order to ensure that present and future generations benefits from their continued survival, then the “wildlife policy” promulgated by the late Mwalimu Nyerere was, in this respect, in line with one of the CITES primary objective, stipulated in paragraph one of the Convention’s preamble. The paragraph provides that the Contracting Party States recognise:

“ [T]hat wild fauna and flora in their many beautiful and varied forms are an irreplaceable part of the natural systems of the earth which must be protected for this and the other generations to come...” (emphasis provided)

The new wildlife policy sets out a strategy designed to encourage direct utilisation of wildlife.²⁸ One of the forms of wildlife utilisation introduced by the policy is the concept of ranching. The definition of ranching provided for by the policy places an obligation on the part of the government, as a signatory to the Convention, to foster improved legal methods in order to implement the provisions of the CITES. The policy document defines ranching to mean:

“..the rearing in a controlled environment of specimens, usually of young, taken from the wild with the intention of engaging in wildlife trade” (emphasis provided).

From the definition above, it is clear that the official policy on wildlife now places significant emphasis on trade in wild animal species and trophies. This is a new approach to utilisation of wildlife resources and has not been taken into account by the Wildlife Conservation Act. Since policies are governments’ main tool for implementing legislation, the Wildlife Conservation Act ought to be amended to effectively reflect this new development.

²⁷ See the proceedings of the Symposium (IUCN Publication News Series No. 1 of 1963). The quotation has also been reproduced by Jonathan Adams and Thomas Mc Shane in their book, The Myth of Wild Africa: Conservation Without Illusion, at Pp. 113-114

²⁸ The definition of “wildlife” provided by the policy is much broader than that of the Wildlife Conservation Act in the sense it includes terrestrial invertebrates, plants, ecosystems and constituent habitats.

It should also be pointed out that the strategies for trade in wildlife products laid down by the policy include the regulation of international trade in wildlife and related products in accordance with international regulations. Implicitly, the policy advocates for compliance with the CITES provisions as the CITES is the main international guide on matters relating to trade in wild animals and trophies. The strategies that the policy sets out to govern trade in wildlife products to a great extent reflect obligations placed onto Contracting Parties States by the CITES provisions. The wildlife policy strategies that are set forth in this regard are those that are aimed at:

- “(i) regulating trade in wildlife products derived from various types of utilisation, natural mortality and confiscation,*
- (ii) retaining the mandate of international trade in products produced under the jurisdiction of other sectors, such as forestry, fisheries under their jurisdiction (sic),*
- (iii) regulating international trade in wildlife and its products in accordance with the appropriate Tanzania laws and international regulations, and*
- (iv) instituting the appropriate measures to ensure that the export of (the) CITES species or parts derived from the forestry and fisheries sectors meet the requirements of (the) CITES regulations.”*

The policy also lays out strategies to guide the government in its endeavours to comply with international and regional obligations on wildlife conservation and management. Among these, the policy focuses on committing to playing a truly international and regional role to ensure that successful conservation of wildlife is achieved both within and outside Tanzania and collaborating with neighbouring countries in the conservation and management of transboundary species and ecosystems.

The wildlife policy, as noted above, therefore, reiterates the government’s obligation to implement the CITES. One of the strategies that the CITES advocates for, in order to effectively implement its provisions, is the putting into place institutional mechanisms within the Contracting Party States’ legal and policy-making frameworks. The wildlife policy also seeks to foster these.

An exploration of the institutional mechanisms established by existing legislation and policy frameworks for the implementation of the CITES will now be undertaken.

SECTION FIVE

A Review of Tanzania's Institutional Arrangements for CITES Implementation

The provisions of the CITES require Contracting Party States to designate Scientific and Management Authorities in their jurisdictions in order to monitor and oversee the implementation of the Convention.²⁹

Neither the Wildlife Policy nor the Wildlife Conservation Act, explicitly designates the Scientific and Management Authorities as required by the CITES. However, this does not mean that there exists a lacuna in this respect. The implementation of the CITES in Tanzania has generally been coordinated by the directorate of wildlife in the Ministry of Natural Resources and Tourism. Whereas the Director of wildlife acts as the Management Authority, the Chief Research Officer of the Game Division, also under the Directorate of wildlife, assumes the role of the Scientific Authority as envisaged by the CITES.

The "monopoly" to coordinate the CITES assumed by the Directorate of wildlife and the Game Division are, however, not self imposed. The regulations made in accordance with the Wildlife Conservation Act, albeit not expressly, vests the two authorities with this "monopoly."

The Wildlife Conservation (Dealings in Trophies) Regulations of 1974 and the Wildlife Regulations (Dealings in Trophies) Amendment Regulations of 1989, for example, vests the Director of wildlife and the Research officer of the Game division with the duty to implement one of the CITES obligation. The Regulations provide 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 on International Trade in Endangered Species of Flora and Fauna entered into at Washington shall be valid only if issued and signed both by (sic) the Director and the Game Research Officer of the Game Division."³⁰

Other developments in respect of implementing the CITES within the wildlife institutional framework relates to the establishment of a CITES desk at the wildlife department. This desk is responsible for issuing permits, compiling annual trade reports and ensuring that matters relating to trade in wildlife are regulated in accordance with the provisions of the CITES.

Besides the Research Department of the Game Division and the Directorate of wildlife, there exists a number of other institutions and authorities whose functions and duties are related to wildlife conservation and protection and could rightly be categorised as "scientific" and or "management" for purposes of the Scientific and Management Authorities envisaged by the CITES. Some of the institutions

²⁹ See Articles IX (1) and III of the CITES.

³⁰ Government Notices Nos. 268 of 8/11/1974 and 190 of 22/6/1989, respectively. See also regulation 6(5) of the latter.

that work in conjunction with the wildlife department have been created by specific statutes while others have been created under the principal wildlife law.

The 1978 amendment to the Wildlife Conservation Act established the Wildlife Protection Unit (WPU) and The Tanzania Wildlife Protection Fund (TWPF).³¹ The Act places the administration of the WPU under the Director of wildlife. The TWPF is essentially a retention fund and it receives its revenue from among other avenues, trophy permit and handling fees. Its other function is to provide support to other agencies involved in wildlife conservation.

The WPU is charged with the duty to enforce the Wildlife Conservation Act in matters relating to the hunting and capture of wild animal species and those pertaining to securing of trophies. These duties are closely associated with and are incidental to trade in wild animal species and their enforcement by the WPU is an indication of compliance with the CITES.³²

The College of African Wildlife Management in Mweka is another institution whose activities to some extent relate to implementing the provisions of the CITES in Tanzania. The College was formally recognised in 1964 by the College of African Wildlife Management Act.³³ Ironically, it was not legally established by the 1964 Act until 30 years later when the Act was amended.³⁴

The amendment provides for the functions of the college. These include the provision of research and consultancy services to individuals and organisations concerned with the conservation and management of African wildlife. The regulation of trade in endangered species of wild animals comprises one of the ways of conserving wildlife. In this respect, therefore, though not explicitly, the training accorded to students at the College of African Wildlife Management reflects the objectives of the CITES.

The Tanzania Wildlife Corporation (TAWICO) established by an Act of parliament as a public corporation but now privatised, is charged with, among other things, collecting revenue for the government through activities such as hunting and capturing wild animals, buying, selling and exporting wild animals.³⁵ In undertaking these activities TAWICO works closely with the wildlife department since these activities have an impact on implementation of the CITES objectives in Tanzania.

In the performance of its statutory duty, the Serengeti Wildlife Research Institute (SWRI), created under the Serengeti Wildlife Research Institute Act, indirectly implements the provisions of the CITES. The institute is vested with power to conduct research on, *inter alia*, wild animal species that are threatened with extinction.

The SWRI is vested with the overall control of other wildlife research institutions.³⁶ The Act also places the management and control of some wildlife institutions and centres onto the SWRI for purposes of coordinated and effective research. The institutions and centres that have been placed under the SWRI are listed in the 7th schedule to the Act. These are the Gombe Wildlife Research Centre, the Kingupira

³¹ See sections 3 (adding section 4A to the Principal Act) and 7 (adding section 69A to the Principal Act) of the Wildlife Conservation (Amendment) Act, No. 21 of 1978, respectively.

³² Section 4B, of the 1978 amendment

³³ Act No. 8 of 1964, Laws of Tanzania

³⁴ See section 3 (1) of the amendment (Act No. 32 of 1994)

³⁵ See G.N. 231 of 1974

³⁶ See Act No. 4 of 1980

Wildlife Research Centre, the Mahale Mountain Wildlife Research Centre, Njiro Wildlife Research Centre and the Serengeti Wildlife Research Centre.

Although the kind of research conducted by the Institute and the affiliated centres is not explicitly related to matters of international trade in wildlife, it indirectly incorporates matters relating to the implementation of the CITES is so far as it identifies species which are threatened with extinction with a view to preventing or restricting their exploitation, through, among many other avenues, illicit trade.³⁷ The existence of the various wildlife research and training institutions, offering courses in regulating trade in endangered species in Tanzania compliments the CITES requirement of ensuring that exportation of wild animal species or specimens is not detrimental to their survival.³⁸

Another statutory institution, charged with management of wildlife and whose duties can be closely associated with implementing CITES is the Tanzania National Parks Authority (TANAPA). TANAPA is established by the National Parks Ordinance.³⁹ The board of trustees of TANAPA is empowered to sell or exchange any specimen of animal or vegetation in a national park and purchase or sell any specimen for introduction into a national park.⁴⁰ This obligation reflects one of the essential goals of the CITES which is to ensure that trade in species is conducted on a sustainable basis for the future.

The Pasiansi Wildlife Training Institute which trains scouts and rangers to combat illegal hunting (one of the main suppliers of wild animals and wild animal products to the export market) is yet another institution that indirectly implements the obligation to establish management and scientific authorities placed onto Contracting Parties States by the CITES. The Tanzania Wildlife Research Institute (TAWIRI), the Sokoine University of Agriculture, (SUA) and the Zoology Department at University of Dar-es-Salaam, are other training centres whose functions have some connection with the implementation of the provisions of the CITES.

One of the strategies to combat illicit trade in wildlife products that the wildlife policy of Tanzania lays emphasis on is the institution of measures to ensure that the export of the CITES species or parts derived from the forestry and fisheries sectors meet the requirements of CITES regulations. In this respect, the fisheries and forestry institutions have also played a role in Tanzania's effort to comply with the provisions of the CITES.⁴¹

In fact, the provisions of the legislation establishing the Forest Research Institute Act and those of the Forests Ordinance supplement the provisions of the Wildlife Conservation Act to the extent of ensuring that the flora, which forms part of the habitat which wild animals depend on for survival, is also effectively conserved and protected in accordance with the CITES.

One of the major features of most government departments in most developing countries is their apparent lack of reliable records and information or poor mechanisms to maintain them. The wildlife

³⁷ *Ibid.*, See section 5. Endangered species placed in the 3rd category of the CITES are those whose regulation is intended to prevent or restrict their exploitation. See also Appendix 1 and Article 11(1) of the CITES

³⁸ This is echoed in Article IX (1) (b) of the CITES

³⁹ Chapter 412 of the Laws of Tanganyika.

⁴⁰ *Ibid.*, see section 10 (1) (b) and (c)

⁴¹ See the functions of the Fisheries Research Institute Act, No. 6 of 1980 that establishes the Fisheries Institute and those of the Forestry Institute Act, No. 5 of 1980 that establishes the Forestry Institute.

department is not an exception to this general rule as it's official data/records relating to the legal and illegal trade in the CITES-listed wild animal species are not readily available. The sketchy information and data that is available cannot be relied upon as they are not officially compiled or documented. In this respect, official data on the management and control of legal and illicit trade in wildlife in Tanzania over the last 30 years is not readily accessible, if at all available.

Informal information relating to statistics on the CITES implementation may be obtained in a piece-meal fashion from a perusal of scattered research reports and studies compiled by private individuals and organisations dealing with wildlife management generally. Some information may also be obtained from data on the aerial census of wild animal species from projects conducted by the Tanzania Wildlife Conservation Monitoring (TWCM) in collaboration with the GTZ, the Ngorongoro Area Authority, Tanzania National Parks Authority (TANAPA), the Wildlife Division and Frankfurt Zoological Society.⁴²

The data obtained from these studies is essentially compiled to determine the population size of various species, in order to find out, for example, those that are declining and those that are stable. From the data analysis one hypothesis that can be made to explain the decline in particular species of wild animals is one that stipulates that the decline has been occasioned by international trade in the species.

Having made such tentative assumption, one would then have to test various variables to prove the hypothesis. Since the statistics from the TWCM, TANAPA, WD, GTZ and FZS aerial census studies were not premised on such hypothesis, they cannot readily be relied upon in determining the status of international trade in wild animals and related products in accordance with the requirements of the CITES without further research to explain the causes of the decline.

Interviews with personnel currently stationed at the CITES desk of the Wildlife department, and others who have been stationed there for a number of years, reveal that efforts to improve the data and record keeping processes at the department are underway. The process to install an advanced computerised database systems at the Wildlife Division had been commenced in 1998 with the Trade and Records Analysis of Flora and Fauna in Commerce (TRAFFIC) providing most of the funds.⁴³

The aim of this project was to assist the department set up a database system in order to improve its data records in a bid to comply with the CITES provisions. The training of local staff in order to equip them with the necessary expertise to enable them run the database system, for example, making entries on animal exports, imports, sales and other CITES-related activities comprised part of the package.

Information obtained from personnel at the Wildlife department indicate that this project has halted for almost a year now for reasons not availed to the author of this report. It is not clear whether the project will continue. The conclusion of the project as envisaged would certainly enable effective monitoring of international trade in endangered wild animal species in Tanzania in accordance with the

⁴² See the Special Report on Animal Count in Selous Game Reserve, Mikumi National Park and Surrounding Areas in Kakakuona Publications, (Tanzania Wildlife Quarterly Magazine on Nature, Conservation and Environment Nos. 16 and 17), of January-March and April -June, respectively.

⁴³ TRAFFIC is the world's largest wildlife trade monitoring program. It is a joint program run by the WWF, and the IUCN. It was established in 1976 and works in close coordination with the CITES secretariat and national wildlife coordinating authorities. Its branch in Tanzania was established in 1993 and is located at the WWF offices in Dar-es-Salaam.

CITES requirements. In this regard, the government should make efforts to ensure that this project is completed. Grants to complete it, if this is the main reason for having it stalled, could be sought from the CITES Secretariat or other wildlife conservation organisations and donor agencies.

SECTION SIX

A Comparative Perspective: The Implementation of the CITES in Other Jurisdiction's - Lessons for Tanzania.

The implementation of the objectives, directives and obligations of the CITES in some of the Contracting Parties States has been relatively more successful and effective compared to others, like Tanzania. There are admittedly many factors that may explain this variance. In our considered opinion, one of the factors that has contributed to the successful implementation of the provisions of the CITES in some jurisdictions is the having in place legislative provisions in the Contracting Party States' principle wildlife laws, the main reference points for the wildlife management framework, whose provisions unequivocally incorporates the objectives and directives of the CITES.

Botswana is one of the country's whose principle wildlife law has played a significant role in ensuring that the country's wildlife regime complies with the demands of the provisions of the CITES. The country's principle wildlife law explicitly refers to the CITES as its main source of command. The preamble to this law provides that its main purpose is to:

"...make further and better provision for the conservation and management of the wildlife of Botswana, giving effect to (the) CITES and any other international convention for the protection of fauna and flora to which Botswana is, from time to time, a party..."⁴⁴

The principle wildlife legislation reproduces the whole of the CITES in the schedule, in effect making the whole Convention part of country's wildlife law.⁴⁵ It should also be noted that the definition accorded to the CITES by the wildlife legislation is broad enough to enable the incorporation of developments that may arise in future within the framework of the CITES. The principle wildlife law defines the CITES as:

"...the Convention on International Trade in Endangered Species of Wild Fauna and Flora to which Botswana is a Party, as set out in the Fifth Schedule to this Act, and includes any appendices thereto and any resolutions of the Conferences of the Parties"⁴⁶(emphasis provided.)

As noted earlier, some Contracting Party States to the CITES, including Tanzania, have not adequately and effectively incorporated the requirements stipulated by Article IX (I) of the Convention. This Article calls upon the Parties to:

⁴⁴ See the preamble to the country's Wildlife Conservation and National Parks Act, No. 28 of 1992, Laws of Botswana

⁴⁵ See Section 2 and the Fifth Schedule to the Wildlife Conservation and National Parks Act., Ibid.

⁴⁶ Section 2 of the Wildlife Conservation and National Parks Act., Ibid.

“..designate for the purpose of the Present Convention: a) one or more Management Authorities to grant permits or certificates on behalf of that Party and b) one or more Scientific Authorities.”

The authorities and establishments that have been designated to implement the CITES as envisaged by the Convention in Tanzania, as is the case in other Contracting Party States, are not explicitly provided for by the processes and laws creating or establishing them. As a result, the authorities and establishments are often confronted with conflicting mandates in performing their CITES-related functions.

Unlike most Contracting Party States' principle wildlife legislation which do not establish Authorities to oversee the implementation of the CITES, Botswana's principle wildlife law explicitly provides for the creation of the Scientific and Management Authorities envisaged by the CITES. The relevant provision provides that:

“The Director (of wildlife) shall be the Scientific and Management Authority for the purpose of (the) CITES in respect of animals, but may delegate his responsibilities as such Authorities (sic) to any wildlife officer, subject to his own overriding control.”⁴⁷

The explicit creation of the scientific and management authorities by the establishing legislation reduces the chances of conflicting mandates between the various institutions and establishments charged with the performance of related but distinct functions. The approach by Botswana's principal wildlife law in this respect is, therefore, commendable.

In matters relating to the export and import of wild animal species, Botswana's wildlife law contains express and specific provisions that reiterate the objectives and goals of the CITES. Part X, which deals with the export, import and sale of wild animals, trophies and game meat require strict adherence to the provisions of the CITES.⁴⁸ Part XI provides for stricter adherence to the terms of the CITES in respect of hunting and trading in elephants and rhinoceros or their parts. These are some of the most endangered species in Africa.⁴⁹

The principle wildlife law empowers the Minister responsible for wildlife management to exercise his/her discretion where s/he considers it necessary or expedient to facilitate compliance with the CITES.⁵⁰ The Minister for wildlife, as is the case in most jurisdictions, including Tanzania, has been vested with tremendous powers in the management and control of the country's wildlife. For example, the law vests the Minister with the power to exercise his discretion when issuing permits or licenses or suspending, restricting, or limiting the operation of the wildlife law.

However, unlike other wildlife laws that leave the Minister's discretionary powers unchecked, including the powers in respect of determining issues relating to international trade in wild animals and

⁴⁷ See section 3 (1) of the Wildlife Conservation and National Parks Act., Ibid.

⁴⁸ Ibid., see section 62 (1) (2).

⁴⁹ Ibid., see sections 67 (2) and (3), 68 (1) and 69.

⁵⁰ Ibid., section 88 (1).

trophies, Botswana's wildlife law places a mechanism that guarantees a checks and balance system on the Ministers' powers in relation to the regulation and control of trade in endangered species of wild fauna and flora. The law explicitly requires the Minister to exercise his/her discretion in such matters in conformity with the terms stipulated by the CITES.⁵¹

The case study of Botswana's approach to implementing the CITES, focusing on the country's main wildlife law reflects a Contracting Party's genuine and serious effort to implement and comply with the CITES provisions. This approach has had a significant role in contributing to the country's successful implementation of the provisions of the CITES.⁵²

Botswana's approach serves as a model and ought to be emulated by other Contracting and Non-Contracting Party States to the CITES, including Tanzania. This is because the concept of incorporating and making explicit reference to the CITES in the principle wildlife legal and regulatory regime takes care of problems that may arise as a result of overlapping mandates in the institutional framework for implementing the CITES.

As a result of the overlapping and conflicting mandates, problems in the interpretation of the provisions of regulations and legislation are bound to occur. The main guide to interpreting regulations, (these being subsidiary legislation), is the principle legislation. Indeed the power to promulgate by laws, rules and regulations is usually provided for by the principle law. In most cases, important details may be omitted by the main law purposely in order that the lacuna be taken care of by bye laws or regulations. This is a common practice in most jurisdictions and has its merits.

However, regulations are often drafted by administrative personnel who are not always well versed with skills to master the legal intricacies of legislative drafting and statutory interpretation. When confronted with a difficulty, a prudent administrative personnel involved in promulgating regulations would make reference to the principle law for guidance.

Where the principle law contains explicit provisions, for example, specifically providing for the incorporation of the CITES, the prudent drafter would not encounter difficulties. In this respect, therefore, Botswana's approach of expressly incorporating the CITES in its principle wildlife conservation and management law avoids interpretation problems which could in turn lead to problems in implementing the obligations and requirements of the provisions of the CITES.

Having in place a mechanism to check the discretionary powers of wildlife authorities specifically entrenched in the wildlife legal regimes is a progressive development in controlling illicit trade in wild animals and trophies. The approach reflects transparency in dealings with wild game and trophies and is a vital tool that can be invoked to limit, reduce or eliminate abuse of discretion, usually granted to wildlife authorities and bodies, with a view to ensuring conformity with international obligations such as the requirements of the CITES.

Botswana's approach in this regard also sheds some light for the Tanzanian wildlife management regime. This approach could also be incorporated in the principle wildlife law of Tanzania in view of

⁵¹ Ibid., see sections 89 (2) and 90 of the Act.

⁵² See African Wildlife News, AWF, Vol. 34, No. 2 Spring, 1999 at p. 7

observations on abuse of discretionary powers by authorities arising mainly because of the unchecked powers granted to the authorities by the Wildlife Conservation Act, 1974.⁵³

Having stated thus, we submit that in many aspects the concepts and approaches that are inherently entrenched in Botswana's wildlife legislative regime that is geared at implementing the CITES provides important lessons for the CITES-related legislative framework and implementation machinery pertaining in Tanzania. The incorporation of the CITES implementation approach inherent in Botswana's model should be seriously considered in the revision of the Wildlife Conservation Act, of course, by taking into account the social, economic and cultural factors pertaining in the Tanzania wildlife conservation and management regime.

⁵³ See for example, the observations by Rugemeleza Nshala in: "*Granting Hunting Blocks in Tanzania: The Need for Reform*," LEAT Policy Brief No. 5, September, 1999. It should also be noted that the 1978 Amendment to the Wildlife Conservation Act of Tanzania, No. 12 of 1974, places trophies confiscated by authorities at the unchecked disposal of the Director of wildlife. See the amendment to section 78, Act No. 12 of 1978. The cases of Wengert Windrose Safaris (T) Ltd Vs The Director of Wildlife et al, Misc. Civil Cause No. 35 of 1998, High Court of Tanzania at Dar-es-Salaam. (Unreported) and Tanzania Bundu Safaris Ltd. Vs The Director of Wildlife et al, Civil Case No. 121 of 1995, High Court of Tanzania at Dar-es-Salaam (Unreported), also serve to illustrate the dimension of the problem in respect of unchecked discretionary powers granted to authorities under the present format of the principle wildlife law.

SECTION SEVEN

Conclusions and Recommendations

This report has shown that the current wildlife management legal and policy regimes in Tanzania has made an impressive attempt to implement the provisions of the CITES. Some of the institutions and establishments that are charged with the implementation of the CITES have been enumerated. These comprise of the Director of wildlife, the Chief Research Officer of the Game Division and the wildlife, forestry and fisheries research centres and training institutions.

The legislation and policy regime, however, does not explicitly vest institutions that in one way or another deal with the implementation of the CITES with the mandate to do so. As a result, the institutions are riled with persistent enforcement problems due to overlapping functions and mandates.

It is recommended that the relevant legislation creating the various institutions, whose functions relate to the implementation of the provisions of the CITES, be accordingly amended to explicitly mandate them to incorporate strategies and plans with a view to enable them effectively perform their CITES-related functions.

The legal and institutional regime created by the CITES does not focus on the destruction of wildlife refuge which is also a major cause why species become extinct. Instead, the CITES lays more emphasis on commercial trade in endangered wild animal species. The legal and policy making enforcement regimes in some Contracting State Parties may fail to see this as a compatible element in the enforcement of the CITES provisions, leading to incorporating this bias in their statutory provisions dealing with wildlife conservation and management.

Indeed, the Wildlife Conservation Act (Tanzania) reflects this bias to the extent that its primary objectives re-echo the objectives of the CITES, consequently focusing mainly on fauna without a corresponding focus on flora. Although this anomaly has been partially addressed by the wildlife policy, the Forest Ordinance and other institutions such as the forestry institutes, the review process of the Wildlife Conservation Act should address this inherent bias.

The regulations and rules made pursuant to Tanzania's principle wildlife law also address pertinent issues covered by the CITES. In fact the regulations have gone a step further in that they provide for the control and regulation of trade in all species of wild animals and not just the endangered ones.

The lack of effective mechanisms to combat illegal trade and trafficking in endangered species of wild animals defeats the otherwise good intent of the regulations. This shortcoming also needs to be addressed by the wildlife legal and institutional arrangement currently in place to implement the CITES. One way of taking care of this particular problem is to enact a specific legislation to protect endangered species and establish an enforcement organ to oversee its implementation. Such organ should work in close association with other CITES implementation agencies of the CITES in Tanzania such as the TRAFFIC, WWF and the WPU.

The existing overlapping mandates in the legal and institutional framework on wildlife management and conservation can prove to be a stumbling block in efforts geared at implementing the provisions of the CITES in Tanzania.⁵⁴ It is recommended that overlapping features be dealt with in order to foster cross- sectoral coordination in the overall effort to implement the CITES within the legal, institutional and policy-making framework on wildlife conservation and management.

Currently, there exists no statutory body that has been explicitly vested with the implementation of the CITES in Tanzania. Most of the establishments and authorities that are in place are not statutorily mandated to do so. The principal wildlife law and other legislation creating the authorities and establishments should also address this.

There is also a need to check the discretionary powers of the authorities that have been vested with the power to determine the issuing of wild animals export permits, licenses and disposal of confiscated trophies to ensure the powers are not abused to the detriment of enforcing the CITES. For example, the Minister's power to amend schedules, which are the only part of the law that explicitly reflect the provisions of the CITES, is not subject to the CITES.⁵⁵

The principle wildlife legislation should also be accordingly amended by invoking a clause that will ensure that the discretion accorded to authorities charged with the implementation of the CITES exercise their discretion, if any, in accordance with the provisions of the CITES. Botswana's approach in this regard is commendable and should be emulated.

Tanzania should also reinforce cross border checks with neighbouring States in order to combat illicit trade in wild animal species and trophies. This strategy is echoed by the Lusaka Agreement on Cooperative Enforcement Operation Directed at Illegal Trade in Wild Fauna and Flora, Lusaka, 1994 whose principle objectives reflect the CITES requirements. The main objective of the Lusaka Agreement is to reduce and ultimately eliminate illegal trade in wild fauna and flora.⁵⁶ Tanzania has ratified this Agreement and therefore has the obligation of implementing it effectively.

The government of Tanzania should also consider effectively implementing the Protocol Concerning Protected Areas and Wild Fauna and Flora in the Eastern African Region executed in Nairobi in 1985 which also re-echoes a similar approach in efforts to eliminate illicit cross-border in game trophies.⁵⁷ Effective and adequate implementation of the government's obligation under regional Agreements would be in compliance with the wildlife policy aspirations which focus and emphasises on, among other things, the need for regional and international cooperation in implementing wildlife management strategies and plans.

⁵⁴ See URT *"The Report on Institutional and Legal Framework for Environmental Management in Tanzania"* ILFEMP, July 1999

⁵⁵ See sections 21, 23 ,24 and 35 of the Act and schedules thereof.

⁵⁶ See Article 2 of the Agreement.

⁵⁷ See Makaramba, R.V, *"Review and Harmonization of Wildlife Laws and Regulations in Tanzania,"* pp.69-72

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